S. HRG. 105–902

CHILD WELFARE REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY
AND FAMILY POLICY

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

S. 511, S. 742, H.R. 867

MAY 21, 1997

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
55–318—CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-058259-8

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CHILD WELFARE REFORM

WEDNESDAY, MAY 21, 1997

U.S. SENATE,
SUBCOMMITTEE ON SOCIAL SECURITY
AND FAMILY POLICY,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:05 p.m., in room SD–215, Dirksen Senate Office Building, Hon. John H. Chafee, (chairman of the subcommittee) presiding.

Also present: Senators Grassley and Rockefeller.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM RHODE ISLAND, CHAIRMAN OF THE SUBCOMMITTEE

Senator CHAFEE. Good afternoon, everyone. This is a meeting of the Subcommittee on Social Security and Family Policy, subcommittee of the Senate Finance Committee. I am very pleased to be holding this hearing on reforms to the child welfare system.

I think we will all agree, there is no more vulnerable group of people in our country than children who have been abused or neglected by their parents.

Nationwide, there are about 500,000 children in foster care. In my own State of Rhode Island, there are approximately 1,600 children in foster care.

On an average, these children will spend more than 2 years in out-of-home care before they either return home to their biological families or they are freed up for adoption.

Many children linger, as we all know, in foster care for much longer periods of time, until they are often so damaged that it is hard to find adoptive homes for these children.

This afternoon's hearing will explore solutions to this problem of how to move children more quickly out of the foster care system and into permanent settings, and how to ensure their health and safety during this time.

I want to welcome Representatives Camp and Kennelly, who are here to talk about legislation that they have introduced in the House which passed overwhelmingly by a very large margin.

I am also pleased that Senator DeWine, who has been a cosponsor of legislation I introduced with Senator Rockefeller, is here to share his experiences with the child welfare system.

We have a very distinguished panel following that, representing providers of child welfare services, State child welfare agencies,

State courts, and adoptive parents. So, I look forward to hearing from all the witnesses.

I would like to take just a moment to talk about the legislation that Senator Rockefeller and I have introduced, the so-called Safe Adoption and Family Environments Act, namely the SAFE Act.

The goals of the legislation are twofold: to ensure that abused and neglected children are in safe settings, and to move children more rapidly out of the foster care system and into permanent placement.

I believe, as we all do, the goal of reunifying children with their biological families is a laudable one. But I do not think we should be encouraging States to return abused or neglected children to homes that are clearly unsafe. Regrettably, this is occurring under current law.

The SAFE bill would clarify the primacy of safety and health. Safety and health would be the objectives in any decision made about children who have been abused and neglected.

Our legislation also pushed States to identify and to enact State laws to address these circumstances in which the rights of the biological parents should be terminated expeditiously. For example, when the parent has been found guilty of felony assault, chronic sexual abuse, or murder of a sibling.

The legislation would also provide incentives to move children into permanent placements, either by returning them home when reunification is the goal, or by removing barriers to adoption.

In addition, the SAFE bill balances these new demands on States by providing modest increased funding to encourage families to adopt special needs children and to help families with reunification efforts.

I think it is a good bill, but obviously it can be improved. That is what we are looking forward to hearing from this afternoon. So, I look forward to hearing the testimony.

Who wants to go first? All right. Representative Camp, if you want to go first, alphabetically.

STATEMENT OF HON. DAVE CAMP, A U.S. REPRESENTATIVE FROM MICHIGAN

Representative CAMP. Thank you, Mr. Chairman. I appreciate you holding this hearing and for allowing me, Mrs. Kennelly, and Senator DeWine to testify today.

I also want to comment you for all of your hard work on behalf of children. I appreciate it very much, and I know many do in this country.

Beginning last year, Mrs. Kennelly and I worked together to help increase the number of adoptions in this country and to try to move children into permanent homes more quickly. We have a good piece of legislation that passed with a bipartisan majority in the House, which you mentioned, of 416 to 5.

This legislation will do just that.

Senator CHAFEE. 416 to 5?

Representative CAMP. 416 to 5.

Senator CHAFEE. You cannot beat that.

Representative CAMP. We got a pretty good number.

Senator CHAFEE. I do not think praise of the American flag would do any better than that, would it?

Representative CAMP. So this legislation will help increase the number of adoptions. There are some who say this cannot be done without spending much more revenue. I would say this legislation is revenue neutral and it is possible to do these good things and be revenue neutral, for two reasons.

That is because spending on child protection programs has increased dramatically since 1993, and doubles to over $6 billion in 2002. In 1993, a new child welfare service program was established for family preservation and support. In 1998, that program will spend more than a quarter of a billion dollars.

So our legislation helps give incentives to the States to move children from adoptive to permanent homes. We do that with a $4,000 per child, and $6,000 per child special needs, incentive award.

We also provide $30 million in technical assistance to help States promote adoption. But, because of the changes that our legislation makes, this bill ends up being revenue neutral.

I have formal remarks that I can submit for the record that include also a chart, which I believe you have at your desk, which indicates the increase in Federal spending on child protection programs for fiscal years 1993 to 2002, and this shows going well over the $6 billion mark in the year 2002.

But I would be happy to answer questions, and I will submit my formal, longer remarks for the record.

Thank you, Senator.

Senator CHAFEE. All right. Well, thank you.

[The prepared statement of Representative Camp appears in the appendix.]

Senator CHAFEE. How is your time, Senator DeWine?

Senator DEWINE. I am doing fine, Mr. Chairman.

Senator CHAFEE. I will go ahead with Representative Kennelly, now.

Senator DEWINE. Absolutely.

Senator CHAFEE. Then I will save questions for the group.

We welcome you.

STATEMENT OF HON. BARBARA B. KENNELLY, A U.S. REPRESENTATIVE FROM CONNECTICUT

Representative KENNELLY. Thank you, Mr. Chairman, thank you, Senator. I want to thank you very much for having me here today to testify, and I want you to thank Senator Rockefeller, because I know how much both of you have done for the foster care system in this Nation.

Yes, Mr. Camp and I did work very hard. We had wonderful support from staff, and we did get a very big vote. We wanted to do that. We thought this was a subject that we could treat in a bipartisan fashion.

We made every effort to try to answer the concerns and the questions of people who were in the business of taking care of children across the country, and we were pleased with the bill and its passage.

But I will say to you that I know any bill can be improved, and that is why we are here today. We would like to continue to work on this bill and work with you to see if it can even be a better bill.

Our bill revises the current Federal requirement that States make reasonable efforts to reunify abused children with their families. In short, we clarified that reunifying a family is not reasonable when it presents a clear and undeniable danger to the child. The legislation provides States with examples of situations where reasonable efforts are unreasonable, such as when a child has been tortured.

I am pleased to acknowledge and know that your bill, the Chafee-Rockefeller bill, has similar language on this issue. I will not go into it today, but we spent much time studying this issue across the country and we know we have an increasing number of situations where an abused child should not be in the home. I know that you feel the same way we do about doing something about it.

But it is not enough to merely prevent children from returning to dangerous homes. We must also do more to find a permanent home for children who cannot return to their birth families.

To accomplish this goal, we call on States to pursue reasonable efforts to place children for adoption when reunifying families is not possible. We propose expediting reviews of foster care children, require States to consider terminating parental rights in certain circumstances, and finally we give States financial bonuses if they increase the number of children leaving foster care for adoption.

I am aware of the sentiment that additional resources are also needed for both family preservation and adoption, and I look forward to working with members of this body who have an interest in providing more funding for those services.

In short, if we can find additional resources in the budget to help families, I think both Mr. Camp and I are all for that. I certainly think a good case can be made for providing more assistance to the child welfare system itself.

But let us be careful about making the perfect the enemy of the good. It would be very unfortunate if a debate about money prevents us from enacting legislation that sends a simple, yet strong, message about promoting protection and permanency for the children of this Nation. Thank you, Senator.

Senator CHAFEE. Thank you, Representative Kennelly.

[The prepared statement of Representative Kennelly appears in the appendix.]

Senator CHAFEE. Now our colleague, Senator DeWine, who has been active in this area.

STATEMENT OF HON. MIKE DEWINE, A U.S. SENATOR FROM OHIO

Senator DEWINE. Mr. Chairman, thank you very much; Senator Grassley.

First, Mr. Chairman, let me thank you for not only holding this hearing, but for the tremendous leadership that you have shown in this area. I am proud to be an original co-sponsor of your legislation.

Let me also congratulate Representatives Camp and Kennelly for the overwhelming victory that they had in the House of Representatives. That vote is certainly very, very impressive.

Mr. Chairman, I would like to tell the story today of two Ohio children. I will not use their real names, but they are real, and their tragedies were real.

I think these stories demonstrate the need for extra work in this area, for additional legislation, and I think they tell a very, very compelling story. Let me, first, talk to you about Sarah. That is not her real name, but what happened to her is tragically real.

Sarah was born in August of 1993. In December of that same year, she was hospitalized in critical condition suffering from Shaken Baby Syndrome. In January 1994, Sarah was released from the hospital and placed in her first foster home.

In May 1994, her foster parents moved so she was placed in foster home number two. In October 1994, Sarah was returned to her natural mother's custody. In December of 1994, her parents were picked up by Florida authorities on warrants. She was placed at that time in foster home number three.

In January 1995, Sarah was moved to another foster home in Florida, foster home number four. She was then returned to Ohio to foster home number two. In August 1995, foster home number two was having trouble with their own children and, as a result, Sarah was moved to foster home number five.

In January 1996, foster home number five asked that Sarah be moved out of their home. Why? Well, Mr. Chairman, because the family was concerned that they were getting attached to her and they knew that they would not be allowed—and were told they would not be allowed—to adopt her. As a result, Sarah was then placed in her sixth foster home.

In April 1996, foster home number six asked for Sarah to be moved after the death of a close relative. Sarah was placed then in her seventh foster home. In May 1996, Sarah was placed back in foster home number six. In June 1996, she was placed in foster home number eight as a pre-adoptive placement.

In July, though, of 1996, the court ordered Sarah into long-term foster care. In August 1996, foster home number eight asked for Sarah to be moved. Because of her uncertain legal status, they did not know if they would ever be permitted to adopt her and their young children were becoming very, very attached to her. Sarah was placed back at that time in foster home number six.

Finally, in April 1997, foster home number six asked for Sarah to be moved at the end of the school year because this family was no longer able to care for her. It is unknown where she will move.

Mr. Chairman, let me put this tragic foster care odyssey in perspective. This child has lived now in eight foster homes over her short life. As a result of the injuries she suffered, she is physically and mentally delayed. She is learning sign language in order to be able to communicate. When she feels frustrated at others' inability to understand her, she bites herself and screams.

Although she has been in foster care for over 3 years, no progress has been made by her parents in the case plans. The juvenile court has on two occasions denied the motion of Children's Services to terminate parental rights.

The court's order stated the belief that the mother is immature and ordered Sarah to be placed in long-term foster care, presumably with the belief that the mother will mature with the passage of time.

Now, Mr. Chairman, the parents have disappeared and obviously they are not complying with the terms of their case plan. In the meantime, Sarah, who is now 3½, is soon to be kicked out of her eighth foster home.

As a result of all these moves, Sarah becomes hysterical whenever she sees a full black garbage bag, because she believes it means she is going to be moved one more time. Her suitcase has always been a black garbage bag.

Mr. Chairman, little Sarah is being treated like an animal, moved back and forth, with devastating results for her physical and emotional development. Sad to say, as we all know in this room, her story is not unique.

Let me tell you about this second child, also from Ohio, also a real child. Richard. He was born October 1992. He tested cocaine positive, syphilitic, and jaundiced.

The hospital contacted Franklin County, Ohio Children's Services, who became involved with the mother on a voluntary basis—voluntary basis, if you can believe it, because they did not think they had to step into that case.

When Richard was 6 months old, he was admitted to the hospital in critical condition, suffering from severe dehydration. He had been left alone on the floor of his apartment for somewhere between 4 and 6 days. Upon release from the hospital, he was placed in foster care.

Criminal charges of child endangering were pressed against both parents, and both were incarcerated. While incarcerated, Richard's mother gave birth to his sister, Rose. Rose was born with symptoms of prenatal cocaine exposure and was placed in the same foster home as Richard.

Finally, Children's Services filed a motion for permanent court commitment of the children. Yet, the mother was granted one hour per week visitation at her correction facility.

After release from prison, the mother moved into her own apartment and was granted unsupervised weekend visits. The motion for permanent custody was soon withdrawn, and the children were returned to the mother's custody.

Two months later, after new allegations of neglect, Children's Services filed a motion for emergency custody of the children. The mother's whereabouts were then unknown for 6 months, until she returned to Ohio just last month. She now wishes to regain custody of the children. Richard, by the way, Mr. Chairman, Senator Grassley, is now 4½ years of age.

Mr. Chairman, there is no indication, record of activity, or hope that either parent is suitable or capable of parenting these children, or that they ever will be. These children have lived all but 2 months of their lives with the same foster parent. Is it reasonable to keep the lives of these two children in legal limbo for more years?

Mr. Chairman, I am here to thank you again for your great work, along with Congressmen Camp and Kennelly, Senator Rockefeller,

and to put in real terms why we are all here. We are here for Sarah, Richard, and other children.

Sarah, Richard, and far too many children like them in this country are why we are here. They need our help, Mr. Chairman. They need our help to find the safe, permanent, and loving homes that all children need and deserve.

Thank you very much.

[The prepared statement of Senator DeWine appears in the appendix.]

Senator CHAFEE. Well, thank you very much, Senator.

Now, I just want to explain to my colleagues, each of the witnesses in this panel has testified. You might have an opening statement, but, because of the time problems with the panel, what I would like to do now is to ask questions of this panel, excuse them, and then you would have an opportunity for an opening statement, as would Senator Grassley. Is that satisfactory?

Well, I want to thank each of you for your testimony. I think we all should bear in mind the admonition that Representative Kennelly gave us, that in doing this we just cannot let the perfect be the enemy of the good, as it so often is in the Congress. So, we want to move on with this legislation to the best of our ability.

A couple of questions, if I might. I know in our meeting, Mr. Camp, you indicated that while we all would like money in these programs, you just felt that you were not going to get any more money out of the House. I think that was your feeling. Do you share that, Representative Kennelly?

Representative CAMP. I think that, as we are seeing this plan to balance the budget by the year 2002 move through the House and through the Congress, I think we are all coming to a greater understanding of just how tight all of these resources are.

But we also thought it was important to act quickly, and if we kept the bill budget neutral, that we could pass legislation now and help children now because of the compelling stories like the story of Richard and Sarah that Senator DeWine referred to. We think this calls for action now. So, it was really twofold.

Then, last, the number of dollars, as I mentioned in my testimony, that are increasing in these programs already show that there is a commitment for both services and other ways to help children financially in our budget already.

Representative KENNELLY. Obviously, Senator, if we could have we would have spent more, because the situation is becoming, by your charts, so much more serious. But we did devise a way to provide bonuses for the States. If they put a child in a permanent home, they would get $4,000 plus an additional $2,000 if the child was hard to place.

Working with those numbers and working with the numbers that would be decreased in foster care costs, we came out with the ability to have the bonuses being budget neutral. So, that is the best we could do in the House. If you can find more, please do.

Senator CHAFEE. Well, everything I am saying here, I know you agree with, so we are not in a point of contention here at all. One of the reasons I think we all recognize that more money is being absorbed in the program is, as you can see from the charts there, that the discouraging rise of child abuse and neglect, all of which

obviously requires more money for the programs and services that we are trying to provide through here.

Let me ask you, I noticed, I guess, Representative Camp pointed out that under your program, I believe for each additional child, I am not sure it is additional. I am not sure what you used as a base. In any event, there is a $4,000 payment for an adoptive child that goes to the State, and $6,000 if it is a special needs child.

My question is, had you thought about having the payment go to the adoptive parent rather than to the State? I am not sure what the purpose of it going to the State is. Also, I am not sure what you use as a base.

Representative CAMP. Well, some States have programs similar to this. Michigan has had a program since 1974. The incentives are always made to the agency, because it is often the red tape. There are many parents willing to adopt, often, but the red tape of the agencies being slow in moving the children and making them available is the problem, so I think it developed as a grant to the adoptive agency.

Also, I think you want to be somewhat careful. I realize we have a tax credit for adoption as well that passed the Congress in the last session, but I think it is best if it goes to the agency because it gets at the problem of, that is where they are being held up.

Senator CHAFEE. Your program would have it go to the State, would it not?

Representative CAMP. To the State.

Senator CHAFEE. To the State agency that deals with this.

Representative CAMP. That is right. The State of Michigan program goes to the adopting agency.

Representative KENNELLY. Senator, the reason I thought this was a good approach, is I have worked for years on Child Support Enforcement. When I was Secretary of the State of Connecticut, and then when I came to Congress, I have continually worked to improve collections.

What I always found out is, when the State does not have something on the front burner it just gets pushed back. The judicial system does not think it is that important, and the Governors do not make it a priority. Then we get into the whole question of unfunded mandates.

I just do not believe we would see progress in the areas that we are so concerned about unless we made it worthwhile for the States. And this was the best we could do, give the bonus to the State over and above how many adoptions they had in the previous year.

I just do not think they would accept the responsibility as something worthwhile doing unless we made it worthwhile for them.

Senator DEWINE. Mr. Chairman, if I could comment.

Senator CHAFEE. Yes. Just one quick question as to the base year. I am not sure what you chose, is it the prior year? Anything above the prior year?

Representative CAMP. I believe it is the prior year, and the adoption has to occur within a certain time period.

Senator CHAFEE. Senator DeWine.

Senator DEWINE. Just to share, briefly, Mr. Chairman, my experience in Ohio in talking to a number of county Children's Service

agencies, which is how we run it, generally, in Ohio. As you know, these agencies are always strapped for money. There simply are not enough resources.

When you talk to them and ask them, what do you have to do to become more proactive in regard to adoption, they say, we would love to do that. Our problem is being able to set aside the resources to do that and put one person, depending on if it is a small county, or more people, on it and to really focus on it.

The counties in Ohio that have had the most success in getting adoptions are those counties that have concentrated on it and who have said, we are going to set aside the money, we are going to do it, it is going to be a top priority. What we are saying, I think, with this is simply that if we put some money out there, my experience is, they are going to do it.

The only reason they are not doing it today is not for lack of will, it is for lack of the resources. They have such finite resources that they have to concentrate on saving kids from being abused, and they cannot turn around and do the preventive work that really would get the job done or would really help, which is to push the adoptions.

Senator CHAFEE. Thank you. My time is up. I think in the early bird rule, Senator Grassley was here next.

Senator GRASSLEY. Well, since I am not a member of the subcommittee, it may not be fair to Senator Rockefeller. I think Senator Rockefeller should go first.

Senator ROCKEFELLER. I can handle it. [Laughter.]

Senator GRASSLEY. Most importantly, I think it is important to recognize that both here, as well as out at the table, you see a bipartisan effort.

It is very impressive that we have bipartisan efforts when we are dealing with these very sensitive problems. So I wanted to compliment people working in this fashion to make sure that we do solve these complicated problems.

My first question is very general, how do you expect the legislation to improve upon the situation we have now? I would like to describe the situation and have you answer it in terms of quantifying your answer on the increases in adoptions you expect from your legislation.

At least 53,642 children that is 1 in 10, were legally free for adoption at the beginning of fiscal year 1992. During 1996, we had only 22,491 children that were adopted from foster care. We know that many families are willing to adopt children, including those with the most challenging of circumstances. We know that many biological families whose parental rights have been terminated want their children adopted.

We also know, and this should be the most important consideration—in fact, I saw a kid just the other night on television saying that he would like to have a permanent home—that kids want permanency that can come through adoption. Yet, the numbers show that children are not being placed in adoptive homes rather they are languishing in the foster care system.

Your intent, I am sure, is to take care of the needs of these 53,642 kids. Do you feel that your legislation will do that for all

53,624? What are the key points in your legislation that can help us to understand that you are at least moving towards that goal?

Representative CAMP. Well, Senator, just quickly, I will say that what we are trying to do, is the pendulum has swung very strongly over to family reunification, and that is a Federal standard about, States must make reasonable efforts to reunite families. We are trying to bring that pendulum back to the center a bit and balance that tension between reuniting families and the health, welfare, and safety of the child.

But we do it in several ways. One, we allow what is called concurrent planning so that you do not get to the end of a 3-year foster care situation and say, now what do we do for a permanent home for this child. Planning can begin at the very initial stages of foster care.

Second, we say that if a child is in foster care 18 out of the last 24 months and there is not a compelling reason for them to be there, they are not with a family member, that States must initiate termination of parental right hearings so that they will move that process along.

Last, our incentives to adoption and the technical assistance for adoption promotion. I believe all those items together will help speed children into more permanent homes more quickly. I know that Representative Kennelly may want to add to that.

