



# Child Abuse and Neglect Institute: The Role of the Judge

REVIEW OF FEDERAL LAWS & REGS

National Council of Juvenile and Family Court Judges





# FEDERAL LAWS THAT DRIVE THE CHILD ABUSE & NEGLECT COURT PROCESS

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Establishing the Foundation ...

Review of Federal Laws & Regulations

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# OVERVIEW

## Our Purpose:

- ⦿ Review key federal legislation time line.
- ⦿ Provide a framework for understanding the Federal legislation that has shaped child abuse and neglect court proceedings, and the role of the Judge.



# INTRODUCTION

- ◉ Since 1974, federal law has played a major role in the development of state law and policy on child abuse and neglect proceedings.
- ◉ Most of the federal laws in this area affect the states because they grant or deny federal funds depending on the state's compliance with certain conditions.



# KEY FEDERAL LEGISLATION TIMELINE

- 1974 -Original CAPTA
- 1978 -ICWA
- 1978 -CAPTA Amended
- 1980 -Adoption Assistance and Child Welfare Act
- 1984, '88, '92 -CAPTA Amended
- 1993 –Omnibus Budget Reconciliation Act (Court Improvement Program)
- 1993 -Family Preservation and Family Support Services Program → *NCJFCJ RESOURCE GUIDELINES, 1995*
- 1994 –MEPA
- 1996 –MEPA and CAPTA Amended
- 1997 – ASFA
- 1999 –CHAFEE Foster Care Independence Act
- 2000 -Child Abuse Prevention and Enforcement Act
- 2000 –Strengthening Abuse and Neglect Courts Act → *NCJFCJ ADOPTION AND PERMANENCY GUIDELINES, 2000*



# KEY FEDERAL LEGISLATION TIMELINE

- 2001 -Promoting Safe and Stable Families Amendments
- 2001 –No Child Left Behind Act and McKinney-Vento Homeless Education Assistance Improvements Act
- 2003 –Keeping Children Safe Act
- 2003 –Adoption Promotion Act
- 2004 –IDEA
- 2005 –Fair Access to Foster Care Act
- 2005 –Deficit Reduction Act
- 2006 –Safe and Timely Interstate Placement of Foster Children Act
- 2006 - Child and Family Services Improvement Act
- 2006 –Adam Walsh Child Protection and Safety Act
- 2008 - Fostering Connections to Success and Increasing Adoptions Act
- 2010 – CAPTA Reauthorization
- 2014 –Preventing Sex Trafficking and Strengthening Families Act



*NCJFCJ ENHANCED RESOURCE GUIDELINES, 2016*



# CHILD ABUSE PREVENTION AND TREATMENT ACT (1974) P.L. 93-247

- ◉ Child abuse and neglect reporting laws
- ◉ Investigation of reports of abuse and neglect
- ◉ Public education about abuse and neglect
- ◉ Confidentiality of child protective service records
- ◉ GAL for every abused or neglected child subject to judicial proceedings

P.L. 93-247, 88 Stat 4, 42 U.S.C. § 5101-5107



# INDIAN CHILD WELFARE ACT (1978) P.L. 95-608

## Goals:

- To protect the best interests and stability of Indian children and families.
- To establish minimum Federal standards for the removal of Indian children from their homes and for the placement of Indian children in homes that reflect the values of Indian culture.

P.L. 95-608, 25 U.S.C. § 1901





# ADOPTION ASSISTANCE AND CHILD WELFARE ACT (1980) P.L. 96-272

- Act intended to
  - Protect children in foster care
  - Shorten the time children spent in foster care
  - Encourage permanency planning through reunification when possible and TPR and adoption when not

P.L. 96-272, 94 Stat. 500, 42 U.S.C. § 670-676 (and amending § 620-628)



# ADOPTION ASSISTANCE AND CHILD WELFARE ACT (1980) (CONT'D)

Amended Title IV of the Social Security Act

- ◉ Must establish a state service plan and individual case plan for each child
- ◉ Required certain state judicial findings as a condition of federal funding
  - **“reasonable efforts”**



# ADOPTION ASSISTANCE AND CHILD WELFARE ACT (1980) (CONT'D)

- ◉ Juvenile Court must determine that case plan developed to ensure placement in least restrictive, most family-like setting in close proximity to parent(s) home
- ◉ Juvenile Court must ensure status of every foster child is regularly reviewed and child is given timely permanent placement



# MULTIETHNIC PLACEMENT ACT OF 1994 (MEPA)

- ⦿ Prohibits discrimination based on race, color, or national origin in foster care or adoptive licensing & child placement
- ⦿ States' implementation of MEPA has led to: Special recruitment efforts for minority foster & adoptive parents; relative placement preference; following ICWA requirements



# ADOPTION AND SAFE FAMILIES ACT (1997) P.L. 105-89

## ASFA Goals:

- ◉ To promote permanency for children in foster care.
- ◉ To ensure safety for abused and neglected children.
- ◉ To accelerate permanent placements of children.
- ◉ To increase accountability of the child welfare system.