Representative KENNELLY. Yes, I will. There was legislation passed in 1980 that called for reasonable efforts to return a child to their parents. We did not clarify what reasonable effort meant. We did not define the term. So what happened is, as David said, the pendulum began to swing forward and family preservation became a very definite goal.

Social workers were left with no clarification of what reasonable effort meant. As a result, some being so afraid that they would not do everything they should do to get that child back with the birth parent, they began to do unreasonable things.

So what this legislation does is clarify a number of situations where, in fact, a parent has murdered another child, where a child has been tortured, where there has been sexual abuse, that at least the social worker knows, in those cases that child gets out of that home and they make reasonable effort to keep the child safe, and not an unreasonable effort to keep the child with the parent.

Senator GRASSLEY. The point that you made about getting them back into the home is the first step before adoption. But for the 53,000-some children, which I spoke of, the determination has already been made. They are out there to be legally adopted. They have already crossed that border. But we only have 40 percent of those being adopted under the present system.

Representative CAMP. The parental rights have already been terminated with those.

Senator GRASSLEY. Yes.

Representative CAMP. Well, that is where I think then the technical assistance and the incentive monies to the State of $4,000 per child, and $6,000 per special needs child will help move that along.

But we are finding that the fastest growing number are the children that are languishing in foster care. It is over half a million

children now, and has increased dramatically since 1982, an 89 percent increase. We are also trying to get at that, too.

Senator DEWINE. Senator, if I could. First, let me just congratulate you, because I know you are very, very interested in this subject. You and I have talked about it.

A very simple change in the statute by specifying, adding to the reasonable efforts to reunify families, and saying that, yes, we are going to keep that in the statute, but the safety of the child will always be paramount.

That small change, I am convinced, not only is going to protect more children, I am also convinced is going to speed up the whole process so that more children are able to be adopted at a younger age, which usually means it is easier to have them adopted.

Let me very quickly tell a story from Ohio. I asked a number of Children's Service agencies this hypothetical. I said, let us assume that you have a case—I made it extreme—where you have a mother with six children, mother and father, and all six have been take away from the mother and father permanently.

The seventh child is now born. The seventh child tests positive for crack cocaine, which means the mother was ingesting it within a week or 10 days, at least, prior to the birth of the child. I said, could you then go immediately for permanent custody and move this child through the system? Almost to an agency they told me, no, we could not at that point go to permanent custody.

I said, well, how long do you think it will take, under the facts that I describe, before this child would be eligible for adoption in your court system, in your county? The shortest period of time I got as an answer was two and a half years. Two and a half years for this child. The average I got was 4 years. That is the problem.

This bill is not going to cure it for all 500,000 kids who are in foster care. It is not a panacea. But the bill that has been introduced by my two colleagues on the panel, the bill that has been introduced by my two colleagues at the table, both of those bills make dramatic improvements, I think, in the situation we have today. We will save children because of this legislation. We will not save all of them, but we will save more than we are saving today.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator CHAFEE. Thank you very much, Senator Grassley.

Senator Bond is here, and I know he wishes to introduce somebody on our next panel. Senator, knowing your busy scheduled, if you would like, now, to introduce Mr. Stangler, that would be fine by us.

Senator ROCKEFELLER. Mr. Chairman, just as the panel is leaving, can I just say how much I respect each one of you. Senator DeWine, I have spent a lot of time listening to you. You have been talking about this on the floor. It has been not just solid, but inspirational. Mr. Camp and Ms. Kennelly, all I can say is, 416 to 5 is not bad. [Laughter.]

Senator CHAFEE. I have one more question for you.

I know Senator Bond is here, and you go to it, Senator, with your introduction.

STATEMENT OF HON. CHRISTOPHER BOND, A U.S. SENATOR FROM MISSOURI

Senator BOND. Thank you very much, Mr. Chairman, distinguished members of the committee, and distinguished panelists. It is a real honor to be here as a co-sponsor. I am very much interested in this measure. The best thing I can do is to introduce to this committee the good friend who is responsible for social services in the State of Missouri.

I think once you get to know him you will understand why we have such a high regard for Gary Stangler, our distinguished director of social services. As Governor, I had the pleasure of appointing him to several positions in my administration. He was executive deputy director of social services.

Then in 1989, my successor, Governor—now Senator—Ashcroft appointed him to be director of Department of Social Services. The parties changed when, in the 1992 election, and Mel Carnehan, a Democrat, was elected Governor and he appointed Gary Stangler as director of social services.

So, truly Gary has been able to work both for Republican and Democratic State administrations because he places the concerns of Missouri children above partisan politics. That is why I think he is so well-suited to testify here today. He has really developed groundbreaking, innovative programs that have been replicated on a national level.

I know you do not have time, but there are many different programs that he could talk about that he has been responsible for leading in Missouri, but his accomplishments in Missouri have brought him national recognition, and even international recognition. He serves on numerous child welfare boards, and today he represents the American Public Welfare Association in his testimony.

He has authored a whole lot more articles than I have had time to read. He has spoken nationally on efforts to keep troubled families together. He is a product of the University of Missouri at Columbia. He really is devoted to ensuring the safety of children, while maintaining and improving the quality of life for all Missouri children and their families by providing the best possible services to enable individuals and families to fulfill their potential. I highly commend his testimony. Thank you very much for giving me this opportunity, but most of all I am sure that you will learn a great deal in talking with my good friend, Gary Stangler.

Thank you, Mr. Chairman.

Senator CHAFEE. Well, thank you very much, Senator. I am going to ask Mr. Stangler to send you a few more articles. [Laughter.]

Because I know you want to read them this evening and in the future.

Senator BOND. I would love to, Mr. Chairman, but I will share them with you first to give you the first crack at them.

Senator CHAFEE. Well, I will annotate them for you and turn them over to you.

Senator BOND. Thank you very much.

Senator CHAFEE. Thank you.

Now, my question is this, particularly to the House members. In your bill, you have some strict provisions—but, indeed, you do have

some exceptions—about children under 10 who have been in foster care for 18 out of the last 24 months, and at that time you begin the process of termination of parental rights.

I have sort of a difficulty with arbitrary time limits, and I suspect that the judge, who is going to be Judge Workman who is going to be on the next panel, will also have some trouble with arbitrary limits. Could you touch on that? Maybe your answer is, you have got these exceptions, I noted in there.

Representative KENNELLY. Senator, let me begin, then David can finish. But what we were seeing in the figures that Senator Grassley quoted, is that children get into foster care and stay there. We have so many abuses and emergency situations, and so often staff is overworked. We think it would make a good deal of sense to begin the process earlier rather than to wait until the 18 months and then begin the process. The courts, in most cases, have the final word, so there are those protections.

But a child of a year, and the two children that Senator DeWine talked about, do you know how much a month is in a little child's life? Newsweek or Time had a cover article on something we mothers always knew: a young child is so impressionable. The development of that young child happens so early.

So our feeling was, why not begin the process earlier? Then if things work out, fine. But if they do not, you wait that 18 months, you know what social service situations are like, and that moves into a year and a half, 2 years. What we are seeing are children younger and younger staying in foster care longer and longer, to the detriment of their future.

Representative CAMP. And just to add, most of the children are infants. I guess, as the father of a 2-year-old, it has been brought home to me most importantly these last couple of years in these articles that Representative Kennelly mentioned. It is not just a child's ability to bond and develop, but it is their intellectual development.

It is now being scientifically proven that if a kid does not bond, the are not able to develop in an intellectual way. So it is so critical that we get these young kids, infants, out of foster care and in a permanent setting as soon as possible. There are those in the House that think the 18 months is too long. They would like to have seen 12 months. But we do have these exceptions, if there is a compelling reason not to initiate termination of parental rights the State must do. It does not mean they need to be completed.

But, if there is a compelling reason not to in the interest of the child, or the child is with a family member or no State services have been offered to the family, those reasons then would mean the State would not have to initiate those proceedings.

So we are trying to address this issue of kids languishing, infants languishing in a setting of impermanence. As Senator DeWine mentioned, often they are going from home to home. How tragic that a child is moved because they are growing too attached to a family. That is unfortunate.

Senator CHAFEE. Well, thank you very much.

Senator Rockefeller, have you got any questions?

Senator ROCKEFELLER. I do not have any statement, Mr. Chairman.

Senator CHAFEE. Senator Grassley?

Senator GRASSLEY. It is more a point than a question, and it refers to a project we have in my State of Iowa called KidsSake Project. The purpose of it is to recruit families to adopt special needs children and it introduces children who are available for adoption. The only reason I mention this is because it is working very well in my State.

But sometimes I run into a point of view by some professionals that there are some kids that are not adoptable. They just want to start out with the assumption that there are some children who are not adoptable. I think we heard that about minority children for a long period of time. Thanks to Senator Metzenbaum and some other people, that is no longer true.

We have heard that children with AIDS were not adoptable, and we know now that is not true. Then there is a special agency I have run into that keeps track of special needs kids, and there are 100 families waiting to adopt children with Down Syndrome.

I hope we can get away from a philosophy that some kids are not adoptable, and that we ought to forget about finding them a permanent home.

Senator CHAFEE. Thank you.

Well, you have all been leaders and we salute you for what you have done.

Representative KENNELLY. Thank you, Senator.

Senator CHAFEE. Thank you very much for coming.

Representative KENNELLY. And good luck to you.

Senator CHAFEE. Aren't you nice? Thank you.

All right. The next panel consists of Judge Workman, chief justice of the West Virginia Supreme Court of Appeals; Ms. Susan Badeau, adoptive parent, Philadelphia; Sister Rose Logan, executive director of Astor Home for Children in Rhinebeck, New York; and Gary Stangler, whom Senator Bond has introduced.

So will you all not take your seat? I would say that there is going to be a vote in the Senate. I am not sure how accurate my predictions are. I thought it was going to be about an hour ago. But, in any event, we may have to interrupt the panel to go vote. If so, we will come right back.

So, Judge Workman, why do you not proceed?

STATEMENT OF HON. MARGARET L. WORKMAN, J.D., CHIEF JUSTICE OF THE WEST VIRGINIA SUPREME COURT OF APPEALS, CHARLESTON, WV

Judge WORKMAN. Good afternoon. It is a great privilege to be here today. I will begin by telling you that my real passion as a lawyer and as a judge has been children's interests.

Beginning as a young lawyer representing both abused children and abusive and neglectful parents, I saw close up that sometimes the legal system actually does re-abuse these children.

As a trial court judge for 7 years, I presided over hundreds of these cases. And, on the State Supreme Court of West Virginia for the last 9 years, I have really had as my primary mission the enunciation of the rights of children.

As a result of all of these experiences, and perhaps also because I am also a biological and an adoptive mom, I have some rather

strong ideas about the roles the courts should be playing in child abuse and neglect proceedings and how that should relate to the legislation that you are considering.

I really am here to echo a lot of the things you just heard. Existing Federal law, as you know, requiring States to make reasonable efforts to reunite families, I believe, was engendered by a simple and a humanitarian concept that troubled families should be given help and that, where possible, children should be restored to their parents.

In practice, however, this requirement has frequently been interpreted to mean reunification at any cost and, in essence, has elevated parental rights far above the rights of children to basic safety, nurturance, and permanency.

Now that there is a growing recognition that children ought to have rights as well, and while we understand that we have both a moral and a legal obligation to try to mend broken families where possible, I believe that the parents themselves must accept responsibility for working to make the changes necessary to reunite with their children. Children cannot wait long periods of time for adults, upon whom they should be able to rely, to live up to their responsibilities.

When children are made to wait, especially in their most formative years, and kept in a legal limbo with no real place to be, no real caretakers that they know they can count on for the long haul, there will be an immense cost to pay, both the emotional cost to the children and the families they create as adults, as well as the financial and social cost to all of us. So, yes, as a judge I am actually for arbitrary time limits. I believe that these cases must have time limits.

Efforts at reunification should only be required when the individual circumstances support the conclusion that such efforts will be productive in a fairly short time and, as the pendulum does swing, to offer greater protection to children. I do believe, however, that that swing should not be so far that Congress itself is determining when reasonable efforts should or should not be required.

I still believe that it is the court systems, courts which have the people actually before them, acting within the parameters of legislative guidelines, that should be making these decisions on the facts and the circumstances of the individual cases.

But let me hasten to add that it should also be courts that are exercising meaningful management and true oversight of these cases so that children do not get lost in legal limbo.

I will be the first to acknowledge that courts throughout the country have often failed abysmally to do the quality or the quantity of management and oversight that I suggest. But the legislation that you are considering provides an incredible opportunity for the Congress to bring real progress to this area of the law.

Just as Congress radically altered the law governing the establishment and enforcement of child support, by conditioning the receipt of Federal funds on States creating expedited systems for child support, so, too, you now have the opportunity to mandate the requirements that State judicial systems and social services systems must meet in order to receive the Federal assistance available under this bill.

Let me just briefly—I know my time is limited—talk about the key components that I believe ought to be part of an effective court system in the areas of abuse and neglect.

First and foremost, regular, active judicial review of child abuse and neglect cases until permanency is achieved must be present before a court can effectively oversee an abuse and neglect case.

In addition to the proposal before Congress that would require permanency or dispositional reviews, I believe, within 12 months of placement, I would like to see Federal legislation require that there be judicial review of the entire case at least every 90 days until permanency is achieved.

I endorse the Senate bill's requirement that States be required to make reasonable efforts, but only where there is good reason to believe that those efforts will result in success, only where reunification can be accomplished in a fairly short time, and only where such reasonable efforts can be made without endangering the child's health or safety. The polar star of whatever legislation you pass ought to revolve around what is in the best interests of the child.

Another key component of effective judicial oversight is that reasonable efforts, when they are required, that there ought to be clear behavioral objectives. Congress should mandate alternate permanent placement planning as soon as the petition is filed. There ought to be counsel for children in all cases.

Under our current system, when a child is removed, even if that removal is well-warranted, it is very traumatic. I think there ought to be crisis intervention services for children, as well as for parents. A multi-disciplinary team approach should be used in all of these cases.

If reunification efforts are determined not to be justified, or if they fail, adoption obviously is the most desirable. But many children are not good candidates for adoption. That is the reality. I believe that we should be investing funds and developing permanent foster care parents.

That is a lot different than just the standard foster care that Senator DeWine talked about. Permanent foster care parents should make a commitment to keep and care for that child. The key is that support services continue for those individuals by the social services network.

There is so much more I would like to say. I know my time is up. I wish that I had time to talk about a little boy in West Virginia who died in 1994. He sounded a lot like Sarah that Senator DeWine told us about. He was abused from the time he was born until his death at age 4, and the legal system reabused Derrick Browning.

I believe you have the opportunity to mandate that courts all over this country create systems that will give hope to the weakest, most voiceless segment of our society, and that is abused and neglected children.

Again, I thank you for the privilege and the honor of being present to speak with you today.

Senator CHAFEE. Well, thank you very much, Judge. That was a very moving statement, and an excellent one. I was just curious

whether you were appointed by that outstanding Governor of West Virginia, Governor Rockefeller.

Judge WORKMAN. That was a long time ago.

Senator ROCKEFELLER. She was elected.

Judge WORKMAN. I was elected in 1988. He only appointed me to a trial court judgeship.

Senator CHAFEE. I see. All right.

[The prepared statement of Judge Workman appears in the appendix.]

Senator CHAFEE. Now, Mrs. Susan Badeau, adoptive parent from Philadelphia, Pennsylvania. Will you not proceed?

STATEMENT OF SUSAN BADEAU, ADOPTIVE PARENT, PHILADELPHIA, PA, ON BEHALF OF VOICE FOR ADOPTION

Mrs. BADEAU. Yes. Good afternoon, Chairman Chafee, Senator Rockefeller, and Senator Grassley.

My name is Susan Badeau and I am pleased to have the opportunity——

Senator CHAFEE. Excuse me. I forgot to tell the witnesses, we do have these lights here and each person has 5 minutes. The green light will be on. When you see the yellow light go on, if you could try to wind up then, then stop on the red light. Now, there is no capital punishment here, but it helps even out the time. So, if you did that, that would be fine.

Mrs. BADEAU. I will do my best.

Senator ROCKEFELLER. But I want to just interject there, Mr. Chairman, that the Chairman is well known for his easy and warm disposition on such matters.

Judge WORKMAN. I wish he had told me that. When the bell rang, I about panicked.

Mrs. BADEAU. All right. As long as mine starts over now.

Senator CHAFEE. We do have a trap door that people disappear into. [Laughter.]

Mrs. BADEAU. I also would like to take a moment just to point out that I brought my daughter with me today, Alicia. Alicia, you want to wave? That's my youngest daughter, Alicia. She will be mentioned a little later in my testimony.

I have worked professionally in the field of adoption and child welfare for 18 years, and during that time I have been personally involved with the placement and supervision of over 600 adoptions of children with special needs.

I am currently a project manager at the National Adoption Center in Philadelphia, which is a founding member of the organization Voice for Adoption, which I represent today. Voice for Adoption is a coalition of many agencies, organizations, and parents like myself who are committed to permanent homes for all children.

However, the most important credential I am bringing to you today is the fact that I am an adoptive parent of children with special needs. Together with my husband, we have 21 children, two born to us, and 19 adopted. All of our adopted children have been identified as having special needs.

From that experience I am pleased to offer my overall support and endorsement to Senate bill 511 because it is consistent with my own beliefs about the types of reforms that are needed to en-

sure that all children have the opportunity to grow up in safe, stable, and permanent homes.

I have many personal feelings, strong beliefs, and expertise in many of the areas that this bill addresses, and if I had more time, or given more time, I would be happy to discuss any of these with you.

However, I would like to use the few moments I have here today to zero in on two particular aspects of this bill and urge this committee to recognize their importance to the children and families of our country. These two issues are adoption assistance and geographic barriers.

In terms of adoption assistance, I strongly support the provisions in your bill which delink eligibility for adoption assistance from poverty status. This important change in current Federal law is required, or many children without permanent homes will never be placed in adoptive homes. Of the thousands of children in this country waiting in foster care for adoption, over 80 percent of them have, indeed, been identified as special needs.

I have stated that 19 of my children are adopted, all with special needs. Only half of my children ever qualified for, or received, Federal adoption assistance. When we believed that a child was right for our family, we were always willing to adopt that child regardless of the availability or amount of subsidy available. This was never the determining factor in our decision to adopt a child.

However, adoption assistance has made it possible for us to undertake the challenges of parenting children with severe disabilities, including a child with Shaken Baby Syndrome like Senator DeWine talked about, two children with terminal illnesses, children with chronic conditions, as well as three separate sibling groups of children, one of which consisted of six children, to provide for each of these children the educational, medical, therapeutic, and recreational opportunities that they need and deserve in order to grow, thrive, and reach their potential.

Today, our five oldest children, who social workers once predicted would never even graduate from high school, have all done so and are living independently on their own. Our next three children are in college.

Adoption subsidies help families in very practical and real ways. Although medical insurance may cover medical bills, it is the subsidy that makes it possible for adoptive parents to take time off from work to attend the appointments, to pay for the transportation to go to the appointments, and to cover the co-payments that are often required.

Although school systems provide individual educational plans for children with special needs, it is the adoption subsidy that allows parents, again, to take time off to go to their IEP meetings, to attend training seminars, and to provide the enrichment activities at home that are needed to further their education.

Although medical insurance provides for a certain limited number of mental health therapy sessions, it is the subsidy that makes it possible for adoptive parents to continue these sessions after the insurance has run out and to attend the appointments with their children. I could go on.

All children with special needs deserve to have these opportunities. However, many do not because they are not eligible for Title 4E assistance. I cannot emphasize how strongly I support the provisions in this bill which delink subsidy, eligibility, and poverty status.

Let me give you one example from my own family. A few years ago, we were asked to adopt a child, who was then 6, with a terminal illness and profound mental retardation.

We were already parenting a child with the same condition, and we were confident that we could meet the needs of this child. Because he was title 4E eligible, he was able to receive an adoption subsidy which included both Federal and State dollars. This subsidy has made a tremendous difference in our ability to provide for his very challenging needs. He had a biological brother also in the foster care system and who also had challenging needs.

The State determined to place him in a separate adoptive home. However, when that adoption disrupted they turned to us and asked if we would adopt our son's sibling. We did not hesitate for a moment; we strongly believe in keeping siblings together, and we felt we could meet this child's needs.

However, because he had disrupted out of an adoption he had lost his Title 4E eligibility and, therefore, he was no longer eligible for Federal adoption assistance. We adopted him and we daily meet his special needs. However, doing so has definitely placed a financial burden on our family.

Some children who were once Title 4E eligible no longer are due to disruptions. While disruptions are very rare—less than 3 percent of all adoptions—how tragic for those children when they do occur, that they lose not only their family, but their access to resources as well.

Other children, like two of our daughters, including Alicia, who is with me today, are ineligible for subsidy because they never were Title E eligible in the first place. Their birth families were not poor. One child has Fetal Alcohol Syndrome and related disabilities, the other has cerebral palsy. Neither had birth families who could parent them, so adoption was the appropriate option for them.

Neither alcohol dependency nor the unexpected birth of a child with special needs are limited to poor parents. This unfortunate circumstance of birth should not mean that these children cannot get resources.

I understand that my time is running out, but I would like to just take a moment to address my second issue, which is that of the removal of geographic barriers to adoption.

I hear in many of these discussions the emphasis placed on the need to improve and expedite the termination of the parental rights process, and I agree that this is an important issue. However, even after parental rights have been terminated many children—the 53,000 that Senator Grassley mentioned—wait in foster care, and often it is due to geographic barriers between counties, States, and regions.

Such was certainly the case with several of my children. The six siblings that we adopted together waited for 5 years in foster care

after their parental rights had been terminated. Geographic barriers were the main culprit.

Senator CHAFEE. Geographic barriers. You mean by some jurisdiction, a county, a State, or something like that?

Mrs. BADEAU. Exactly. A State that was not willing to place them out of State.

Just as the Multi-ethnic Placement Act addressed the removal of racial and ethnic barriers in preventing permanency for children, I believe strenuous efforts must be made at the Federal level to remove geographic barriers so that a State cannot discriminate against a placement simply because it would occur in another jurisdiction.

I strongly endorse the provisions of this bill which address this concern, and I endorse the plan to create an advisory panel to examine these interjurisdictional issues, and I would be happy to volunteer myself to serve on such a panel, to share my knowledge in more depth in this area.

I would just like to close by finally adding my support for the provisions which authorized innovation grants to reduce the backlog of children awaiting adoption. While it is important to study, identify, and address barriers, it is equally important to recognize and reward success.

It has often been my experience that it is the individual case worker, supervisor, and agency that is allowed to use creative thinking, dedication to children, and innovative practices that makes the greatest difference. Any leadership Congress can provide to acknowledge, reward, promote, and strengthen these efforts is welcome and needed.

Thank you very much for your time today.

Senator CHAFEE. Well, Mrs. Badeau, you are a remarkable lady, there is no question about that. This is some story. Is your husband here? Can we see him?

Mrs. BADEAU. He would have loved to have come. However, we have a sick child at home and he had to be there.

Senator CHAFEE. What does he do?

Mrs. BADEAU. We have a small business we run out of our home, and he runs it from there.

Senator CHAFEE. Well, my hat is off to you.

I see you were born and brought up in Vermont.

Mrs. BADEAU. That is right. I was hoping to see Senator Jeffords. Give him my greetings.

Senator CHAFEE. I will tell him. I know he is tied up, but I will tell him that you were here.

[The prepared statement of Ms. Badeau appears in the appendix.]

Senator CHAFEE. Now, Sister Rose Logan. We welcome you here.

STATEMENT OF SISTER ROSE LOGAN, EXECUTIVE DIRECTOR, ASTOR HOME FOR CHILDREN, RHINEBECK, NY, ON BEHALF OF CATHOLIC CHARITIES

Sister LOGAN. I thank you, Mr. Chairman and members of the committee. I thank you for allowing me to be with you today as we search together for ways to respond to the needs of children in our country.

I am testifying on behalf of Catholic Charities, USA, a national association of 1,400 local, independent social service agencies and institutions.

The care of abused, neglected children has always been at the heart of our mission. Today, Catholic Charities USA member agencies serve over 3 million children each year by arranging adoptions, supervising children in foster care, working to reunite families, and providing other services to children and their families.

I also speak to you today out of my own personal and professional experience of the past 25 years of providing services to children and their families. I am currently the executive director of the Astor Home for Children in Rhinebeck, New York.

The Astor Home is an agency of Catholic Charities that provides behavioral health and child development services in 21 locations in the Hudson River region of New York State, and in New York City.

Each day, members of our staff work with children whose life experiences have included significant abuse and neglect. Some of these children are living with their own families, some are living with foster families, some are in group care facilities, and some have been adopted.

Mr. Chairman, as you know the problem of protecting, monitoring, and treating children subject to abuse and neglect is critical. Over 95 percent of the children in foster care in our country were removed from their homes after reports of abuse and neglect, and the legislation that you enact in these halls impacts intimately on the lives of these children.

The history of our child welfare laws and the philosophy behind them has, indeed, swung like a pendulum between the extremes of the perceived interests of the children on one side, and the perceived interests of the family on the other side.

I believe that there are truly values and rights to be respected at either end of that pendulum swing, and only a balanced approach that recognizes both interests will truly promote the well-being of children.

Senator CHAFEE. Sister, I am hesitant to interrupt.

Sister LOGAN. Yes.

Senator CHAFEE. You had a figure of 95 percent and I was trying to find that. What was that figure again?

Sister LOGAN. I have that 95 percent of the children who are in foster care came into foster care following reports of abuse or neglect.

Senator CHAFEE. I was trying to think, what other category would there be? Abandonment, I suppose, would be one.

Sister LOGAN. It could be, yes.

Senator CHAFEE. In other words, all that come into the foster care system come with——

Sister LOGAN. The wide majority of kids in foster care are there because of a history of abuse and neglect.

Senator CHAFEE. Problems. Yes. Fine. Thank you.

Sister LOGAN. We do not have so many of the orphans of the earlier years in foster care.

Senator CHAFEE. Oh, I see. Yes. Thank you.

Sister LOGAN. When I think of the children I have known in the child welfare system, I can identify those whose life histories really

reflect the extremes of these pendulum shifts, and their personalities bear the imprint of the system within which they were protected.

On one extreme we have somewhat institutionalized people who have little sense of personal relatedness or family roots. On the other extreme, we have people who have gone through the trauma of being repeatedly removed and then returned to abusive family situations.

These people come to believe that there is little reason to trust, to believe in themselves, to trust others, or to believe in the world as a safe place.

I know from personal experience that many children have been reunited with families when that should not have happened. An example that comes to mind is one little girl whose parents abused her repeatedly when she was an infant.

She was removed from their care several times and placed with a foster family, but the parents would always manage to meet the minimum requirements to have her returned. This happened again and again for the first 8 years of her life, until ultimately she required psychiatric hospitalization.

After that, she was discharged from the hospital. She came to the Astor Home for continued treatment and with a permanency plan for an adoptive home. This child now has severe emotional problems that will present a challenge to the family considering her adoption.

I do not believe that anyone was well-served in this situation by repeatedly allowing abuse, removal, return home again, to go on. But I also know of other situations in which children were returned to their families with very positive results, for both the child and the family.

This has been primarily in cases when a child suffered from abuse or neglect because of parental ignorance, not because of malice of any kind. When families in this situation are willing to work to remedy the situation, I believe that family support services can make a difference in ensuring that a child has a family and that the family home is a healthy and safe place for the child.

What is needed, and what I believe this bill recognizes, is a balanced, comprehensive approach. Where there is blatant abuse and no significant hope for improving the situation, we should move quickly and decisively toward adoption.

But not all children should be pulled from their homes at the first hint of abuse or neglect, and families that make mistakes must be given support to become whole.

Catholic Charities USA supports the efforts of this committee to set forth this kind of balanced, comprehensive approach. The bill not only makes clear that child safety must come first, but it does provide significant services to protect the safety of children, whether in the home, in foster care, or in permanent adoptive placements.

We support aspects of both the Senate bill and the House bill. The two bills complement each other, and we believe that they mesh well. We encourage your continuing working together on them.

We strongly support the clear message sent by both bills, that the safety of children above all must be paramount. We support provisions in the Senate bill that are stronger than the House bill, particularly the establishment of death review teams to investigate circumstances surrounding the death of children.

We also support the priority given for substance abuse treatment for caretaker parents when referred by local or State welfare agencies, and we believe that this could be even stronger and that parents who are at risk could be given preference for treatment.

We support all of the strong Senate provisions, but we also favor many aspects of the House bill, especially the adoption incentive payments. And, although we support these bonuses, we believe that providing the bonuses along could send the wrong message to the State and local level.

There is danger that the strong emphasis on adoption in the House bill because of the bonuses would be a signal to State and local officials that they do not have to do anything to reunite families or to keep them together. In order to avoid misguided interpretations, we propose maintaining the adoption incentives in conjunction with new funding for services in the Senate bill.

While we strongly support termination of parental rights in cases where children cannot be safe with their parents, we also recognize that without help and oversight from local agencies many children will neither return home, nor be freed for adoption, and will, in fact, languish in foster care.

In addition, we believe the House bill is more comprehensive in listing the circumstances regarding reasonable efforts to reunify families not being required. By contrast, the Senate bill requires that States pass legislation by 1999 to achieve similar results.

Both specify that States should not reunite children with parents convicted of capital violations such as murder, manslaughter, or felony assault on a child's sibling. We challenge this committee to go further and to specify that States should not reunite children with parents convicted of these acts against other children or adults, not just the siblings.

Finally, we believe there is an additional way in which Congress should protect the safety of children. Last year, Congress eliminated the requirement that organizations be not-for-profit to receive reimbursement under the Foster Care and Adoption Assistance Act.

Now, in some States, for-profit organizations are receiving open-ended entitlements to serve entire populations of foster care children. There have been reports that some of these organizations are not providing quality care, and we believe that special monitoring and oversight is warranted to ensure that quality care is, in fact, being provided and all regulations are being complied with.

Once again, Mr. Chairman and members of the committee, I thank you for inviting me to speak on behalf of Catholic Charities USA, and I am happy to offer any further assistance I can.

Senator CHAFEE. Well, thank you very much, Sister. That was very helpful, because you analyzed the two bills and came up with specifics. That is what we always find so very helpful.

[The prepared statement of Sister Rose Logan appears in the appendix.]

Senator CHAFEE. Now, Mr. Stangler, we are very glad you are here. You have been well introduced. You have nowhere to go but downhill now. [Laughter.]

STATEMENT OF GARY J. STANGLER, MISSOURI DEPARTMENT OF SOCIAL SERVICES, JEFFERSON CITY, MO, ON BEHALF OF AMERICAN PUBLIC WELFARE ASSOCIATION

Mr. STANGLER. I thought about leaving after Senator Bond's introduction.

I am here representing the American Public Welfare Association. We have a longstanding interest in these issues. I know that you and the committee know that, because we have worked with you for a very long time, and Senator Rockefeller. I wanted to express my personal gratitude for your leadership and your longstanding interest in these issues.

And Senator Bond and I first started working together in 1981 on his Children's Initiative, which was an innovative set of services that we now take for granted as standard around the country.

I am here to talk about SAFE. I believe that the title aptly captures our mission, that child safety is the super-ordinate mission. It is the universal proposition that underlies everything we do in State child welfare agencies.

In Missouri and other States, we have been trying to meet the challenge of Peter Drucker, the management guru who calls for States and the public sector to innovate like crazy.

We have been trying to do that with intensive services, especially up front services, with professionalization of foster care to compete with the labor force, neighborhood-based services where we increasingly understand the difficulty of the situation we face.

I have been director 8 years. It is a different world today than it was when I took over the child welfare system in 1989. It is very different in terms of violence and drugs and the issues we face, and we need to come up with different solutions.

I am also challenged in my State by the uniqueness of place. It is different down in the Mississippi River delta than the inner cities of St. Louis and Kansas City, and in the Ozark Hills. It requires different solutions for different circumstances.

We support, as I said, the safety of children. We support reasonable efforts. We also believe that there are situations when reasonable efforts should be excluded. We also support reasonable efforts to move toward permanency.

We are held in the States to the same sort of standard that the airlines are held to. Ninety-nine percent success is not enough. When one plane crashes or one child dies, our whole system comes under scrutiny. We are held to that level of perfection.

We support permanency hearings in 12 months and not 18 months. But I would suggest to you too, as the Judge has pointed out, this places additional demands not only on my agency, but the courts and the cops as well.

What we need to think about is a system solution, not an institutional solution. This is not fixing a child welfare agency, it is not fixing a court, it is fixing a system of protection and care for kids. We would support that 4E funds be flexible enough to take that into account, to target it towards systemic solutions.

I would challenge the image versus the reality. The popular image is, these are all little cuddly infants that we are trying to have adopted. The reality of the world today in the inner cities and in the small towns makes the challenges more severe and more direct in terms of confronting how we deal with permanency decisions.

The lynch pin is the financing, the incentives. You cannot legislate sound judgment, but you can legislate the framework in which we work. You can legislate the support and the means for us to provide the services that we need to have for kids in our States.

We support the flexibility to use 4E funding for permanency services, for supports for adopted children so that we do not have disrupted placements, for the training of our staffs, not just my staff, but the judicial staff, the juvenile officers, the judges, the other myriad agencies that come into contact with kids as we work through this system.

But we want to be clear that this funding, in our opinion, at the Federal level should not come at the expense of other programs for children and families, and we strongly support that at the State level it not supplant our funds. We put up most of the money in the situation today, and we intend to continue to do that. We need to have the increased resources to do the other things that need to be done.

I would also reiterate on the issue of prescribing too far, and the Sister has mentioned this, what should be involved in the termination of parental rights. We would ask that you be mindful that these should only be expedited after appropriate reasonable efforts—to use that phrase—have been applied.

In my judgment, and most judges in my State, only the death penalty is a more awesome power than the power to remove a child from his or her parents. Now, that is balanced against the universal proposition of safety, but again I would say it is a very serious decision that we need to take on a case by case basis, and with all due deliberation.

We support the waivers. As I have said, we are trying to innovate like crazy, given the changing circumstances that we face, given the unique circumstances that we face, whether you are in the suburbs or the cities, whether you are in the remote rural areas of States like Missouri, or in the small towns. There is a statutory limit proposed of 15. We would propose that any State be allowed to put the innovations in place that are going to be necessary.

We would like to come back to you, in addition to my formal remarks, with those other ideas on the details of funding and the services that are needed, and I welcome your questions at this time.

Thank you, Mr. Chairman.

Senator CHAFEE. Well, thank you very much, Mr. Stangler.

[The prepared statement of Mr. Stangler appears in the appendix.]

Senator CHAFEE. Judge, one of the things that worries me a little bit here, and I think Mr. Stangler touched on this, I am a little cautious of being too specific in language as to what prohibits fam-

ily reunification. I think in one of the bills it says felonious conduct, or something like that.

In any event, I think we have got to assume that our courts' judges are good. If they are not, we ought to get better ones. But I am prepared to leave considerable discretion to the judge.

Now, on the other hand I suppose you could say, well, all they had was just guidance from here with a tilt toward family reunification, and apparently that tilt has gone too far. I think Sister Logan, or maybe it is Mrs. Badeau in the previous testimony, spoke about swinging the pendulum back. So that makes you think that the judges are kind of hidebound; they look and just read the language and do not use their discretion.

What do you think about the specifics in the Federal law? All right. You do A, B and C, and parental rights ought to be terminated.

Judge WORKMAN. I share your caution because the longer that I am around these types of cases and other cases involving human beings and human issues, the more it seems to me that it is extremely difficult to establish bright line rules.

Even in the examples talked about today, I can probably think of situations where, if manslaughter was committed, maybe it was an abused wife who had been abused for many years, and not that that justifies the act, but there may be a bond between her and that child. I would be very cautious about Congress establishing criteria here.

I think I like the approach and I think it is sound, of requiring State legislatures to look at that issue. Then judges have got to have the training, and I hope the mandate in this legislation, to recognize that they have got to look at these cases individually, but with an understanding that these cases cannot be drug on and on.

Senator CHAFEE. Well, I notice you supported the recommendation that is in both the Senate and the House bills for permanency planning.

Now, I have got to go back to the training. In our Senate bill, we provide flexibility for the States to use these funds for training of judges and other court staff. Would that be helpful, or does everybody feel they do not need any training?

Judge WORKMAN. From the judicial system's perspective, I think it would be very helpful. I think judges need to be educated. Too many judges around this country, I think, do take the term reasonable efforts and take that at face value, and have interpreted it to mean reunification at any cost. Training is something that we desperately need in the judicial system, and I would think also in the social services system.

Senator CHAFEE. Sister Logan, what do you say?

Sister LOGAN. I certainly would support that. Speaking from the social services system, I think it is critical that we have people working with the families and doing the assessments of what the situation really is who are well-trained and who have support to make recommendations within certain parameters that could be set, but that they are professionally trained and professionally challenged and held accountable for the recommendations they make.

But it is not something that you can put your youngest case worker out and then expect that that person is going to be able to give you the material you need for the judge to be able to make some determinations on the basis of that. So I think we need training for everyone, basically.

Senator CHAFEE. That is what would absorb some of this extra money we are talking about.

Sister LOGAN. Where is this extra money?

Senator CHAFEE. Well, we have not got it yet, but that is where it goes.

Mrs. Badeau, I am all for the delinking that you are talking about. I have never understood this provision that, based on the biological parents' poverty status, that the child then is eligible for Medicaid, for example. Rather than the financial status of the adoptive parent, you might have a biological parent be quite well off and the child be adopted by individuals in modest means. It just seems upside down.

Mrs. BADEAU. I would agree. I think that the issue is the needs of the child, and to not put any stumbling blocks in the way that are going to make it more difficult for that child to have a permanent home.

I do not think it is a matter of the financial status of the biological parents or former adoptive parents in the case of a disruption like I mentioned, but rather the needs of the child and, therefore, should be not dependent on the financial status of the previous parents, nor the adoptive parents, but rather what the needs of the child are. Circumstances in the future can change for any set of parents, but the child is going to continue to have needs.

Senator CHAFEE. My time is up.

Senator Grassley?

Senator GRASSLEY. Mr. Stangler, I am going to ask a question. But, before you answer I have a long background to it, but I want you to know what I am getting to.

The question comes out of frustration on this specific legislation dealing with the States, particularly with the National Governors Association, State Legislatures Association, and maybe even with the APWA, but I am thinking more about elected officials.

It seems to me that I get the attitude from the States that they want no stick and all carrot when it comes to this issue of adoption. So what guarantees do we have that the States will comply with any new the legislation?

Let me give this as a background. Eventually I am going to come to a quote of yours from this newspaper article, and I am asking for clarification, I am not accusing.

A March 17, 1996 article in the New York Times that reported that at least 21 States were under court supervision because they failed to take proper care of children who had been abused or neglected, and that court records showed that many of those States "flouted" their obligations either after promising in legal settlements to protect the constitutional rights of foster children. At least one Governor acknowledged that his State had not fully complied with the various decrees.

State responses to the suits vary widely. Some officials are cooperative and constructive, seeing the litigation as an opportunity to

make improvements and to press State legislators for more money. Other States, it seems, are slow to change or are reluctant to even disclose the data needed to assess their performance.

In the last Congress we ran into this a little bit from this standpoint, when members of the House and Senate considered allowing each State to take its Federal share as a block grant with more freedom to decide how the money is spent, and the Clinton administration and a lot of legislators just felt that that would be a foolish thing, to reduce Federal supervision and enforcement in the face of these abysmal conditions that were evidenced by the lawsuits that were pending.

So now getting to the quote that I wanted to ask you about. Missouri Judge Dean Whipple, Federal District Court, found State officials in contempt for failing to carry out a court-approved consent decree protecting foster children in the Kansas City area.

The failure, he said, resulted from "officials lack of commitment to make a good faith effort to make the consent decree work." And, after being cited for contempt, State officials agreed to a new consent decree in 1994. But, as of 1996, Fred Rich of the Legal Aid of Western Missouri says that there has been "dismal compliance."

Your response Mr. Stangler was, "It's difficult to change the culture of an agency." I do not doubt that it is very difficult. But that is something we are dealing with here in the culture of the whole thing, that there seems to be an incentive to keep people in a system for a long period of time.

Then you went on to say, "This lawsuit has been a prod to State officials," which I am sure it had been, "but it has contributed to defiance as well as compliance. Any legislative body resents being forced to this by the Federal courts." So that brings me to my question.

Mr. STANGLER. I think that there is growing consensus that litigation has failed in terms of resulting in a systematic reform of the child welfare system, and I think the quote underscores that.

I think what litigation has often done is, back to my airlines analogy, set up a perfection record to which we cannot ever meet. In terms of the specifics of what Mr. Rich had said, there were things in the old consent decree which, when reduced to writing, seemed like good ideas at the time, such as there be sibling visits with the parents.

In hindsight, there were times when it was not in the best interests of a child for those visits to occur. Yet, those things reduced to compliance quotas in the consent decree presented a real problem.

Sure, you know about defiance in this body as well as the bodies in my State where the court is demanding certain activities. To me, that underscores the point. If there is going to be a systematic solution, not an institutional solution—and consent decrees are an institutional solution—then I believe it is going to have to come out of a legislative fix. That is what I hope this bill takes a step toward.