## ASFA (Cont'd)

- ◉ Safety and well-being of children are paramount concerns
- ◉ Foster care is temporary
  - permanency timelines
- ◉ Termination filings in certain conditions
- ◉ No reasonable efforts regarding removal or reunification in certain circumstance
- ◉ New reasonable efforts expectation when reunification is no longer the goal

[P.L. 105-89, 45 C.F.R.]



## ASFA (Cont'd)

- ◉ Foster parents' rights to notice and be heard at review
- ◉ Focus on the adoptability of ALL children
- ◉ Contrary to welfare finding in first Court ruling

45 C.F.R. § 1356.21(c)



# ASFA (CONT'D)

## *ASFA Provisions Affecting Judicial Proceedings*

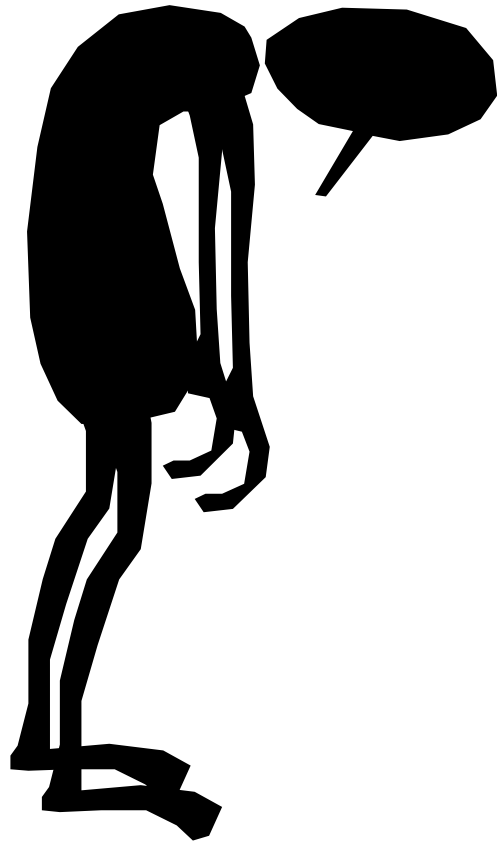
- ◉ Reasonable efforts
- ◉ Contrary to welfare determination
- ◉ Foster care placement; limit on court role
- ◉ Permanency hearing deadline
- ◉ Permanency plan set at hearing
- ◉ Permissible plans
- ◉ Reasonable efforts to finalize plan
- ◉ TPR Required; deadline for filing TPR w/in 60 days of felony determination
- ◉ TPR w/in 60 days of abandoned infant determination
- ◉ Exceptions to TPR requirement
- ◉ Adoptive family recruitment at TPR filing





# ASFA (Cont'd)

## ASFA'S DIRECT IMPACT ON COURTS



- ◉ More termination cases
- ◉ More adoption, custody, guardianship and relative placement cases
- ◉ More hearings of all of the cases



# REASONABLE EFFORTS GENERALLY

The State must make reasonable efforts to:

- ⦿ Maintain the family unit and prevent unnecessary removal of a child from his/her home, as long as child's safety is assured;
- ⦿ Effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure immediate safety of the child); and
- ⦿ Make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.

45 C.F.R. § 1356.21(b)



# CONTRARY TO WELFARE DETERMINATION IN FIRST COURT RULING

If “contrary to the welfare” determination is not made in the first court ruling, the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.

45 C.F.R. § 1356.21(c)



# REASONABLE EFFORTS TO PREVENT REMOVAL

When a child is removed from home, a judicial determination as to whether reasonable efforts were made, or were not required, to prevent removal must be made no later than 60 days from the date the child is removed from home.

45 C.F.R. § 1356.21(b)(1)



# ASFA PERMISSIBLE PLANS

## Permissible plans or goals under ASFA

- ⦿ Reunification
- ⦿ Adoption
- ⦿ Permanent Legal Guardianship
- ⦿ Placement with a Fit and Willing Relative
- ⦿ Another Planned Permanent Living Arrangement

45 C.F.R. § 1355.20



# CHAFEE FOSTER CARE INDEPENDENCE ACT [P.L. 106-169]

- ◉ Provides for flexible funding for program services for youth.
- ◉ Provides opportunities for States to serve youth who are likely to remain in foster care and those who have aged out of foster care up to 21 years of age.
- ◉ Enables older youth (18-21) to receive housing assistance if needed.
- ◉ Provides States the option of allowing these young people to remain eligible for Medicaid up to age 21.