Senator GRASSLEY. My last question would be with regard to the figure that is an incentive in the House bills. The fact is that a State may receive $20,000 every year for a child in the system. Is that $4,000 enough of an incentive to offset this? It appears chil-

dren are locked into a system because there is a financial incentive for the State to keep them in the system?

Mr. STANGLER. I think it tends to contribute to sort of a mercenary view. I think in the front lines, and I would turn to the Sister and to Mrs. Badeau on some of this, I do not think any individual worker out there makes a decision on the case plan, or her efforts or his efforts for a child, based on the nebulous goal that the State agency is going to get $4,000.

Now, over the long haul I believe that how you finance a system does dictate the general design, but I do not think it motivates individual decisions in any sense.

Senator GRASSLEY. Well, the only thing is, I know you are cynical of Congress. I am cynical in response to your answer.

Mr. STANGLER. I am not cynical at all toward the Congress. I am appealing for a legislative fix, Senator Grassley.

Senator GRASSLEY. Thank you.

Senator CHAFEE. Senator Rockefeller.

Senator ROCKEFELLER. I do not think, in fact, that this really is a place for cynicism at all because some of my colleagues have heard me talk about this before.

First of all, I want to say, Mr. Chairman, that I would love to have introduced Justice Workman, and I will not hold it against you that I was not allowed to introduce Justice Workman, who I have known for many, many years and who is absolutely superb. He left. [Laughter.]

That is what happens around here. I understand your cynicism.

But, more seriously, the cynicism, I think, comes—and I am intrigued both by the standards that you set out, Justice Workman, very clearly and logically from your own experience—the 19 adopted, 2 of your own, or is it 17 plus 2 of your own?

Mrs. BADEAU. Nineteen plus 2.

Senator ROCKEFELLER. Nineteen plus 2.

When you are talking, Mr. Stangler, about the perfection, I think so much of this comes not from ill intention. I do not even think that often States necessarily follow Federal rules or the Feds know whether the States are abiding by Federal rules.

I think the whole thing has sort of wound down in such an enormous morass of confusion, paperwork, and exhaustion, budget cuts, and people not having enough time, and disillusioned social workers, and all the rest of the complications. Judges are simply overwhelmed in juvenile court situations where they just do not have the time and the resources. The lawyers do not show up with the parents, or parents that may speak a different language, and the judge does not speak that language.

I have seen, as Justice Workman has, when I was in California with the National Commission on Children, chaos like I have never seen in my life before in a juvenile court justice setting, where children were brought up in the same elevator with criminal prisoners. They went one direction, the children went the other direction. But the symbolism was not hard to discern.

I guess kind of a question. I mean, I think that we up here feel very good about this SAFE legislation, but when we talk about training, getting better training and getting a more sort of responsiveness, are we really at a point where we could do this?

I mean, I think we have to pass this law because I think at some point it does not matter what the situation is, you have got to keep introducing new resources and upping the standards and calling people's attention to it.

But I would be interested, in fact, from all of you, just kind of, the weight of the system has imploded the system. There is so much to do, so few people to do it, that you want a system reform. I think I agree with you. My question is, is that really possible?

Mr. STANGLER. I am optimistic that it is, Senator. I think we do know what needs to be done and I think this legislation takes many of those things and puts them into place. For us in the field, I think it is a matter of sustaining the momentum. I agree with you that the intentions are good.

I think your analogy of an implosion is very accurate, but it is an implosion that is going to continue. I do not know if you can implode worse, but it is going to get worse without paying attention. I am optimistic that there is a systemic solution that is beginning to take place in this country.

Senator ROCKEFELLER. Do you see people—I would address this to all four of you—who are getting into social work. I remember there used to be a worry about attracting motivated people. My 25-year-old daughter, who Justice Workman knows, is getting her master's degree in teaching at Columbia and she is teaching in Harlem, which she loves and wants to continue doing.

Now, Columbia is a very good teacher's college, but are young people coming out of college motivated like some of us were in the 1960's? Are they, in fact, going into the kinds of professions that will allow enough of them to do what it is that will be necessary to carry out the standards which you say we have to keep, and I believe we should keep pushing?

I mean, are you seeing the professionals, are there enough, Justice Workman, judges and justices like yourself who have this commitment; is the situation improving?

Judge WORKMAN. Let me comment, really, on both of your questions in this fashion. First of all, in our judicial system in West Virginia—I know you will not mind if I take a moment of pride in West Virginia—we really are making, I think, significant changes of the judicial system.

But that has been because we have had a lot of leadership from the Supreme Court, not just myself, but I have served with 11 justices over the last 9 years. From the top down we are, under our Judicial Reorganization Amendment of 1974, the administrative head of the court system. That is not true everywhere. But we have had the leadership to train the judges.

We have had a lot of training. We have a substantive body of case law we have developed, as well as a brand-new set of extremely substantive rules governing these cases. In every judicial conference, we have a component of training. So I think we are making progress there.

Where I am concerned in our State, and I think this probably is true in many other areas, is that this last question you had about whether the young people were coming along.

In West Virginia, a child protective services worker is paid a very low amount. There is very little room for advancement. You can

imagine the burn-out rate with the incredible case loads they have, the working circumstances that they have, and the frustration they feel with the system.

So I think there is great concern that we undervalue professionals in this area, and frankly I think we probably do not have enough young, bright people willing to go out and become child protective service workers and other interventive personnel.

Senator ROCKEFELLER. Is there a body of knowledge, in fact, as to the graduate schools that do this, or college degrees, in these areas? Are there more students getting into that?

Mrs. BADEAU. You know, there is one issue in the schools that do train, for example, social workers. What we are talking about here, which is so important to each of us and is the focal point of our lives, is a very small piece of social work and of child welfare, so it gets maybe a 45-minute class session in a whole 2-year master's program. So, training is a big issue.

I would just like to take a second to address your question of, is there hope, can the system be reformed. I think there, part of the answer, at least, is again in the piece about allowing for some innovation and rewarding it and placing incentives that make that possible.

As Mr. Stangler said, we have large cities, we have urban areas, we have places with great programs, we have places that have never even gotten started. It is often the attitudes of the individual people working, regardless of what the legislation says, regardless of what else is going on, that make a difference.

So I think that whenever we have an opportunity like this to introduce something new and it leaves room for and actually rewards innovation, then that is when we are going to see some real change.

Judge WORKMAN. If I can just make one last comment on that.

Senator ROCKEFELLER. Please.

Judge WORKMAN. I think it is just common sense that if we help people adopt children by giving them support services, financial help in adopting them, and especially for those harder to adopt children, or establish permanent foster care which is the closest other thing I think there can be to adoption, it is just common sense that we are going to have more of these arrangements.

Society as a whole, from a very pragmatic standpoint, is going to pay less in the long run because children who do not find permanency are going to be in the system in some fashion or another, whether it is reabusing their children, committing criminal acts, and we will pay as a society.

On the subject of innovation, I think we have got to look—we, both the legal system and the social services network—at the reality of these situations. One of the things we have done, as an example, is judges have a very difficult time severing that bond. They do not want to put asunder what God has created, especially where there is some emotional bond, where there are redeeming qualities in many of these abusive and/or neglectful parents.

But, when the track record demonstrates those individuals cannot, or will not, be consistent caregivers for those children, then their rights perhaps should be terminated, but with the opportunity for those children to have post-termination continued rela-

tionship with them so that, if there is that bond, the human reality is, they ought to have a chance to still have that, yet have a place to be where people are there who they can count on.

Senator ROCKEFELLER. If the Chairman would allow me just one more extension on that question, that brings me to the matter of family preservation. This tension, which I do not want to see, because preservation of the family, Title 4E, they are both important, efforts made at preservation.

There used to be, at least a few years ago, the theory if you turned a good social worker loose for a period of time on two families, that the majority of the crises between the children and the families, they could get worked out.

Now, that implies that the social worker has the time to get out and work with families. Sue Sergi has testified in West Virginia that she trained to see clients and be with people, and now all she does is paperwork. We cannot have a tension. But there is a tension because we have to appropriate the money—now it is over 5 years and up to be renewed—to appropriate the money to preserve a family, but then to take the child out of the family is an entitlement.

Those two things, it seems to me, ought to be in creative, but equal, tension so that the signal sent to professionals is that both efforts are important; if the first one fails, then the second one has to succeed. But both of them are important and that preserving the family, where possible and only if possible, is a fundamental effort.

Mrs. BADEAU. Could I make a comment on that? I think one of the good things about concurrent planning, which is talked about in the bill, is that we can start to talk about permanence for children at the beginning and not have it in a way of tension, but rather saying, yes, the child's family of origin is always going to be part of this child's life, not will it be, but it is. How will it carry out? Is this a place for the child to actually live or not is the question, not is this family part of the child's life or not.

I have 19 children I have adopted. Their birth families are all part of their lives, and always will be. It is not a tension of removing them from those families in the sense of their emotional bonds, their history, or their heritage. It is a sense of, what role do those families play in their lives?

The role that is safe for those children is not the role of being their day-to-day caretaker, but that does not mean that they do not have any role. Concurrent planning helps us begin to address that issue and see that it does not have to be an either/or, it can be both.

Mr. STANGLER. Senator, if I could add, we are always looking for simple answers to complex problems. You have just artfully articulated a complex answer to the complex problem. It is not just both, as Ms. Badeau said.

They had to work together. You have got to consider the situations. I like the Judge's words, not turning asunder what God has put together, in balance with the universal proposition of safety for the child. The key to this lies in how you articulated that.

Sister LOGAN. I would just make one comment on this also. Going back, when you spoke of your daughter working in Harlem and the question of whether or not we have young professionals

coming into the field committed to doing the work, I think this touches on it.

I think there are two issues. One, I do believe that we do have people coming into the work, and I know that at Astor Home I have many young people who come in very committed to working to make life better for kids.

I think the two issues that come in are, one, they sometimes then think they are caught up in a system and there is nothing they can do, that their assessment of the situation really does not matter because this is what you have to do, you have to follow these steps.

I think if we get to the point where the tension is there, it is a healthy tension, and you work to bring forward the best situation you can for the child, we will have people more willing to commit their lives to doing this.

The other thing is, I think the reality of the financing and the payments we make to these young, bright people, they really do have family commitments of their own that they have to meet. If we truly believe that children are the greatest asset of our country, then we have to look to putting money into paying the people who provide services to those children an adequate salary.

Senator CHAFEE. Well, thank you, Senator Rockefeller.

I have come out of this hearing and have learned a lot, and am very grateful to all of you. I must say, I think the words of caution that you have put up about the termination of the parental rights being, I think you said, Mr. Stangler, the largest decision except for, what, the death penalty.

I think the thrust here is to get on with these terminations more quickly and that the villain is the failure to do so. The children stay, ad infinitum, in foster care and cannot get out. Loving foster care parents cannot adopt them because the parental rights still exist. You have that on the one side.

Then we have the cautions that you set up. On the bottom of page 5 you say, "We urge that in any provision an expeditious termination of parental rights be linked to the case goal of adoption."

Now, see if I understand that. In other words, that if you are going to terminate the parental rights, you want a plan set up where this child we are discussing goes into an adoptive situation. Is that what you are saying?

Mr. STANGLER. I believe that you have articulated that.

Senator CHAFEE. All right. Well, thank you all very much for coming. I am sure I can speak for Senator Rockefeller and myself. We are very grateful for what you have done.

We are laboring away on this. The House bill, as you have heard, passed overwhelmingly and has some excellent items in it. I hope that we can get on with ours. It will take a little time because of the whole so-called reconciliation process, the money process, that would be required. But we have learned a lot.

Thank you very much.

[Whereupon, at 3:48 p.m. the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF SUSAN BADEAU

Good Afternoon, Chairman Chafee and members of the Senate Finance Subcommittee on Social Security and Family Policy. My name is Susan Badeau, and I am pleased to have the opportunity to provide testimony today on S.511, the Safe Adoptions and Family Environments (SAFE) Act. I come here today from my home in Philadelphia.

I have worked professionally in the fields of adoption and child welfare for 18 years, during which time I was personally involved in the placement of over 600 children with special needs into their adoptive homes. I am currently a project manager at the National Adoption Center in Philadelphia, a founding member of Voice for Adoption (VFA). VFA is a coalition of more than thirty-five major national and state special needs adoption organizations and includes professionals, parents, and advocates committed to securing adoptive families for waiting children. The coalition's aim is to ensure permanent, nurturing families for our nation's most vulnerable children and to strengthen support for families who adopt.

However, the most important credential I bring to you today is the fact that I am an adoptive parent of children with special needs. Together with my husband, Hector, we have 21 children, 2 born to us and 19 adopted. All of our adopted children have been identified as having special needs.

I am pleased to join with VFA in offering my support and overall endorsement to S. 511 because it is consistent with my own beliefs about the types of reforms that are needed to insure that all children have the opportunity to grow up in safe, stable and permanent homes. I appreciate the work that Senators Chafee and Rockefeller have done in sponsoring this important bill and I am grateful to each of your for giving it your attention today. Especially important to us, S.511 recognizes that service reforms as well as procedural reforms in current federal adoption law are essential in order to ensure that the thousands of children in this country waiting in foster care without permanent homes, most of whom are children with special needs, will be placed in adoptive homes. As a result of my lifetime of personal and professional experiences in adoption, there are many provisions within S. 511 around which I have very strong beliefs, expertise and passionate feelings. If given the opportunity to speak with you at greater length, I would be happy to discuss any or all of these issues in more depth.

However, I would like to use my few moments here today to zero in on two particular aspects of this bill and urge this Committee to recognize their importance to the children and families of our country. These are the issues of adoption assistance and geographic barriers.

Adoption Assistance for Children with Special Needs

Voice for Adoption strongly supports provisions in S.511 which delink eligibility for adoption assistance from poverty status. This important change in current federal law is required or many children without permanent homes will never be placed in adoptive homes. Of the thousands of children in this country waiting in foster care for families who will adopt them, it is estimated that 80 percent are children with special needs – children with disabilities, older children, minority children, or sibling groups.

I have stated that I have adopted 19 children, all of whom have special needs. Only half of these children ever qualified for and received adoption assistance subsidies. When we have believed that a child was right for our family, we were always willing to adopt that child regardless of whether or not subsidy was available. Neither the availability nor the amount of assistance available was ever the determining factor in our adoption decisions. However, adoption assistance has made it possible for us to undertake the challenges of parenting children with severe disabilities, terminal illnesses and chronic conditions, as well as 3 separate sibling groups, one of which consisted of 6 children and to provide for them the educational, medical, therapeutic and recreational opportunities they need and deserve in order to grow, thrive and reach their potential. Our five oldest children - who social workers once predicted would never graduate from high school - have all done so and are now living on their own as independent adults. The next three children are all enrolled in college.

Adoption subsidies help families in very practical and very real ways. Although medical insurance may cover medical bills, it is the subsidy that makes it possible for parents to take the extra days off from work, to provide the transportation to and from appointments, to pay insurance co-payments and to make modifications at home that medically fragile children need. Although school systems provide individual educational plans for children with special needs, it is the subsidy that makes it possible for parents to attend training seminars, purchase supplemental instructional materials to have at home and provide educational opportunities that extend beyond the child's 18th birthday. Although medical insurance provides for a certain number of mental health therapy visits, it is the subsidy that makes it possible for parents to attend appointments with their child, continue the sessions after the insurance ends and provide the enrichment activities at home that compliment and expand the effectiveness of the therapy.

All children with special needs deserve to have these opportunities. And yet, many have not because the subsidy eligibility has been linked with Title IV-E poverty status. I

cannot emphasize how strongly I support the provisions in S.511 which delink the subsidy eligibility and poverty status. Let me give you one example from our own family.

A few years ago, we agreed to adopt a (then) 6 year old child with a terminal illness and profound mental retardation. We were already parenting a child with the same condition and knew that we could provide a good home for our new son. Because he was Title IV-E eligible he was able to receive a subsidy payment that included both federal and state dollars. This subsidy has made a tremendous difference in our ability to provide for his very challenging needs. He had a biological brother that was also in the foster care system. His brother also had some daunting challenges and the agency decided to place him separately in a second adoptive home. When that adoption disrupted, the agency turned to us and asked if we would adopt our son's sibling. We had not a moment's hesitation. We strongly believe in keeping siblings together and we knew we could meet his special needs as well. However, due to his adoption disruption, he was no longer Title IV-E eligible and therefore, he was not eligible for the same full subsidy amount his brother was eligible for. Fortunately, he was at least eligible for a state subsidy, however, his monthly amount is approximately one third that which his brother receives! Therefore, providing for his challenging special needs has placed a financial burden on our family. We have adopted other children with special needs who were also ineligible for adoption assistance. In fact, some of our children who were not eligible for assistance have more extensive special needs than those who were eligible! This is not fair to either the children or the adoptive families.

Some children who were once Title IV E eligible, like our son, lose their eligibility as a result of an adoption disruption. While disruptions are rare (less than three percent of adoptions are disrupted), how tragic for those children that when a disruption occurs, they lose not only their family, but their opportunity for critical resources. Good friends of ours adopted a sibling group of 4 severely challenged children who had lost their subsidy eligibility this way. These children no longer were eligible for federal subsidy and in their state, this eliminated them from state adoption assistance as well. Their special needs were primarily a result of fetal alcohol exposure and extreme early life abuse and neglect. They present a multitude of educational and behavioral health challenges to their family. The family has stretched themselves further than many would to continually meet the needs these boys present.

Other children, like 2 of our daughters, are ineligible for subsidy because they never were Title IV E eligible. Their birth families were not poor. One child has fetal alcohol syndrome and related disabilities while the other child has cerebral palsy. Neither of their birth families were able to parent them, thus, adoption was the appropriate option for providing them with permanent homes. Neither alcohol dependency, nor the unexpected birth of a child with a disability are uniquely confined to poor parents. Yet

due to this circumstance of birth, neither of these children nor many others like them throughout the country, are eligible for adoption assistance.

Clearly it is inequitable to treat differently children who both have special needs. The economic status of the child's birth family, or former adoptive family, should not determine whether or not that child is eligible for the kinds of services and supports that a subsidy provides, especially since parental rights have been terminated and the child is free for adoption. By delinking adoption assistance and basing a child's eligibility solely on his special needs status, you will remove a significant barrier that currently prevents all children with special needs from receiving equal adoption opportunities, including Medicaid coverage, which otherwise can change when a child's family moves from state to state.

Furthermore, administrative costs will be saved by delinking adoption assistance eligibility since agencies will no longer be required to conduct time-consuming, lengthy investigations to establish eligibility based on financial situation.

Voice for Adoption supports, too, provisions in S.511 which would continue eligibility for adoption assistance payments if the child's adoptive parent dies, or the child's adoption is dissolved, and the child is placed with another adoptive family.

I would like to point out that the House bill,H.R.867, does not include this delinking provision. Therefore, I would urge you, Senators, to place considerable emphasis in maintaining this important provision of S.511 when the two bills go to conference.

Removal of Geographic Barriers to Adoption

In discussions about reforming the foster care and adoption systems, much emphasis is often placed on the need to improve and expedite the termination of parental rights process. I agree that this is an important area of concern. The objective is to place waiting children with appropriate families and to eliminate barriers to the placement of children in interstate and inter-county adoptions.

However, even after parental rights have been terminated, many children continue to wait in foster care due to geographic barriers. From the county level to the state level, and regionally, there is a resistance to place children outside of one's immediate jurisdiction. States and counties hang on to approved families in their jurisdictions, in case a child comes into care needing a home, while children are waiting in other jurisdictions for families to be found. Such was certainly the case with several of my children. In fact, we adopted one set of 6 siblings who had waited for nearly 5 years in care after their parental rights had been terminated. Geographic barriers were the main culprit.

Just as the Multi-Ethnic Placement Act (MEPA) addressed the removal of racial and ethnic barriers preventing permanency for children, strenuous efforts must be made at the federal level to remove geographic barriers, so that a state cannot discriminate against a placement simply because it would occur in another jurisdiction. I strongly endorse two provisions of S 511 which address this concern.

The first is in Section 301, "Reasonable Efforts for Adoption or Location of a Permanent home. In regard to the documentation of steps taken by an agency to find an adoptive family for a child, and in particular, the language which states that "At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems". My six oldest children had many strikes against them in their quest for an adoptive home. First of all there were six of them - a large number for any one family to take on! Secondly, they were older (ranging from age 6 to 12 when they came into care and ranging from ages 13 to 19 when we adopted them). Several of them had their own individual special needs including deafness, mental retardation and emotional disabilities. They were also African American. These children needed recruitment efforts that extended as far and as wide as possible. Yet for several years, they remained - separated - in foster care - while only local and then regional efforts were attempted. Finally, they were listed on a national exchange and that is how our family, across the country, saw them and determined to adopt them. We quickly told their agency we would adopt all 6 and yet, it still took 2 more years before they came home to us, all the while their workers and agencies were resisting placing them with a family "so far away". Due to this unnecessary and irrelevant geographic barrier, my children lost most of their childhoods. National recruitment at an earlier time could have moved them to permanency more quickly and prevented many of the traumatic experiences they endured.

Secondly, I strongly endorse the plan, in Section 305 to create an advisory panel to examine interjurisdictional adoption issues, particularly concerning the procedures to grant reciprocity to prospective adoptive family home studies from other states and counties. It has been my experience that this issue alone has hindered more adoptions than any other single issue. In fact I would be happy to volunteer to serve on this panel to share my knowledge of this issue in more depth.

Innovation Grants

Finally, I would like to add my support for the provisions in S.511 which authorize innovation grants to reduce the backlog of children awaiting adoption. While it is always important to study, identify and address barriers, it is equally important to recognize and reward success.

In addition to important innovations needed in removing barriers to adoption, Voice for Adoption supports the focus in S.511 on post-adoption services. Adoptive parents need

a range of services. These may include respite from parenting very challenging children, and continued educational workshops as different issues surface in the years following adoption, as well as specialized medical and mental health services for their children. All need to be obtainable. The availability of post-adoptive services can mean the difference between a child remaining with an adoptive family or going back into another, more costly foster care placement.

I have found that it has often been the individual caseworker, supervisor or agency program with creative thinking, dedication to children and flexibility to attempt innovative practices that have made the greatest difference in the lives of my own 21 children and those of the hundreds of children I have worked with professionally. Any leadership Congress can provide to acknowledge, reward, promote and strengthen these efforts is welcome and needed.

Reasonable Efforts

The bill's emphasis on reasonable efforts to ensure children's safety is important. In reviewing the cases delineated in S.511 in which the state is not required to make efforts at reunification, Voice for Adoption urges the inclusion of termination of parental rights of a sibling as one of the exceptions, with the provision applying to a parent whose rights have been terminated to another child and who will not respond to rehabilitative services and a court finds it unlikely that further services would result in reunification. Such a provision would follow, for example, a similar provision in Rhode Island state law, which has served to move children to adoption sooner.

Procedural Reforms

Voice for Adoption supports the provisions in H.R.867 mandating a "permanency planning" hearing within 12 months. The requirement of a concurrent planning process is appropriate, to enable agencies to determine whether a child should return home or is freed for adoption.

Reunification Services

Without service money, the impact of procedural reform is slight. Voice for Adoption strongly endorses the provisions in S.511 allowing states to use Title IV-E foster care funds for up to one year to pay for reunification services. By helping ensure that services actually happen, this change in current law can serve to shorten the time a child spends in foster care before returning home or being deemed eligible for adoption.

Again, I thank you for taking the time to listen. Your leadership and advocacy on behalf of special children is deeply needed and appreciated. On behalf of all of my children and all waiting children and families in the country, I urge you to press on and ensure that these important provisions of S511 are passed and implemented.

HECTOR AND SUSAN BADEAU
Brief Biography, 1997

"There are only two lasting gifts we can give our children - one is roots, the other is wings." Hector and Susan Badeau found this Hodding Carter, Sr. quote on a poster many years ago and have been seeking to live by its message every since - giving both roots and wings to their own 21 children (2 by birth, 19 by adoption, most with special needs) as well as assisting hundreds of other children with special needs find their roots in adoptive families from all over.

Susan grew up as the oldest of four children in Barre, Vermont. Her mother's family were immigrants from Spain, her father had deep family roots in Vermont. Hector also grew up in Barre, Vermont, the 11th of 15 children born to a first generation French Canadian immigrant family.

Hector and Susan met in high school and married after they graduated from college. After operating a bookstore for 4 years, they decided to devote their lives to children, particularly children with special needs. Two children, Chelsea and Isaac, were born to them, and were followed by Jose, a malnourished toddler adopted from El Salvador; and Raj, a preemie with cerebral palsy, adopted from India.

While beginning their family, they also provided foster care to teenagers, nearly all of whom faced challenges involving special education and mental health services. During these years a total of 23 foster children passed through their home and touched their lives.

By the mid-1980's Susan and Hector had won many awards for their work in adoption and had been featured in the New York Times newspaper in 1988 and Newsweek and Woman's Day magazines in 1989.

Seventeen more children were added to the family over the years including Joelle, a 2 pound infant with fetal alcohol effects, from Florida; 4 Mexican siblings, all with special educational and mental health needs - Abel, SueAnn, George and Florinda; another set of siblings, again, all of whom have special educational and mental health needs JD, Fisher, Lilly, Renee, Trish and David - who is developmentally delayed and profoundly deaf; two children with a rare terminal disease called San Filipo Syndrome - Wayne and Adam, an infant who suffered brain damage, Dylan; a child with cerebral palsy who relies on assistive technology for communication, Alysia, and two more young boys, both challenged by ADHD and learning disabilities, Todd and Aaron.

The Badeau children have faced numerous challenges over the years including handicap access issues, medical and health issues, mental health issues, special educational and school issues, vocational and transitional life planning issues, drug and alcohol dependency issues, racism and more. Through it all the family has

remained committed to each other and the children are all doing very well according to their individual special needs.

The Badeaus moved from Vermont to Philadelphia, Pennsylvania in 1992 where Susan works as a technology project manager at the National Adoption Center, a non-profit center promoting permanence for children with special needs. Sue is also the Pennsylvania state representative for Family Voices, a national, grass roots organization of families whose children have special health care needs and sits on the City of Philadelphia Health Department's Special Needs Work Group. Hector is particularly active in the children's schools, participating in all IEP meetings and advocating on behalf of his own and other children within the school settings. In addition to volunteering hundreds of hours per year for the National Adoption Center, the Badeau children are active volunteers with the Special Olympics, Habitat for Humanity, Multicultural Students Association, local homeless shelters, their church and youth sports organizations.

Hector and Susan and their children are totally committed to using their personal and professional experience to continue to help more children have the opportunity for "roots" and "wings" of their own.

Written Remarks Congressman Dave Camp
Subcommittee on Social Security and Family Policy
May 21, 1997

THANK YOU MR. CHAIRMAN

I WANT TO FIRST THANK YOU FOR HOLDING THIS HEARING TODAY AND ALLOWING ME AND MY COLLEAGUE, MRS. KENNELLY, TO TESTIFY. I WOULD ALSO LIKE TO COMMEND YOUR FOR YOUR WORK ON BEHALF OF CHILDREN.

AS YOU MAY KNOW, LAST YEAR, MRS. KENNELLY AND I SAT DOWN WITH THE GOAL OF INCREASING THE NUMBER OF ADOPTIONS AND MOVING CHILDREN INTO PERMANENT LOVING HOMES. THE STATISTICS ARE ASTOUNDING. NEARLY 500,000 CHILDREN CURRENTLY RESIDE IN FOSTER CARE -- AN EIGHTY-FOUR PERCENT INCREASE SINCE 1982. SOME CHILDREN REMAIN IN FOSTER CARE FOR UP TO THREE YEARS. THIS IS A LIFETIME FOR A YOUNG CHILD.

WE WORKED FOR OVER A YEAR, LISTENING TO THE VARIOUS CHILD ADVOCACY GROUPS AND CONSULTING WITH THE STATES BEFORE CRAFTING BI-PARTISAN LEGISLATION THAT ACCOMPLISHES THE GOAL OF PROMOTING ADOPTION. I WOULD LIKE TO THANK SENATOR DEWINE FOR HIS WORK ON THIS ISSUE AND FOR RECENTLY INTRODUCING SIMILAR LEGISLATION IN THE SENATE.

IN 1980, THE PENDULUM MOVED TOWARD 'FAMILY REUNIFICATION." WHILE THIS IS A GOAL WE SHOULD STRIVE TO ACHIEVE, IT SHOULD NOT COME AT THE COST OF OUR CHILDREN. SINCE 1980 NEWS STORIES IN EACH OF OUR STATES HAVE HIGHLIGHTED THE PROBLEMS ASSOCIATED WITH REASONABLE EFFORTS. ACCORDING TO THE NATIONAL COMMITTEE TO PREVENT CHILD ABUSE, IN 1995, 1,248 CHILDREN DIED AS A RESULT OF ABUSE OR NEGLECT.

THE HUMAN RESOURCES SUBCOMMITTEE HELD SEVERAL HEARINGS ON THE BILL. EACH HEARING AND MEETING HIGHLIGHTED THE SAME PROBLEM. THE "REASONABLE EFFORTS" DEFINITION CONTAINED IN THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980 HAD BECOME UNREASONABLE.

WITH THE ADOPTION PROMOTION ACT OF 1997, WHICH RECENTLY PASSED THE HOUSE BY A VOTE OF FOUR-HUNDRED AND SIXTEEN TO FIVE, THE PENDULUM HAS MOVED -- NOT TOWARD ABANDONING EFFORTS TO REUNIFY FAMILIES BUT TOWARD ENSURING THE HEALTH AND SAFETY OF THE CHILD.

THE BILL PROVIDES INCENTIVES TO STATES TO MOVE CHILDREN INTO ADOPTIVE HOMES. FOR EACH CHILD ADOPTED, THE STATE WILL RECEIVE AND INCENTIVE PAYMENT OF FOUR THOUSAND DOLLARS -- SIX THOUSAND DOLLARS FOR A SPECIAL NEEDS CHILD.

IN ADDITION, THE BILL PROVIDES THIRTY MILLION FOR TECHNICAL ASSISTANCE TO HELP STATES PROMOTE ADOPTION.

OUR FOCUS IS TO PLACE CHILDREN FIRST. BY MOVING THEM INTO PERMANENT LOVING HOMES, WE CAN HELP CHILDREN ENJOY A HAPPIER HEALTHIER CHILDHOOD AND HELP ENSURE THAT THEY WILL BECOME HAPPY HEALTHY ADULTS.

IN ADDITION, ALL SAVINGS RESULTING FROM OUR REFORMS ARE REINVESTED IN OUR CHILDREN. THE BILL WILL PROVIDE ONE-HUNDRED AND THIRTY EIGHT MILLION DOLLARS TO HELP OUR NATION'S CHILDREN.

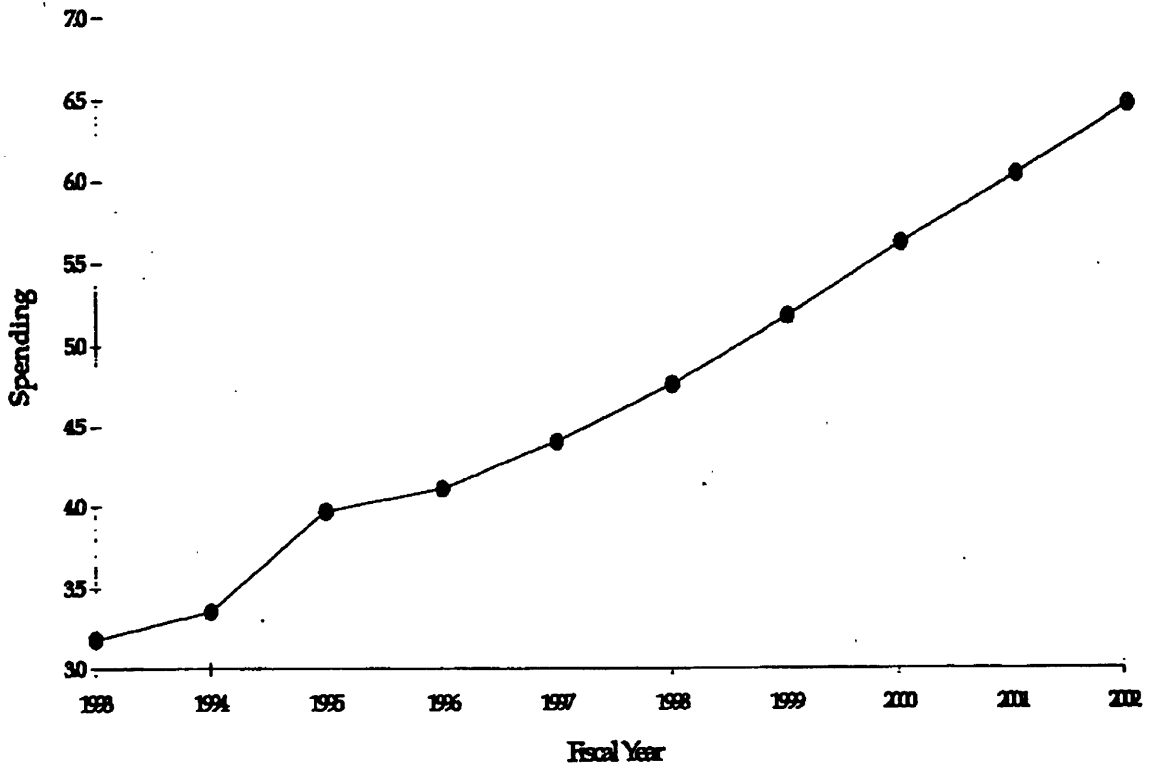
WITH NEARLY FIVE-HUNDRED THOUSAND CHILDREN CURRENTLY RESIDING IN FOSTER CARE AND THOUSANDS MORE JOINING THEM EACH YEAR – I BELIEVE IT IS TIME FOR CONGRESS TO ACT. WE MUST WORK TO ENSURE OUR CHILDREN GROW UP IN A SAFE AND LOVING ENVIRONMENT.

MR. CHAIRMAN, YOU HAVE TAKEN THE IMPORTANT STEP OF INTRODUCING LEGISLATION TO ACHEIVE THE GOAL OF INCREASED ADOPTIONS. I AM READY TO WORK WITH YOU TO MAKE THE DREAM OF A PERMENANT HOME A REALITY FOR OUR CHILDREN.

I THANK YOU AGAIN FOR THE OPPORTUNITY TO TESTIFY AND WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

Federal Spending on Child Protection Programs, Fiscal Years 1993-2002

[Spending in billions of dollars]



Sources: Department of Health and Human Services (FY1993-5); Congressional Budget Office (FY1996-2002).

Spending in Child Protection Programs

1. Federal spending on child protection programs has increased significantly over the past decade. CBO says the program will nearly double in size from a $3 billion program in 1993 to over $6 billion in 2002.

2. In 1993 a new child welfare service program (IV-B, Subpart 2) was established that provided entitlement funding services for family preservation and support. This program over five years will spend almost a billion dollars on services for families. In the final year alone, Congress will spend $255 million in FY 98. States also receive almost $300 million every year from the child welfare services program (in IV-B, Subpart 1).

TESTIMONY

HEARING ON CHILD WELFARE REFORM

FINANCE COMMITTEE

U.S. SEN. MIKE DEWINE

MAY 21, 1997

Mr. Chairman, let me begin by thanking you for holding this hearing. More important, thank you for your leadership on foster care and adoption promotion. I would also like to congratulate Representatives Camp and Kennelly on the overwhelming approval of their bill, the Adoption Promotion Act of 1997, by the House of Representatives. And I'm also glad that my fellow co-sponsor of S.511, Senator Levin, could be here.

It seems like every day, we get more compelling evidence of the need to rescue children from the limbo of the foster care system -- and move them into permanent, safe, stable, and loving homes.

Let me tell you about a couple of Ohio children who recently came to my attention.

Let me tell you about "Sarah." That's not her real name -- but what happened to her is tragically real.

Sarah was born in August of 1993. In December of that year, she was hospitalized in critical condition, suffering from shaken baby syndrome.

In January 1994, she was released from the hospital and placed in foster home number one.

In May 1994, her foster parents moved -- so she was placed in foster home number two.

In October 1994, she was returned to her mother's custody.

In December 1994, her parents were picked up by Florida authorities on warrants. She was placed in foster home number three.

In January 1995, she was moved to another foster home in Florida, foster home number four. She was then returned to Ohio and foster home number two.

In August 1995, foster home number two was having trouble with their own children. As a result, Sarah was moved to foster home number five.

In February 1996, foster home number 5 asked that Sarah be moved out of the home. Why? Because the family was concerned they were getting attached to her -- and they knew they wouldn't be allowed to adopt her.

As a result, Sarah was placed in foster home number six.

In April 1996, foster home number six asked for Sarah to be moved, after the death of a close relative. Sarah was placed in foster home number seven.

In May 1996, Sarah was placed back in foster home number 6.

In June 1996, she was placed in foster home number eight, as pre-adoptive placement.

In July 1996, the court ordered Sarah into long-term foster care.

In August 1996, foster home number eight asked for Sarah to be moved -- because of her uncertain legal status they did not know if they would ever be permitted to adopt her, yet their young children were becoming attached to her. Sarah was placed back in foster home number six.

Finally, in April 1997, foster home number 6 asked for Sarah to be moved at the end of the school year, because they are no longer able to care for her. It is unknown where she will move.

Mr. Chairman, let me put this tragic foster care odyssey in perspective. This child has lived in 8 foster homes over her short life. As a result of the injuries she suffered, she is physically and mentally delayed. She is learning sign language in order to communicate. When she feels frustrated at others' inability to understand her, she bites herself and screams. Although she has been in foster care for over 3 years, no progress has been made by her parents in the case plans. The juvenile court has on two occasions denied the motion of childrens' services to terminate the parental rights. The court's order stated the belief that the mother is immature and ordered Sarah to be placed in long-term foster care, presumably with the belief that the mother will mature with the passage of time.

Now, Mr. Chairman, the parents have disappeared -- and obviously, they are not complying with the terms of their case plan. In the meantime, Sarah -- who is now 3-1/2 -- is soon to be kicked out of her 8th foster home. As a result of all of these moves, Sarah becomes hysterical whenever she sees a full black garbage bag, because she believes it means she's going to be moved again. Her suitcase has always been a black garbage bag.

Mr. Chairman, little Sarah is being treated like a human shuttlecock -- with devastating results for her physical and emotional development. And sad to say, her story is not unique.

Let me tell you about a boy named Richard, who was born October 1992, cocaine-positive, syphilitic and jaundiced. The Hospital contacted Franklin County, Ohio, childrens services, who became involved with the mother on a voluntary basis. "Voluntary basis" -- if you can believe it -- they didn't think they had to step in in that case.

When Richard was 6 months old, he was admitted to the hospital in critical condition, suffering from severe dehydration. He had been left alone on the floor of his apartment for somewhere between 4 and 6 days. Upon release from the hospital, he was placed in foster care. Criminal charges of child endangering were pressed against both parents -- and both were incarcerated.

While incarcerated, Richard's mother gave birth to his sister, Rose. Rose was born with symptoms of prenatal cocaine exposure and placed in the same foster home as Richard.

Finally, childrens' services filed a motion for permanent court commitment of the children, yet the mother was granted one hour per week visitation at her correction facility. After release from prison, the mother moved into her own apartment and was granted unsupervised weekend visits. The motion for permanent custody was soon withdrawn, and the children were returned to the mother's custody.

Two months later, after new allegations of neglect, childrens' services filed a motion for emergency custody of the children. The mother's whereabouts were then unknown for 6 months, until she returned to Ohio last month. She now wishes to regain custody of the children. Richard is now 4-1/2.

There is no indication, record of activity or hope that either parent is suitable or capable of parenting these children, who have lived all but 2 months of their lives with the same foster parent. Is it reasonable to keep the lives of these children in limbo for years?

Mr. Chairman, I am here to thank you for your great work, along with Congressman Camp and Congresswoman Kennelly and to put in real terms why we are here. Sarah, Richard and far too many children like them in this country -- are why we are here. And they need our help -- to find the safe, permanent and loving homes that all children need and deserve.

# # #

BARBARA B. KENNELLY
STATEMENT ON THE ADOPTION PROMOTION ACT, HR 867
SENATE FINANCE SUBCOMMITTEE ON
SOCIAL SECURITY AND FAMILY POLICY

MAY 21, 1997

Mr. Chairman, I want to thank you for inviting me here today to testify. Let me also express my appreciation to you and Senator Rockefeller for all of your efforts to improve our nation's foster care system.

On the last day of April, the House of Representatives took an important first step towards protecting children and promoting adoption. We passed the Adoption Promotion Act, HR 867, by a vote of 416 to 5. I will not suggest this legislation, which Mr. Camp and I worked on for almost a year, will eliminate child abuse or guarantee a permanent home for every child. It will not. But the legislation does represent a significant step forward on the road to providing protection and permanency for our nation's abused and all too often forgotten children.

In the best of all worlds, we all agree the best place for a child is with his or her parents. But there times when living at home threatens a child's life. The Washington Post summed it up best when a recent editorial said, -- "the dark secret known to people who work in the field, but seldom honestly acknowledged by lawmakers and many others, is that some parents are the worst possible people to care for children."