# CHILD ABUSE PREVENTION AND ENFORCEMENT ACT 2000 [P.L. 106-177]

Authorized Federal funds to States to improve criminal justice systems in order to provide timely, accurate, and complete criminal history information to child welfare agencies and other entities involved in child protection.



# STRENGTHENING ABUSE AND NEGLECT COURTS ACT (SANCA) 2000 [P.L. 106-314]

Legislation to improve administrative efficiency and effectiveness of child abuse and neglect courts

- National Dependency Court Performance Measures
- <http://www.ojjdp.gov/publications/courtoolkit>





# PROMOTING SAFE AND STABLE FAMILIES AMENDMENTS OF 2001 [P.L. 107-133]

- ⦿ Authorized vouchers for the Chafee Foster Care Independence Program.
- ⦿ Created matching grant program to support mentoring networks for children of prisoners.
- ⦿ Authorized appropriations for FY 2002-06 to promote family support and preservation, as well as time-limited family reunification and adoption.

42 U.S.C. §629



# NO CHILD LEFT BEHIND ACT OF 2001 AND MCKINNEY-VENTO [P.L. 107-110]

Requires schools, local educational agencies, and states to be held accountable for improving the academic achievement of all students, and identifying and improving low performing schools.

## McKinney-Vento Homeless Education Assistance Improvements Act (in No Child Left Behind)

- ⦿ Requires States to ensure homeless children have access to the same public education as other children and youth, including public pre-school programs.



# KEEPING CHILDREN AND FAMILIES SAFE ACT [P.L. 108-36]

## Mandated changes to State Plan eligibility requirements -

- ⦿ Required policies and procedures to address the needs of infants born and identified as being affected by prenatal drug exposure
- ⦿ Provisions and procedures to require CPS representative to advise an individual of allegations against them at initial contact
- ⦿ Implemented programs to increase the number of older children placed in adoptive families
- ⦿ Emphasized linkages between child protective services agencies and public health, mental health, and developmental disabilities agencies



# ADOPTION PROMOTION ACT OF 2003 [P.L. 108-145]

- ◉ Reauthorized the adoption incentive program under Title IV-E
- ◉ Provides additional incentives for adoption of older children (age 9 and older) from foster care



# INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT (IDEA) OF 2004 [P.L. 108-446]

- Public schools must identify children with disabilities (including homeless youth and wards of the state) who may need specialized education and provide them with individualized education programs and related services
  - Including services designed to prepare them for employment and independent living
- Requires referral to Part C Early Intervention Services for children aged 0-3 involved in substantiated child abuse and neglect cases



# FAIR ACCESS FOSTER CARE ACT OF 2005 [P.L. 109-113]

Amends Title IV-E to make foster care maintenance payments available to private for-profit agencies



# DEFICIT REDUCTION ACT OF 2005 [P.L. 109-171]

- Provides for new court improvement grants for improved data collection and training for judges, attorneys, and other legal personnel in child welfare cases
- Requires collaboration between courts and child welfare agencies
- Provides for the use of child welfare records in State court proceedings



# SAFE AND TIMELY INTERSTATE PLACEMENT OF FOSTER CHILDREN ACT (2006) [P.L. 109-239]

## Improvements to the interstate placement of children:

- ◉ Complete home studies requested by another State w/in specified period;
- ◉ Accept home studies received from another State w/in specified period;
- ◉ **Requires court determine at permanency hearing whether child's out-of-home placement continues to be appropriate and in child's best interests;**
- ◉ State must provide child's health and education records at no cost upon leaving foster care; and
- ◉ In order to continue to receive CIL funds, the highest Court in the state must have a rule that foster parents, pre-adoptive parents, and relative caregivers are notified of proceedings.





# CHILD AND FAMILY SERVICES ACT OF 2006 [P.L. 109-288]

Amends Title IV-B and IV-E:

- State's case review system must include procedures that ensure the court consult, in an age-appropriate manner, with the child regarding proposed permanency or transition plan for the child;
- Targeted grants to improve well-being and permanency outcomes for children affected by methamphetamine;
- State must have procedures for child welfare system to respond to disasters; and
- State plans for child welfare services must describe standards and frequency of caseworker visits with children in foster care (minimum of a monthly visit).



# ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 [P.L. 109-248]

Acts to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, and to promote internet safety.

- Title I, Subtitle C requires national criminal background and child abuse registry checks before approval of any foster or adoptive placement.



# FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT (2008) P.L. 110-351

## © Kinship guardianship assistance payments

- Amends title IV-E to allow states to provide guardianship payments for children in FC who are being cared for by relatives provided they have been in FC for 6 consecutive mos. and are eligible for FC maintenance payments
- Allows children who leave FC after age 16 for kinship guardianship or adoption to be eligible for independent living services and education and training vouchers



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Maintaining Family Relationships

### ■ Family Connection Grants

- Establishes program to provide grants for activities designed to keep children in FC (or those at risk of entering FC) connected with their families
- Funds can be used for kinship navigator programs, family finding efforts, family group decision-making meetings within the child welfare system, or residential substance abuse treatment programs for families

### ■ Sibling Placement

- States must make reasonable efforts to place siblings in the same FC placement
- If siblings can't be placed together, the state must make reasonable efforts to provide frequent visitations among the siblings.



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Improving Outcomes for Older Youth

- States may extend adoption assistance and/or guardianship payments for youth aged 19, 20, or 21
- States may provide care and support to youth until the age of 19, 20, or 21 if the youth is:
  - Completing high school or an equivalency program; enrolled in vocational school; participating in a program to remove employment barriers; employed 80 hours/month; or if there is an existing medical condition that prohibits the youth from doing any of these activities



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Improving Outcomes for Older Youth (Cont'd)

### ■ Transition Planning

- Requires agency to help youth develop a transition plan during the 90-day period immediately preceding the date the youth ages out of FC.
- The plan must be detailed and contain the input of the youth. The plan must include:
  - Options on housing, health insurance, education, opportunities for mentoring, continuing support services, and work force and employment supports



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Educational stability

- Requires agency to coordinate with local education agencies to ensure that the child remain in their original school if in the child's best interests
- If not in the child's best interests, the state must provide assurances that the child is immediately enrolled in a new school and all records are transferred
- The FC maintenance payment may be used to fund transportation costs to the child's school
- Every state is required in their IV-E plans to provide assurances that every school-age child receiving and adoption assistance payment is enrolled full time in school or has completed school



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Health Needs

- State is required to work with the Medicaid agency to develop, with the consultation of pediatricians and other experts, a plan to coordinate the healthcare needs of FC children that includes health screenings, oversight of medication, and steps taken to ensure continuity of medical homes for children if needed.





# FOSTERING CONNECTIONS (CONT'D)

## ◎ Tribal Access to IV-E funds

- Allows tribes to directly access and administer IV-E funds by submitting a plan to the federal government
- Allows tribes to access part of the state's Chafee Foster Care Independence Program funds
- Requires the HHS secretary to provide technical and implementation assistance and grants to tribes to help them to administer their own programs



# FOSTERING CONNECTIONS (CONT'D)

## ◎ Adoption Incentives

- Allows states to receive an additional \$1,000 per adoption of a child from foster care
- Expands the Adoption Incentive Grant Program for five more years and awards \$8,000 per child nine and older and \$4,000 per child with special needs (doubles old rates)
- States required to inform all people who are adopting or may adopt a child from state custody of their potential eligibility for the adoption tax credit
- Eligibility for federal funding of adoption assistance is “de-linked” from AFDC eligibility requirements. This will allow more children with special needs to be adopted with federal funding support
  - Phased in over nine years beginning with children 16 and older who will be the first to be de-linked from the AFDC requirement
  - Any child in care over 60 consecutive months is eligible as well as that child's siblings



# UNINTERRUPTED SCHOLARS ACT OF 2013

- ◉ Amends provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA) to permit educational agencies or institutions participating in a Department of Education program to release records or identifiable information without parental consent to agency caseworker or other representative of a state or local child welfare agency or tribal organization authorized to access a student's case plan when such agencies or organizations are legally responsible for the care and protection of the student.
- ◉ Sets forth conditions for disclosing education records to an entity engaged in addressing the student's education needs
- ◉ Permits the release of such records and information without additional notice to parents and students when a parent is a party to a court proceeding involving child abuse and neglect or dependency matters



# PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (2014) P.L. 113-183

- ⦿ Requires agency to act promptly when children go missing
- ⦿ Promotes foster child “normalcy”
- ⦿ No plan of APPLA for children under 16
- ⦿ Mandates that for every Permanency Hearing the agency must document on the record “intensive, ongoing, unsuccessful efforts for family placement”
- ⦿ During review of an APPLA plan, child must now be asked about their desired permanency outcome
- ⦿ If APPLA remains the goal, in every case there must be a judicial determination at that hearing of compelling reasons why APPLA remains best permanency plan for that child



## PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (CONT'D)

- Encourages sibling placements
- Empowers foster youth at the earlier age of 14
  - May select up to 2 individuals to be involved in developing the case plan
  - Requires case plan includes a “rights document”
- Mandates receipt of key documents upon leaving foster care at 18 or later



# QUESTIONS?