We attempt to confront this hard truth while maintaining our nation's current commitment to restoring families that can provide safe and loving homes for their children. To strike this balance, our bill revises the current federal requirement that states make "reasonable efforts" to reunify abused children with their families. In short, we clarify that reunifying a family is not reasonable when it presents a clear and undeniable danger to the child. The legislation provides states with examples of situations when "reasonable efforts" are unreasonable, such as when a child has been tortured. I am pleased to acknowledge that the Chafee/Rockefeller bill has similar language on this issue.

But it is not enough to merely prevent children from returning to dangerous homes. We must also do more to find permanent homes for children who cannot return to their birth families. To accomplish this goal, we call on states to pursue "reasonable efforts" to place children for adoption when reunifying families is not possible; we propose expediting the reviews of foster care children; we require states to consider terminating parental rights in certain circumstances; and finally, we give states financial bonuses if they increase the number of children leaving foster care for adoption.

Mr. Camp and I worked with advocates on all sides of the issue while drafting HR 867. I am pleased this work produced a bill the Washington Post said, -- "puts a new and welcome emphasis on the children" and that Secretary Donna Shalala said, -- "would further the President's efforts to ensure the safety, permanency and well-being of children in the child welfare system."

However, I am aware of the sentiment that additional resources are needed for both family preservation and adoption. I look forward to working with members of this body who have an interest in providing more funding for those services. In short, if we can find additional resources in the budget to help families, then I am all for it. I certainly think a good case can be made for providing more assistance to the child welfare system.

But let us be careful about making the perfect the enemy of the good. It would be very unfortunate if a debate about money prevents us from enacting legislation that sends a simple, yet strong message about promoting protection and permanency for children.

Mr. Chairman, I look forward to working with you and the other members of this panel on our shared goal of finding safe, loving and permanent homes for children.

Thank you.

Catholic Charities USA

TESTIMONY OF SISTER ROSE LOGAN, D.C.

CATHOLIC CHARITIES USA

WEDNESDAY, MAY 21, 1997

SENATE COMMITTEE ON FINANCE

HEARING TO CONSIDER S. 511,
"THE SAFE ADOPTIONS AND FAMILY ENVIRONMENTS ACT"

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Mr. Chairman and Members of the Committee, thank you for the opportunity to speak to you today about the Safe Adoptions and Family Environments Act.

My name is Sister Rose Logan, D.C., and I am testifying on behalf of Catholic Charities USA, a national association of over 1400 local independent social service agencies and institutions. The care of abused, abandoned, and neglected children has always been at the heart of our mission. The first Catholic Charities agency was founded in 1729 by a group of Ursuline sisters who opened an orphanage in New Orleans. Today, Catholic Charities USA member agencies serve over three million children each year by arranging adoptions, supervising children in foster care, reuniting families, and by providing day care, emergency services, housing, nutrition, parent education, health care, early education, and social services to families with children.

I also speak to you out of my personal and professional experience of the past twenty-five years as a social worker involved in the field of services to children and their families. I am currently the Executive Director of The Astor Home for Children in Rhinebeck, New York. Prior to assuming this position, I served as Executive Director of St. Catherine's Center for Children in Albany, New York. Before taking on these administrative responsibilities, I spent several years in direct clinical practice with children and their families as a social worker in Buffalo, New York. I am a certified social worker and hold a Masters Degree in Social Work from Fordham University.

The Astor Home for Children was established in 1953 as a residential treatment center to provide an alternative to psychiatric hospitalization for children in need of

professional mental health services. Since its inception, The Astor Home has sought continuously for new and effective ways to enhance the emotional well-being of children. Today, Astor's behavioral health and child development services are available in at least twenty-one different community-based settings throughout the Hudson River Region of New York State and in New York City. We have extensive experience in working with children and their families through a host of programs, including community-based family support programs, outpatient child guidance clinics, day treatment programs, home-based hospital diversion services, school-based counseling programs, parent education programs, and early childhood programs such as Head Start and Early Head Start.

Each day, members of our staff work with children whose life experiences have included significant abuse and neglect. Some of these children are living with their own families; some are living with foster families; some are in group care facilities; and some have been adopted.

Mr. Chairman, as you know, the problem of protecting, monitoring and treating children who have been subjected to abuse and neglect is critical. Over 95% of children in foster care in our country have been removed from their homes after reports of abuse or neglect. The legislation you enact within these halls impacts intimately on the lives of these children.

When I think of the history of our child welfare legislation, it seems to me that the philosophy behind child welfare programs has swung like a pendulum over time—going

back and forth between the extremes of the perceived interests of children and the perceived interests of the family. There are values and rights to be respected at either end of the pendulum swing, but I believe that only a balanced approach that recognizes both interests will truly promote the well-being of children.

Before our modern welfare programs came into being, the focus of "child welfare" was primarily on assuring the physical safety of children. The state would step in and remove abused children to orphanages or youth homes, and little effort was made to work with families, or to ever return the children to a home environment.

Then, when we recognized the shortcomings of that system, we enacted legislation that focused primarily on family preservation and reunification. Although this focus on the family is laudable, I believe there is an imbalance in our current legislation to the extent it does not provide adequate protection for children.

When I bring to mind children whom I have known as they come through the child welfare system, I can identify individuals whose life histories reflect the extremes of these pendulum shifts and whose personalities bear the imprint of the system within which they were "protected." On one extreme, we have the "institutionalized" person with little sense of personal relatedness or family roots. On the other extreme, we have victims of an almost cyclical abuse who went through the trauma of being repeatedly removed and then returned to abusive family situations. These people come to believe there is little reason to trust in themselves, in others, or in the world around them.

I know from years of personal experience that many children have been reunited with their families when that should not have happened. For these children, a quick and decisive move into a new permanent setting would have made all the difference.

An example that comes to mind is one little girl whose parents abused her repeatedly when she was an infant. She was removed from their care several times and placed with a foster family. The parents, however, would manage to meet the minimum requirements to have the little girl returned to them. This happened repeatedly over the first eight years of the child's life. She ultimately required psychiatric hospitalization at age eight. Upon her discharge from the hospital, she came to The Astor Home for continued treatment and with a permanency plan for placement in an adoptive home. This child now has severe emotional problems that present quite a challenge for a family considering adoption. I do not believe anyone was served well by the repeated abuse-removal-return cycle that this child went through.

I also know of situations in which children were returned to their families with very positive results for both the child and the family. I have seen situations in which a child suffered from abuse and neglect because of parental ignorance. Sometimes, what may, at first glance, appear to be a very negative family environment in which to raise a child can be turned around with focused family intervention services. When such families are willing to work to remedy the situation, family support services can make all the difference in assuring that a child has a family, and that the family home is a healthy and safe place for the child.

What is needed, and what I think this adoption bill recognizes, is a balanced, comprehensive approach. Where there is blatant abuse, and no significant hope of improving the situation, we should move quickly and decisively toward adoption. This adoption bill takes great strides toward this goal.

But we should not ride the pendulum too far in this direction. Not all children should be pulled from their families at the first hint of abuse or neglect, and families that make mistakes must be given the support they need to become whole.

Professional judgment must be exercised in assessing and responding to child abuse situations. Legislation should establish clear parameters for the exercise of that judgment. Professionals should be allowed flexibility in making judgments within such parameters, and should, ultimately, be held accountable for the judgments they make.

Catholic Charities USA strongly supports the work of Senators Chafee, Rockefeller and DeWine to set forth this kind of balanced, comprehensive approach. The bill not only makes clear to states that child safety must come first, but it also provides significant services to protect the safety of children, whether in the home, in foster care, or in permanent adoptive placements.

It might be expected that those of us with experience in treating abused children want the toughest bill possible, but I would like to make clear that we support aspects of ***both*** the Senate bill ***and*** the House bill. The two bills complement each other in many ways by utilizing distinct approaches to the issue. Since the provisions of both bills may

in fact mesh consistently, we encourage you to continue your efforts while recognizing those of the House of Representatives.

We strongly support the clear message sent by both bills—that, in appropriate circumstances, a permanent, adoptive home should be found quickly and expeditiously. Recognizing that shuffling children through foster homes causes needless suffering, these bills change the "dispositional" hearing to a "permanency" hearing and require that it be completed within a year. Hearing officers, for the first time, are required to consider whether terminating parental rights may be appropriate under some circumstances. In another first, states must make reasonable efforts not only to reunite families, but to find adoptive homes. We support all of these proposed changes.

The Senate bill is stronger than the House bill in several respects, and we support these provisions. For example, the Senate bill requires states to establish "death review teams" to investigate circumstances surrounding the death of children whose parents were reported for past abuse. We believe death review teams will bring more accountability into a system where there is plenty of blame but too little reform.

The Senate bill also requires criminal background checks for any prospective foster parents, adoptive parents, or employees of childcare institutions. Individuals convicted of child abuse, spousal abuse, or violent crimes such as rape or homicide should not be permitted to have supervisory roles with ***any*** children, let alone with children who suffer from preexisting trauma caused in their previous homes.

Although a similar "background check" provision was added to the House bill, it was made optional for states. We prefer the tougher Senate version.

Finally, the Senate bill gives priority for substance abuse treatment for caretaker parents who are referred by state or local welfare agencies. We support this policy and believe even earlier intervention is warranted, especially considering that 85% of newborns and young children now in foster care were exposed to drugs or alcohol. We propose that in addition, caretaker parents who are "at risk" of abusing or neglecting their children should also have priority to receive treatment services. We also propose that any newborn child with prenatal exposure to drugs should be monitored for potential abuse or neglect.

We favor all of these strong Senate measures and hope they ultimately would be accepted by the House. In addition to these Senate provisions, we also favor certain aspects of the House bill we believe will assist in the overall treatment of abused children. We hope these provisions will be included in the final legislation. The most significant of these is the direct "adoption incentive payments" to states to increase the number of adopted foster care children. These "adoption bonuses" are a practical and effective method of changing the culture of child protective services and of securing permanent homes for many children.

The additional financial incentive for increasing the number of adopted "special needs" children recognizes that children who have significant challenges in their daily

lives, such as disabilities, deserve the opportunity to have a loving, caring, and permanent home.

Although we support these bonuses, we believe taking the House approach and providing bonuses ***alone*** could send the wrong message at the state and local level. There is a danger that the very strong emphasis on adoption in the House bill because of the bonuses will be a signal to state and local officials that they don't have to do anything to reunite families or keep them together, even when the abuse or neglect is not chronic or severe.

In the experience of our agencies, federal policy must be clear, balanced, and nuanced in order to avoid sending a weighted message that is misinterpreted at the state and local level. It should surprise no one that this can happen in a time when teachers, administrators and school board lawyers interpret a playground kiss on the cheek by a kindergartner as sexual harassment.

In order to avoid this type of misguided interpretation, we propose maintaining the adoption incentives in the House bill in conjunction with the new funding for services in the Senate bill for children who can and should be returned to their parents. While we strongly support termination of parental rights in cases where children cannot be safe with their parents, we also recognize that in many cases, without help and oversight from local agencies, children will neither return home nor be freed for adoption, and will languish in foster care for years.

Only with the strong and sure-footed support of appropriate intervention and family services can we assist those families who became known to us because of abuse or neglect situations to learn new ways of caring for their children and to create a healthy home environment. We need to ensure that children who return to such homes remain safe. This should not be left until new reports of abuse are made, but should be fostered through follow-up interventions, including home visits and support services.

There is one other area in which the House version is stronger than the Senate, although we believe neither bill goes far enough. The House bill is more comprehensive in listing the circumstances in which reasonable efforts to reunify families are not required by the state. By contrast, the Senate bill requires states to pass state legislation by 1999 to achieve the same goal. In addition, the House bill permits a concurrency of efforts to reunify ***and*** to find permanent placements.

Both bills specify that states should not reunite children with parents convicted of CAPTA violations, such as murder, manslaughter, or felony assault ***of a child's sibling.*** We challenge the members of this committee, however, to go further and take the lead by specifying that states, as a condition of receiving federal funds under the Adoption Act, should not reunite children with parents convicted of these acts against ***other*** children or adults. There is simply no reason to require children to live with an individual who has proved he or she cannot be responsible for the safety of another human being.

Finally, Catholic Charities USA believes there is an additional way Congress can take the lead directly in protecting the safety of children. Last year, Congress eliminated

the requirement that an organization register as a "nonprofit" in order to receive reimbursements under the Foster Care and Adoption Assistance Act. Since this requirement was removed, states have turned to contracting out responsibilities for foster care children to "for-profit" organizations. Now in some states, these new for-profit organizations are receiving open-ended entitlements to serve entire populations of foster care children. There have been several reports that these organizations are not providing the required level of care for children in their custody.

The prospect of essential care for children competing with investor profits is alarming. We believe significant special monitoring and oversight are warranted to ensure that such organizations are complying with all federal, state, and local requirements, and that the children in their care are, in fact, safe.

Once again, thank you, Mr. Chairman, and members of the Committee, for inviting me to speak on behalf of Catholic Charities USA. I am happy to offer any further help I can to make this process as beneficial as possible to children in need. Thank you.

Statement of Senator Jay Rockefeller
Finance Hearing on Child Welfare Reform and SAFE
May 21, 1997

I am proud to be here with Senator John Chafee and others to talk about the challenges we face in the child welfare and foster care system. I believe that abused and neglected children are among the most vulnerable children in our society. We have a moral obligation to be thoughtful and prudent in designing improvements to the troubled, and expanding child welfare and foster care system.

But I am also very encouraged that we are debating this issue in a positive, bipartisan manner. I believe children's policy should be bipartisan, and our SAFE Act has a range of cosponsors because it was developed in spirit of bipartisan, and I want this to continue throughout the legislative process.

I also want to thank Chief Justice Margaret Workman for making the effort to be here today. She is a distinguish jurist and a caring public servant who can provide valuable insights about the crucial role that our courts must play if we are to truly change the system for abused and neglected children.

Because I am anxious to hear the testimony, I won't make a long statement. But I want to set the context:

* Reports of child abuse and neglect have increased, with about 1 million case of abuse substantiated.

* The number of children in foster care is nearly a half-million, according to the Administration.

* Of those half-million children in foster care, the Administration estimates that 100,000 cannot be returned home, but only 27,000 are immediately free for adoption.

* Our challenge in child welfare reform is to -- speed up adoption for those 70,000 children who are waiting for loving families and permanent homes. And provide help for the other 400,000 children who make need other support or services in order to live in a safe, permanent home.

Testimony of Gary Stangler,
Director of the Missouri Department of Social Services,
Before the Subcommittee on Social Security and Family Policy
of the Senate Finance Committee

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to testify before you today on congressional legislation aimed at assuring safety and permanency for children in the child welfare system. I am Gary Stangler, Director of the Missouri Department of Social Services. I am testifying on behalf of the American Public Welfare Association, for which I serve as Chair of APWA's National Council of State Human Service Administrators. APWA is a bipartisan organization that represents the cabinet-level officials in 50 states responsible for administering publicly-funded human service programs – including child welfare, foster care, adoption assistance and independent living – and 800 local public human service agencies and 3000 individual members.

We commend the Subcommittee and the principal sponsors of the SAFE Act, Senator Chafee and Senator Rockefeller, for your interest in and commitment to safety and permanency for children in the child welfare system. As you know, APWA has a long standing interest in working with Congress to improve outcomes for children who come to the attention of the child welfare system. Public human service agencies are working diligently to ensure that every child has a safe, permanent family.

As you know, today the public child welfare system sees more children than ever who are in crisis. This increase is threatening to overwhelm our ability to make a positive difference in the lives of troubled children and their families. As administrators of children's service programs, we know we must change our strategies to help families, protect children, and provide for their permanency. We are trying a variety of creative intervention strategies to work with families, but as you know, our resources our fully stretched. We recognize that more needs to be done to improve and strengthen the child welfare system and that state agencies cannot do it alone.

For the purposes of today's hearing, I will limit my comments on legislation to the SAFE Act (S. 511), which is currently pending before this Committee, and the Adoption Promotion Act (H.R. 867 and S. 742), recently passed by the House of Representatives and portions of which have been introduced in the Senate by Senator Mike DeWine. Both bills send a message which we strongly support that

child safety should be the paramount consideration in all placement and permanency decisions, and that too many children are waiting too long for permanent homes.

In my own state of Missouri, we have implemented a program to expedite permanency for children. It is based on a fundamental concept around immediate intensive work with the family at the time the child is placed in the custody of the public child welfare agency to develop concrete plans for reunification. We have allowed our individual counties the flexibility to use pooled funding for service needs for the child and family and employ a "team" concept for development of the treatment plan. This approach has allowed us to reunify children in a more timely fashion, and, failing reunification, quickly move to a timely adoption or other permanency plan.

Congressional legislation has the potential to help states in our efforts. We are very interested in working with this Committee and the Congress so that the legislation is crafted in a way that assures states have the appropriate and needed resources and flexibility to carry out the objectives of the legislation in a manner consistent with best practices for protecting children and serving children and families safely and effectively.

While we support many of the provisions of both the SAFE Act and the Adoption Promotion Act, we do have recommendations for changes and additions to other provisions. We have carefully reviewed the bill and want to share our views with you on a number of these issues.

Child Safety is Paramount and Reasonable Efforts Should Not Compromise Safety

In 1980, Congress required states to make reasonable efforts to prevent the need for placement of a child in foster care and to make it possible for the child to return home. Although it was never intended that this provision be interpreted as requiring unreasonable efforts, or returning children to unsafe homes or impeding permanency, Congress has learned in previous hearings that in practice, such action is, on occasion, an unintended consequence of an erroneous interpretation of the law.

- States strongly support congressional efforts to make explicit in the law what is already implicit — that in making reasonable efforts, child safety is paramount.

Demonstrating reasonable efforts, when appropriate, helps to assure early decisions on child permanency. However, states recognize that there are certain egregious circumstances where reasonable efforts may be the exception, rather than the rule.

- We appreciate that both bills provide states the flexibility to determine the appropriate circumstances where reasonable efforts are unnecessary, allowing agencies to determine the appropriate plan for each child on a case-by-case basis. Many states have already moved or are moving toward enacting such laws or policies.

- We support the provisions in both bills to require states to make reasonable efforts to place a child for adoption or in another permanent placement, when reunification is not reasonable and the goal for the child is adoption or another permanent placement.

- Furthermore, we support the provision in the House bill that clarifies in federal law that planning concurrently for adoption or another permanent arrangement while making reasonable efforts for reunification is not a violation of the reasonable efforts requirement. Many states are effectively using concurrent planning to promote timely permanency for children, but in other jurisdictions, a lack of clarity in federal law has presented barriers to this approach.

States also are supportive of the intent of provisions in the SAFE legislation to address other issues of child safety and system accountability such as a requirement for criminal record and child abuse registry checks for foster and adoptive parents and a requirement for state-wide multi-agency and multi-disciplinary child death review teams. Most states, including my own state of Missouri, already are engaged in these activities and have crafted programs that are tailored to their individual states.

Our specific concern with these requirements is that if they are included as federal mandates, the Committee should review the provisions to assure that they provide the necessary flexibility so that states may build on the progress they have made in these areas, and that achievements in these areas are not unintentionally undone.

Earlier Permanency Hearings are Important Safeguards but Require Child Welfare and Juvenile Court Systems Improvements

We support changing the federal law to require a permanency hearing at 12 months rather than at 18 months. This requirement places new expectations and demands on the system and charges public child welfare agencies to be more expeditious in moving children to permanency. The Committee should be aware, however, that this requirement is going to be especially burdensome for the courts. State agencies alone do not make permanency decisions for children. As you know, much of child welfare decision-making takes place in the context of the courts. Therefore, we are especially concerned about the ability of the court system to handle these new demands. Of particular concern are our urban systems where the courts are backlogged thus generating delays in the timeliness of hearings, or the inability to devote sufficient time to individual children.

Many states have, on their own, moved toward a more timely permanency hearing for children. Although the change in statutory timelines is important, equally important is the emphasis that this permanency hearing should assume that the child will be reunified or moved to an alternative placement plan as a result of the hearing. The Court Improvement projects funded under the Family Preservation and Family Support Act are taking important steps to standardize this process but have limited funding.

- Congress must recognize the critical role that juvenile and family courts play in making permanency decisions and we urge you to consider in this legislation ways of deploying Title IV-E funds or other federal supports to improve coordination of activities between the courts and child welfare agencies. And as I will discuss more fully later in my testimony, many states are concerned that without additional resources for services to the vulnerable children and families who come to the agencies' attention, a shortened time frame may actually delay permanency decisions rather than facilitate sound decision-making.

I want to note that the SAFE Act requires subsequent permanency hearings in the court every six months after the first permanency hearing, while the House bill maintains current law for subsequent hearings every 12 months after the initial permanency hearing. We urge the Committee to adopt the House provision on the timing of subsequent permanency hearings. Since the child welfare agency is now required by federal law to conduct an administrative review or court hearing at six month intervals on all children in care, mandating court hearings every six months will increase the strain on the already overburdened juvenile court system and limit

state flexibility. Further, and of utmost importance, it creates a hearing which is duplicative of the mandated administrative reviews.

- In addition, Congress also should consider encouraging under Title IV-E other permanency arrangements such as subsidized guardianship which, where appropriate, would provide permanency for children without requiring additional court processes.

Timely Termination of Parental Rights Is an Important Permanency Decision

While the SAFE Act does not include provisions that are in the House bill that mandate states to initiate termination of parental rights (TPR) proceedings and that prescribe timelines, I want to discuss this topic because I know that many members of Congress have a serious interest in it. While we support the intent of such provisions to address the importance of expediting permanency for children in foster care, we ask that Congress carefully consider some issues and recommendations if such a provision were to be included in any legislation.

- Timely decisions regarding termination of parental rights should occur only after 1) reasonable efforts have been made (when appropriate), 2) the case plan for the child is adoption, *and* 3) a court determines that reunification is not in the best interests of the child.

We share the concern that after 18 months in foster care, a strong case should be made as to why a child is still without a permanent home. We appreciate that the House legislation affords states the opportunity to demonstrate a compelling reason for not initiating TPR, and recognizes that TPR is not always appropriate for children who are in placements with relatives and for families who have not received appropriate services. The House has made substantial improvements to this provision during its legislative deliberations, many of which reflected our recommendations, and we appreciate this.

But, even with changes made to the House bill, we are still very concerned that the provision on TPR is linked to specific time frames and states may not have the flexibility to decide these delicate issues on a case by case basis and in accordance with the best interests of a child. We urge that any provision on expeditious termination of parental rights be linked to the case goal of adoption.

Incentives for Permanency are Necessary to Realize the Outcomes Called for in the Legislation

The legislation appropriately asks states to step up efforts at protecting child safety and providing permanency for children in the child welfare system. It proposes a number of procedural changes to overcome some of the barriers to protecting children and providing for permanency.

- We caution you not to expect that procedural changes alone will accomplish these goals. States are making administrative and policy changes, but these alone will not achieve the desired outcomes. We appreciate that the SAFE Act recognizes the need for resources to assure safety and permanency for children.

- **We strongly support the provision in the SAFE Act to allow use of Title IV-E dollars for child and family reunification services, where safe and appropriate, for one year, in order to promote prompt permanency decisions.**

- These resources are critical to accomplishing the objectives of the bill to assure that states can achieve permanent and safe outcomes for children, and particularly to meet any requirements for termination of parental rights. Parental rights have been viewed as among the most sacred of rights in our country, and judges often are reluctant to terminate parental rights unless they believe that there have been efforts made and services provided to keep a family together. Such efforts and resources require a level of funding that currently is not adequately supported by the federal government. States now provide the bulk of such service funding with their own state dollars, but such funding is not enough. We want to be very clear that increased funding for these programs must not come at the expense of other programs for vulnerable children. However, if such proposals initially result in increased expenditures for Title IV-E, funding should be in addition to current Congressional Budget Office (CBO) projections for growth in the Title IV-E entitlement program. We also want to be clear that we view increased federal resources as a means to strengthen and enhance state funding in these areas, not as a means to supplant it.

- Furthermore, to accomplish the goals of the legislation, we strongly support provisions in the SAFE Act to encourage adoption of children in the foster care system with special needs by expanding the federal adoption assistance program to cover all children with special needs regardless of the

circumstances of their biological families by delinking Title IV-E Adoption Assistance from AFDC and SSI.

- In addition, we strongly support the provision in the SAFE Act to expand Title IV-E training to enable cross-agency training and elimination of the cost allocation requirement for federal reimbursement. A highly trained staff is essential to supporting the goals of safety and permanence. On a related matter, states have concerns that some regional offices within the U.S. Department of Health and Human Services (HHS) have interpreted the Title IV-E statute as *not* to include training on reasonable efforts and other child welfare training activities as allowable costs. We ask that the Committee review the current law around Title IV-E training and include in the SAFE bill language to clarify that training of child welfare agency staff on reasonable efforts and other child welfare activities are allowable under Title IV-E training. We must ensure that state child welfare agencies have the necessary supports to train their workers in addition to staff in other agencies. Given that implementation of reasonable efforts is a centerpiece of this federal legislation, federal training resources must be provided to ensure good practice in this area.

- We also strongly support the provision in the SAFE Act to allow Title IV-E funds to allow for the care of a child in a residential setting with a parent receiving treatment. Funding for the placement of children is currently available through Title IV-E if the child is *not* with her parent. This funding restriction forces separations which may not be in the best interest of the child. It is critical that federal statute provide incentives to keep families together when that can be done safely. Resources should be devoted to obtaining treatment without separating parents from their children unnecessarily.

- We are pleased that both bills recognize the critical link between substance abuse and child abuse and neglect, and the need for increased collaboration among agencies at the state and federal level. We support including the provision in both bills that calls on HHS to study this important matter. However, we are not favorably disposed to the provision in the SAFE Act requiring state substance abuse and child welfare agencies to submit a joint data report as a condition of federal funding for child welfare and substance abuse services. We recommend that the SAFE Act address the issue of state agency collaboration in another manner than requiring additional data reporting of the states. If additional data are required, additional federal funding should be appropriated for this activity so that limited resources are not redirected away from services for vulnerable children and families.

We also are very supportive of the provision in the House bill and the President's adoption initiative to provide adoption incentive payments to states for increasing the number of children adopted from the foster care system. However, we want to ensure that the payments to states are constructed as a fair and equitable incentive system and that there is adequate funding for these incentive payments in order to achieve the outcomes desired by this legislation.

If the Senate includes this provision in its bill, we recommend that the Committee examine the base year and formula for determining the bonus to ensure that incentive payments to states are fair and equitable. As written in the House bill, it is possible that some states that already have performed exceedingly well at eliminating their backlog of waiting children and have increased substantially the number of adoptions will never be able to match their past performance and may never receive a bonus. Other states that may not have achieved similar increases may reap larger and more frequent incentive payments.

- We would like to see the incentive payments crafted to reward appropriately states who do a good job, while encouraging others who could improve, without disadvantaging states or enabling them to take advantage of the system. Perhaps the Secretary, in consultation with the states, could be charged with constructing a fair and equitable incentive system.

Waivers are a Critical Tool to Support Child Welfare System Improvements

Section 1130 of the Social Security Act currently provides for 10 state child welfare waiver demonstration projects. To meet the challenges facing children and families in our states and communities, and system improvements called for by Congress, it will take innovation and flexibility at the state and local level. Both the SAFE Act and the House bill expand the number of child welfare demonstration waivers to 15 states. States feel strongly that the number of waivers should not be limited. Given the requirement that each project be cost neutral, appropriately evaluated and that it ensure current-law protections for all children, states feel strongly that such waivers should be available to any state that meets the criteria.

- Such waivers give states the needed flexibility to make the kinds of improvements to their child welfare systems that this legislation clearly seeks to accomplish.

- Furthermore, we believe that the current law on waivers should be modified to enable states to continue successful demonstrations beyond the allowable five years. Children and families may be significantly harmed if successful services are terminated at the end of a demonstration. States also should be allowed the opportunity to replicate successful demonstrations operating in other states. In addition, the current statutory language around application and evaluation should be amended to allow more flexibility so as not to preclude demonstrations that address systems changes.

We would like the opportunity to work with the Committee to address these changes.

Kinship Care Raises Unique Issues in Foster Care Policy and Permanency Decisions

It is critical that Congress recognize the special circumstances of kinship care. We cannot expect to address fully issues related to permanency without recognizing the role that kinship care plays within the child welfare system and the needs of children and families in such placements. It is important to take into consideration the substantial number of children in foster care placements with relatives when citing numbers of children in foster care and the lengths of stay. For many children, foster placement with relatives is the best permanent placement for a child, and it is in the best interests of a child to remain in care with these relatives until he or she is fully grown. Statistics do not usually distinguish between relative and non-relative placements for children in foster care. Therefore, tens of thousands of children who are in permanent arrangements with relatives are likely to be counted as children in need of a permanent home.

The Title IV-E federal foster care program was not developed with relative caregivers in mind. Foster care programs were designed to license and fund temporary, out of home care for children by persons who were not known to them. And yet, in order to qualify kinship placements for Title IV-E funds, states must incorporate kinship homes into the formal foster care system. As a consequence, federal child welfare policy has grown more rigid and less responsive to the variety of children's needs in kinship care. For example, licensure may preclude placement with kin whose attachment to the child may outweigh stricter certification standards imposed on non-relative foster parents.

Thousands of children have been supported with AFDC grants in the homes of relatives. Bringing children who are being cared for by their relatives into the

formal foster care system is not always appropriate or responsive to the needs of these children. The question that needs to be asked is whether the growing expansion of formal state control over the long-standing tradition of kinship care is beneficial and truly in the best interests of children. We also must be mindful of the supports needed by these families to assure the well-being of the children in their care and of how welfare reform might impact these issues.

States are undertaking innovative initiatives to address these issues. Three states, Illinois, Maryland and Delaware have been approved for child welfare demonstration waivers relating to kinship care and subsidized guardianship. The problem is that the special character and dynamics of kinship foster care make it difficult to move large numbers of children into permanent homes through the established channel of adoption. While research shows that many more relatives are willing to consider adoption than previously assumed, significant proportions still are uncomfortable with this approach. Families fear becoming embroiled in an adversarial process that pits parents against sons and daughters, siblings against sisters and brothers. Many relatives, especially grandparents, find formal adoption to be an unnecessary bureaucratic imposition. They feel that their relationship to the children already is permanently sealed by virtue of their blood ties. Many relatives find subsidized guardianship an attractive permanency option that would add legal permanence to existing family relationships. It maintains customary informal family relationships instead of interjecting the adversarial process of termination of parental rights.

We urge Congress to look to state demonstrations on kinship care as it considers any legislation on foster care and adoption. We also recommend that the Senate include the provision in the House bill that calls for an advisory panel to examine issues concerning kinship care and make recommendations. Through subsidized guardianship programs, states intend to bring permanency to the lives of thousands of children who otherwise would spend their childhood in long-term foster care.

An APWA work group of public child welfare administrators is now developing a discussion paper to submit to Congress regarding recommendations for reform of federal policy on formal kinship care.

- Our ideas include the authorization of federal participation in the funding of private guardianship or other legal permanency arrangements with kin for children who otherwise would have remained in long-term foster care, and the delegation to states of the flexibility to establish certification standards and payment rates for kinship homes that are separate and distinct from the licensing standards and payment rates for foster family homes.

We look forward to working with the Committee on this matter.

Conclusion

We believe that the provisions of the House and Senate bills are complimentary and we expect that any legislation enacted by Congress will include the best provisions from each. We recognize that balancing the budget is a top priority for Congress and the nation and that financing these proposals will require difficult decisions to prioritize limited resources. However, we believe that the Congress fully intends that the objectives of safety and permanency contained in these bills not just send a message about the concern for children but become a reality for these vulnerable and waiting children. Thus, there must be adequate resources provided by both the states and the federal government to accomplish these goals of protecting the safety of children and providing timely permanency.

In closing, I want to reiterate that public human service administrators wholeheartedly support the principles embodied in these bills. With bipartisan and bicameral congressional attention to these issues, along with a strong partnership between the states and the federal government to support reform initiatives and innovation at the state level, we have a unique opportunity to improve outcomes for our nation's most vulnerable children and families. Again, Mr. Chairman, thank you for inviting me to comment on this promising legislation. We hope you will consider our recommendations and we look forward to working with you as the legislation moves ahead. I would be happy to answer any questions.

Statement by Chief Justice Margaret L. Workman
Supreme Court of Appeals of West Virginia

I will begin by telling you that my great passion is children's interests. I have long believed children do not enjoy rights equal to those accorded adults in our legal system.

As a young lawyer, representing both parents and children in abuse and neglect cases, I saw close-up how the system frequently re-abused children. Later, as a trial court judge for seven years, I presided directly over hundreds of such cases, and for the last nine years as a state Supreme Court Justice, my primary goal has been to develop a body of law in our state enunciating the rights of children---especially abused and neglected children. As a result of these experiences, I have some rather strong ideas about the role courts should play in child abuse and neglect cases and how our legal system should respond to children who are in court through no fault of their own --- but because they are abused or neglected.

Existing federal law requiring states to make reasonable efforts to reunite families was engendered by a simple and humanitarian concept---that troubled families should be given help and that, where possible, children should be restored to their parents.

In practice, however, this requirement has frequently been interpreted to mean reunification at any cost, and in essence elevated parental rights far above the rights of children to the basic safety, nurturance and permanency to which every child should be entitled.

Now there is a growing recognition that children should have rights, too. And that while we have both a moral and legal obligation to try to mend broken families, the parents themselves must accept responsibility for working to make the changes necessary to re-unite with their children.

Children cannot wait for long periods for the adults upon whom they should be able to rely to live up to their responsibilities. When children are made to wait, especially in their most formative years, and kept in legal limbo with no real place to be—no real care-takers they know they can count on for the long haul—there will be an immense cost to pay— both the emotional cost to these children and the families they create as adults, and the financial and social cost to all of us.

We in the legal system must begin to see time from a child's perspective, and we must keep these cases moving to some resolution. Efforts at reunification should only be

required where the individual circumstances support the conclusion that such efforts will be productive in a fairly short time. As the pendulum swings to protect children, I urge that it not swing so far that Congress itself is determining when reasonable efforts are or are not required. I believe strongly that it should be courts (courts which have the people actually before them), acting within the parameters of legislative guidance, making these decisions on the facts and circumstances of individual cases. But it should also be courts exercising meaningful management and oversight of these cases to see to it that children don't get lost in a legal limbo.

I will be the first to acknowledge that courts have often failed abysmally to do the quantity and quality of management and oversight I suggest. The legislation you are considering provides an incredible opportunity for the Congress to bring truly meaningful progress to this area of law. Just as Title IV-D of the Social Security Act radically altered the law governing the establishment and enforcement of child support by conditioning the receipt of federal funds on states creating expedited systems for child support, the Congress has the opportunity to mandate requirements state judicial systems must meet in order to receive the federal financial assistance this bill will offer.

Let me talk about what I view as the key components to an effective court system in the area of abuse and neglect:

(1) First and foremost, regular, active judicial review of child abuse and neglect cases until permanency is achieved must be present before a court can effectively oversee an abuse and neglect case. In addition to the proposal before the Congress that would require permanency or dispositional reviews within twelve months of placement, federal legislation should also require that there be a judicial review of the entire case at least every ninety days until permanency is achieved. This requirement could in some instances be satisfied by multi-disciplinary team reviews if an improvement period has been granted and reunification is the goal, but there must be some form of active review at least every ninety days. This is key to ensuring children in these cases are receiving the level of attention they need.

(2) I endorse the Senate bill's requirement that states be required to make reasonable efforts, but only where there is good reason to believe that such efforts will result in success, only where reunification can be accomplished within a fairly short time, and only where such reasonable efforts can be made without endangering the child's health or safety. The polar star of any such decision should be the best interests of the child. Senate Bill 511's requirement that states must enact and enforce laws specifying cases where reunification efforts would not be required, and where grounds exist for expedited

termination of parental rights, is a sound approach. I still believe, however, that courts, however, should make the ultimate determination on these questions.

(3) Another key component of effective judicial oversight is that, where reasonable efforts are determined to be required, then clear behavioral objectives must be set forth in the treatment plan. It is wholly insufficient to create a treatment plan which consists only of a laundry list of services which the social services system must provide. This approach effectively shifts the entire responsibility from parents to the government. The nature of the changes expected should be specified, and the test for success must be whether or not these changes have occurred, not just whether the services were provided.

(4) Congress should mandate that state social services systems begin alternative permanent placement planning as soon as a petition is initially filed. Waiting to begin permanency planning until remediation efforts have failed unnecessarily delays the process of achieving permanency for children. If the goal of reunification is achieved, the child can be returned home. But if reasonable efforts do not succeed, there will be an alternative permanent placement ready for that child.

(5) Federal legislation should require that all children be appointed legal counsel. While West Virginia and many other states have long required such appointment of counsel, many states simply require a guardian ad litem who is not necessarily a lawyer.

(6) While state social services and legal systems should place a high premium on permanent resolution, they should also require crisis intervention services for children. When a child is removed suddenly from his or her home, even where that removal is well-warranted, it is extremely traumatic. As a trial court judge, at the first emergency taking hearing, I often asked, "Who's talked with this child? What has he been told about what's going on in his life" That question was usually met with dead silence. Even well-meaning social workers, lawyers, and foster parents often forget how important it is to communicate with a child about what's happening in his or her life. And the pain these children are feeling is often too difficult to acknowledge and hear. Under our current system, services are usually provided at this time of trauma and crisis to parents, but the children are forgotten, further reinforcing their view of a world as a scary place where adults cannot be trusted and counted on. Similarly, courts need to give children the opportunity to be heard and treated as if their thought and feelings matter.

(7) Use of a multi-disciplinary team approach is essential to the effective handling of abuse and neglect cases. This concept combines community resources and

focuses all the interventive personnel—child protective service workers, educators, counselors, foster parents, and other service providers—on working together to bring healing and resolution to the child's life.

(8) If reunification efforts are determined not to be justified, or if they fail, adoption obviously is the most desirable placement for the child. Unfortunately, many children—due to special needs, emotional or behavioral problems resulting from prolonged or aggravated abuse, or just age, are not good candidates for adoption. Not only do we need to focus on the recruitment and training of prospective adoptive parents for special needs children, we must also recruit and train permanent foster care parents. By that, I mean foster parents who commit to keeping and caring for the child until his majority, the child welfare agency agrees not only to move that child from that permanent foster placement, but also provide ongoing supportive services, and this arrangement is ratified by court order. Under the current system, many state social services agencies consider return to home, adoption, or regular foster care as the only alternatives. Yet in a recent field study in our state, more than one-third of the children in the system were regarded as non-adoptable. There is a vast reservoir of such children nationwide. For them, permanent foster care is the best alternative. But many states (and West Virginia is one of them) have failed to develop a meaningful permanent foster care program. In order to make permanent placement a reality for these children, we need federal legislation providing financial incentives designed to assist states in recruiting and training permanent foster care parents.

(9) I must mention my favorite program, the Court Appointed Advocates for Children (CASA). CASA programs recruit average citizens—people who are stable, committed and willing to undergo thorough training—to go to court to speak up for a child. CASA volunteers offer tremendous assistance to courts, and federal funding at least for start-up programs, would be a boost to this vital nationwide program.

(10) None of these concepts will work without adequate judicial training. We must teach judges that it is they who bear the primary responsibility to oversee abuse and neglect cases and to see to it that children move to permanency.

(11) Any federal legislation should make absolutely clear that the overriding purpose of the statute is to assure the best interests of the child, and all other considerations must be consistent with that objective.

In closing, I must take a moment of pride in what we have at least begun in the West Virginia Judicial System. Over the last few years, we have developed both case law

and substantive Rules for abuse and neglect to put the child first—to place more responsibility on parents to make the changes needed to accomplish re-unification and to require courts not only to monitor and oversee abuse and neglect cases, but also to give them the highest priority on the docket.

The Congress has the opportunity to mandate court systems all over the country to create a legal system that will give hope to the weakest, most voiceless segment of our society—abused and neglected children.

Thank you for the opportunity to speak with you today.

COMMUNICATIONS

STATEMENT OF THE AMERICAN ADOPTION CONGRESS

To: Senators Chafee, Rockefeller, Jeffords, DeWine, Dodd, Moseley-Braun, Kerry, Kerrey, and Kennedy.

Representatives Camp, Kennelly, and Shaw.

The American Adoption Congress (AAC) is proud to join with you, the Senators, in your efforts on behalf of:

S511: The SAFE ADOPTIONS and FAMILY ENVIRONMENTS ACT

and, congratulates you, the Representatives, on the successful passage of:

HR867: The ADOPTION PROMOTION ACT OF 1997.

If these Acts accomplish what is intended, thousands of children will be rescued from being stuck or lost in our child welfare and foster home systems and will have safe, permanent homes with their biological families, kinfolk, and/or families extended through adoption. Most importantly, the Acts contain many stepping stones toward rebuilding a system with coordinated planning, training, and the delivery of services that we hope will characterize the child welfare/adoption world for the new millennium. These are works that shall impact far beyond the target year of 2002. Thank you from all of us who lives have been touched by foster homes and adoption.

The American Adoption Congress, Inc. (AAC) stands for truth and integrity in serving children in general and children of adoption in particular. The AAC is almost 20 years old and is a non-profit, tax-exempt charitable corporation composed of people whose lives have been touched by adoption. While our membership is primarily composed of adoptees, birth parents, adoptive parents, and adoption and clinical professionals, a number of us are also foster parents and other adoptive and biological kin of adoptees.

Please accept the following remarks as our testimony in support of S511, the incorporation of portions of HR867 within S511, and the eventual reconciliation of the two Acts. Our comments are structured to follow the side-by-side summaries of the Acts. Not all provisions are commented which should be taken to mean that either we would endorse the provision or it is out of our purview.

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CONCURRENT PLANNING FOR REUNIFICATION AND PLACEMENT.

HR867, Sec 2, refers to the need of concurrent planning for reunifying a family or permanent placement of a child in adoption or guardianship. We would like to see this idea included in SAFE. Much time is lost in sequentially implementing a family preservation plan and then, when that is no longer feasible, beginning adoption planning. Meanwhile the child ages in the system and has to build the psychological defenses against the pain of not belonging, defenses that will interfere with the ability to trust and attach once a permanent plan is implemented. Concurrent planning not only saves time, but it could well save children. Also, it will be important that such concurrency be managed with all parties as a team effort and not as one agency or division forming its plan in competition with another. Such competition all too frequently treats the child as an object, much like a wishbone, which only adds to the child's pain and confusion.

CHILD'S HEALTH AND SAFETY

Both Acts refer to concerns for a child's health and safety. We suggest wording such as "health, including mental health, and safety." We have found that down through the years much official attention has been paid to physical health. Yet the problems that make adjustment to whatever setting so very difficult is the emotional well-being of the child. Emotional wounding and the resulting dysfunctional coping skills that the child develops are major factors in placements not working. The importance of emotional well-being needs to be recognized in the law.

TERMINATION OF PARENTAL RIGHTS

HR867 provides a requirement for the states to move for termination of parental rights for children 10 and younger if they have been in foster care 18 out of the last 24 months. There are three exceptions given: kinship care, an official decision that TPR is not in the best interests of the child at this time, or the state has failed to provide adequate reunification services. Given that the median age of foster children is 8.6 and that 18 months is a long time in the life of a child that young, we believe that this provision has value. Provided that our concern below is met, we support its incorporation into S511. It appears to offer protection for the biological family, the child, and is certainly better than the child remaining indefinitely in the foster care system.

We are very concerned that the Termination of Parental Rights creates legal orphans. Already there are thousands of children in the country whose parents' rights are terminated but who are not, and may never be, adopted. We recommend that the concepts and language of this provision make clear that there is a residual right in the child to have contact with birth family members including parents, siblings and other kin. Further, it is conceivable that the life situations of the extended birth family may change in such ways to make it possible for them to be candidates for permanent placement. We believe strongly that this door should always be open and that, under changed and positive conditions, the birth family have the right of heading the priority list for permanent placement.

POST-ADOPTIVE SERVICE

While it does not appear in either Act, we feel that one of the results of moving children earlier into permanent placement is that many of the issues that might have been worked out while the child is in foster placement will now be faced in what we would hope would be permanent placement. One of the prices of the success of this legislation is that there is a possibility of more disruptions unless there is excellent support from professionals and agencies who are specifically trained to work with this population. The trauma and resulting behaviors that characterize so many of these kids, are really impossible to prepare adoptive parents for. Ongoing help has to be available and some of that will have to have public support. Disrupted adoptions are extremely expensive emotionally and financially with the children possibly becoming permanently residing in the public system. It is a case of a pound of prevention hopefully will save a ton of trouble. We suggest that some provision insisting on post-adoptive services be added.

ADOPTION INCENTIVE PAYMENTS

Our people are quite mixed on this item. Some refer to it negatively as a bounty and find the idea of anyone getting paid off for placing a kid objectionable. Many of our members are birthmothers or adoptees who find anything reminding them of the buying and selling of children to be repulsive. What perhaps would make such a provision more palatable, would be just, and of great service to children and their families is to make the incentives also available for children who return home or to kinship care. After all, a major purpose for this provision is to place children, safely and permanently. If that placement could be made with the biological family or kin, it would achieve an espoused goal of the Acts and would be of great service to the child and the families.

While incentives are generally not a popular idea with our members, we are aware that some states may have finance people who would point out that it is to the state's advantage to keep children in the system because of federal subsidies. To the extent that is true, an incentive payment may make unfortunate sense. There is also concern that if 1997 is to be used as the base year for counting placements, that some states may not place as many children this year in order to establish a lower base. If such a provision was to be included in S511, perhaps a year that has already expired would provide a less vulnerable base line.

We realize that the incentive payment is to encourage the states to place children. However, along with the placing of children, we suggest adding that the incentive payment is also dependent upon the states implementing an acceptable program for staff training and an acceptable level of reunification and/or post-adoptive or services for families.

It is interesting to note that with a $15,000,000 cap per year, a minimum of $4000 per child, and a maximum of $6000 for a special needs child, the total population for incentive pay would run between 2500 and 3750 children per year. As the program is to run for five years, we can estimate that reimbursement would be made for about 15,000 children which is only 15% of the children currently free for adoption.

CASE REVIEW SYSTEM

We have no objection to reducing from 18 to 12 months the time for the first permanency hearing. We do like the wording of HR867 that acknowledges permanent placement possibilities with "fit and willing relatives." Providing that there is good planning and "fit relatives," there are great psychological advantages for children to be placed with people who share a common culture and whom they may resemble. We recommend that such a concept be incorporated in S511.

FOSTER PARENTS and RELATIVES in CASE REVIEWS AND HEARINGS

This is an excellent and long overdue provision in HR867. We believe that anyone with relevant data about the child should have input in such settings. We therefore would err in inclusiveness on this matter and suggest that a good social history would reveal who would be appropriate to be invited. We would not restrict such invitations to relatives providing care unless broadly interpreted. For example, grandparents may not serve in any primary caretaking role but may very well have valuable input and great interest in their grandchild. We recommend that a similar but more inclusive wording be incorporated into S511.

DOCUMENTATION OF EFFORTS TO ADOPT

The material required in documentation fits with the standards of good professional practice. We are pleased to see in HR867 "a fit and willing relative" referenced as an appropriate provider for a permanent home. We encourage such language to be used in S511. We also appreciate the specifying of "electronic exchange systems" as an acknowledgment of a very powerful and state of the art tool.

KINSHIP CARE

We are excited to see kinship care obtaining such recognition as it does in HR867 and we hope that it will reappear in S511. Kinship care has been around for as long as there have been children and families. It is the natural outcome in families which accept the responsibility of caring for their own. Providing that the kin are "fit and willing," kinship care is a great psychological boon for the child who cannot or should not be raised by biological parents, or in situations in which the parents can provide part-time parenting at best. Kinship care, when well performed, provides a great service to society also, reducing the likelihood of children becoming dependent on community resources. It also can be very complicated and there are instances where socially valued boundaries must be set and maintained. In such situations caring kin and children need to have good counseling from competent professionals.

It is appropriate that Congress learn more about kinship care. So little has been documented and, what little that has, is anecdotal and is apt to be skewed in whatever belief direction the teller of anecdotes favors. We welcome the establishment of an advisory panel and we would be glad to participate.

FEDERAL PARENT LOCATOR

Using the Child Support Enforcement Program's Federal Parent Locator to alert missing parents and informing them of hearings and developments is an excellent idea. It will serve birthfathers, particularly, who frequently are not informed even that a child exists, and it will give them an opportunity to make clear decisions about what responsibility they wish and are able to take. It will serve adopting parents who need to be assured that the child and themselves are safe from disrupting interventions. We strongly suggest that this provision become included in S511.

TECHNICAL ASSISTANCE TO PROMOTE ADOPTION

HR Sec 10 provides for Technical Assistance program and funds to the states. Given the complexity of the changes in this legislation, we believe that it is responsible for Congress to offer such technical support. We particularly note that training will be available for concurrent planning and we appreciate that. We suggest adding to the list, technical assistance regarding post-adoptive services which will prove vital to the success of the Congressional efforts. We recommend that this provision and its funding be incorporated in S511.

SUBSTANCE ABUSE AND CHILD PROTECTION

Both Acts call for greater coordination of state substance abuse and child welfare programs. We are very supportive of such efforts. We are surprised to learn that there has not been an inventory of federal substance abuse programs for access from child welfare. That information surely needs to be available.

PRIORITY FOR SUBSTANCE ABUSE TREATMENT

We are pleased to see that S511 broadens the priority for treatment from pregnant women to all caretaker parents, hopefully to include pregnant women. We suggest that the wording be managed to include other primary caretakers as well in order to place kin folk providing direct care within this priority.

ELIGIBILITY FOR INDEPENDENT LIVING SERVICES

We are pleased to see that HR867 expands Title IV-E eligibility to children who have accumulated assets of $5000. Will this require additional funding?

CRIMINAL RECORD CHECKS

We are pleased to see that criminal record checks will be part of the federal mandate. While most states already have implemented such a procedure, it should be done by all.

STANDBY GUARDIANSHIP

HR867 provides for encouraging the states to enact laws and develop procedures for parents to name standby guardians for their children in the event of life threatening illness or nearness of death. While this provision may not fit clearly within the primary focus of this legislation, it is a worthy provision for protecting children in general and allowing parents to fulfill their parental responsibilities even in death. We encourage this provision to be included within S511.

CHILD REVIEW DEATH TEAMS

The death of a child is always of great pain to all concerned and impacts concerned citizens in general, particularly if the child's death was through suicide or foul play. We appreciate the sponsors concern and the provisions of the Act. We suggest that the specificity for structuring death review teams is extremely elaborate and may prove to be a burden for implementation, particularly within smaller states. We would recommend changing these provisions so that the states can tailor proposals and implement an approach that fits their situation. Such plans would have to be submitted for approval to the Secretary of HHS who would provide the states with a statement of objectives rather than specific structure or procedures. We also note that the proposed mandate will need funding and that there is no provision for such funds.

FOSTER CARE PAYMENTS FOR CHILDREN WHOSE PARENTS ARE IN RESIDENTIAL TREATMENT

Support of children placed with their parents while the parent(s) undergoes residential treatment is a wonderful proposal. For those of us who have witnessed such programs, this is an important acknowledgment that parents can be good and valued parents even though in residential treatment and that children derive positive benefits from accompanying their parents.

STAFF TRAINING

We are very supportive of this provision and would hope that training increasingly will cut across agency lines. Staff needs to discover the importance of their colleagues in other agencies and to know that they are part of a bigger effort in which many resources are needed and must work interdependently.

ELIGIBILITY FOR ADOPTION ASSISTANCE

We believe that the provisions for adoption assistance as outlined in S511 indeed is a step forward in opening eligibility and clarifying some sources of confusion in the law. We support this measure.

REUNIFICATION SERVICES PAYMENTS

Payment for reunification services is an excellent provision recognizing that such services are necessary in order to give families a chance. We heartily endorse this measure.

INNOVATION GRANTS

This, along with the provision to increase the number of states eligible for demonstration funds, is an excellent step forward. We would encourage the sponsors to include post-adoptive services as one of the specified focal areas. As noted earlier, post-adoptive services are going to be vital to families and children that directly benefit from this legislation.

CONCLUSION

Once again, we thank you for your efforts on behalf of children. If the AAC can be of help in your deliberations, please call on us.

Respectfully yours,
AMERICAN ADOPTION CONGRESS

Jane C. Nast
President

Jack Marvin
Executive Director (Interim)

STATEMENT OF THE AMERICAN HUMANE ASSOCIATION, CHILDREN'S DIVISION

Mr. Chairman and members of the Subcommittee, as Executive Director of the American Humane Association (AHA), I appreciate the opportunity to submit testimony regarding S. 511, the Safe Adoptions and Family Environments Act – the "S.A.F.E." Act. I want to thank the Subcommittee for holding this timely and important hearing. The American Humane Association's Children's Division praises the S.A.F.E. bill for its emphasis on the fundamental priority sought for decades by children's advocates: ensuring child safety and protection.

By refocusing the spotlight, and the legal imperative, on the paramount importance of child safety in the foster care, adoption and family reunification processes, the SAFE Act gives federal clout to the redirection of efforts already underway in many states and long advocated by most organizations, like AHA, which work to improve the lives of abused and neglected children.

We are concerned by the fact that almost $3.1 billion in federal funds were spent on foster care in FY'96, an amount estimated to increase to nearly $4.8 billion in 2001, according to the U.S. General Accounting Office. Combine those staggering figures with recent data which suggests that more than 40 percent of

representatives of the Bureau of Indian Affairs), and support efforts to address the welfare of Indian Children within the Act.

Moving children into permanency requires services for both the child and the family during the reunification process. We are pleased that S. 511 provides these necessary services. Of note is the proposal to use Title IV-E funds for cross-agency training activities of child welfare staff, in conjunction with substance abuse workers, mental health providers, education personnel, juvenile justice workers, and representatives of the court. AHA supports the use of these funds for the care of a child whose parent are in a residential program, when it is the goal of the child welfare agency to reunify that child with his or her family. We also favor funding for support services to the aforementioned families if they are grappling with such issues as substance abuse, domestic violence issues, homelessness and/or teen parenting.

The American Humane Association, founded in 1877, is a national leader in identifying and preventing the causes of child and animal abuse and neglect, and provides advocacy, training, research, technical assistance and other services in the areas of child and animal protection. Its national constituency is both agencies and individuals. Headquartered in Denver, Colorado, AHA has regional offices in Washington, D.C., and Los Angeles. We applaud the strides made in this legislation and look forward to working with the Subcommittee to ensure its enactment.

Testimony Submitted by
The National Association of Homes and Services for Children
to the Subcommittee on Social Security and Family Policy

The National Association of Homes and Services for Children (NAHSC) is pleased to have this opportunity to testify on behalf of S 511, the Safe Adoptions and Family Environments (SAFE) Act. We strongly support this carefully crafted legislation to enhance children's safety and better equip states to find adoptive or other permanent families for children in foster care.

We are delighted that this bipartisan legislation has earned the support of thirteen senators to date. In particular, NAHSC thanks Senators Chafee and Rockefeller for introducing the SAFE Act, and Senators Jeffords and Moseley-Braun, members of the subcommittee, for cosponsoring the legislation.

NAHSC members include close to 350 charitable nonprofit organizations that provide services in almost 1,000 communities nationwide. They serve over a quarter of a million children yearly and provide over $1.3 billion in direct care and services to children and families in 48 states and the District of Columbia. Associate members include state and regional associations of nonprofit child- and family-serving agencies. NAHSC members provide a full range of direct care services to children and families in crisis. Most of the children cared for are victims of physical, sexual, or emotional abuse, neglect, or abandonment. Other children need help because their family is unable to care for them due to severe health problems, alcohol or substance abuse, or incarceration.

Congress and the Clinton Administration are poised to enact major social legislation to ensure children's safety and promote adoptions of children from foster care. Last February, President Clinton set a goal of doubling adoptions, and proposed budget initiatives to achieve that goal. For months, both houses of Congress have been working on bipartisan legislation to ensure that children are not returned to their families when doing so would endanger their health and safety, and to help nearly 500,000 children in foster care find permanent homes. Last month, the House of Representatives passed HR 867, the Adoption Promotion Act. We would like to share our views on why the SAFE Act is better designed to achieve the important goals set forth by Congress and the President.

The SAFE Act is a comprehensive package of child protection reforms that would enhance the safety of children in our child welfare system, and allow child welfare agencies to make better informed, more timely decisions about the appropriate permanent placement for each child. In particular, we would like to call attention to the following provisions of the SAFE Act that would help achieve these goals:

Reasonable Efforts
NAHSC applauds the SAFE Act's clarification of the "reasonable efforts" requirement in current law. The bill would make clear that the health and safety of the child are the paramount concerns in determining reasonable efforts required by state agencies to prevent placement in out-of-home care, or to reunify families, if removal is necessary. The bill clarifies that reasonable efforts to prevent the removal of a child from the home are required only when the child can be cared for safely at home. The bill also makes clear that efforts to return a child home are not required when a court has determined

that doing so would endanger the child's health and safety. Finally, the bill requires states to enact and enforce laws that specify cases, such as murder, manslaughter, and chronic abuse, in which reunification efforts are not required and grounds for expedited termination of parental rights exist.

NAHSC strongly supports these changes. They provide needed clarification to states in implementing the reasonable efforts requirement, while continuing the federal policy of support to troubled families when doing so does not endanger a child's health or safety.

In addition to the reasonable efforts changes, NAHSC strongly supports several provisions of S 511 that would provide additional federal resources to promote permanence for children in foster care and address weaknesses in the child protection system. We view these additional resources and reforms as a critical component of legislation to promote adoptions. Provisions of S 511 that we support and hope to see signed into law include:

- **Federal reimbursement under Title IV-E Foster Care for reunification services for one year after a child is removed from the home.** This critical provision would allow child welfare agencies to determine sooner whether a child may be returned safely home, or whether adoption or other permanent living situation should be the goal. Thus, the provision is squarely within the bill's overall goal of promoting adoptions and other permanent homes for children in foster care.

  Too often under current practice, children remain in foster care and are not freed for adoption because judges are understandably reluctant to terminate parental rights in the absence of services provided to a troubled family to determine whether a child may be returned safely home. This provision would give states the resources to provide time-limited, targeted services so that informed, timely decisions can be made. The services are limited to counseling, substance abuse treatment, mental health services, assistance to address domestic violence, and transportation to and from such services, and were specifically designed to emphasize those services that cannot be provided by child welfare agencies and are therefore the hardest to obtain.

  When reunification services begin the day a child enters care, it is much more likely that a permanency decision will be made within one year. Some children will be returned safely home; others will be moved more quickly toward adoption or other permanent placement. Also, early reunification services will prevent later delays in terminating parental rights, if appropriate. Under current practice, reunification services may not begin for children and families until termination is sought, delaying final permanency decisions.

- **Expanding eligibility for Title IV-E Adoption Assistance to all children with special needs, not just those eligible for Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI).** This provision expands eligibility for federal adoption assistance payments to all children with

physical, mental, or emotional disabilities or other special needs. Under current law, federal adoption assistance is available only to children with special needs who were eligible for AFDC when adoption proceedings began, or who are eligible for SSI.

NAHSC believes it is unfair to deny assistance to any child awaiting adoption solely on the basis of the income of the family from which the child is permanently severed. By basing eligibility solely on the basis of a child's special needs, as this bill does, all children with special needs waiting for adoptive families will be eligible for adoption assistance on an equal basis. The provision also will ensure Medicaid coverage for all children with special needs. Finally, the provision would expedite adoptions by eliminating the current need for costly eligibility determinations based on the financial status of a child's parents at the time the child entered foster care, even though parental rights to the child have been terminated and the child is free for adoption.

- **Priority in providing substance abuse treatment services to parents who are referred for treatment by child welfare agencies.** Under current law, pregnant women are given priority for substance abuse treatment provided with federal substance abuse block grant funds. This provision would give a similar treatment priority to all caretaker parents who are referred by a state or local child welfare agency.

  Substance abuse is among the two most frequently cited problems in families reported for child maltreatment. For children who can be safely reunified with their families, this provision would facilitate a more timely reunification. The provision complements another important provision of the bill requiring state substance abuse and child welfare agencies jointly to report on the extent of substance abuse among child welfare clients, and their joint activities to address the problem.

- **Allowing Title IV-E funds to be used for cross-agency training of staff working with abused and neglected children.** Many institutions are involved in the outcomes of children and families who come to the attention of the child welfare system, including courts, schools, and agencies involved in law enforcement, substance abuse treatment, health and mental health, domestic violence, child care, and homelessness. Yet, because staff from these agencies often have little understanding of the needs of children and families in the child welfare system, services are not maximized toward providing permanence for children. Allowing Title IV-E funds to be used for cross-agency training of staff working with state and local child welfare agencies would improve the quality of care and outcomes for children. This provision also may help alleviate backlogs of child welfare cases awaiting court action.

- **Allowing Title IV-E foster care payments to be made on behalf of a child placed with their parent in a residential treatment program.** This provision would increase treatment options for substance abuse, domestic violence,

homelessness, and problems associated with teen parenting. These services could shorten the time a child spends in foster care and strengthen the family instead of breaking it apart so parents can obtain treatment.

- **Creating a new, $50 million set-aside within the Title IV-E program to provide grants to states to develop innovative strategies to reduce the backlog of children in foster care awaiting permanent placement.** NAHSC strongly supports this provision, which would ensure the availability of resources for innovative strategies to promote permanence for children. The provision would rewards to states that develop plans to accomplish such goals as ensuring a permanent placement for a child within one year of placement in out-of-home care, and addressing barriers to permanency.

- **Development of state benchmarks for quality care.** NAHSC strongly supports this provision, which would require the development of state guidelines to ensure safe, quality out-of-home care, based on nationally recognized accrediting bodies such as the Council on Accreditation of Services for Families and Children. The provision complements other provisions of the bill to enhance children's safety.

We believe that these services and reforms are critical to achieving the goals of safety and permanence for children. We urged their incorporation into HR 867. Regrettably, they were not included in the House-passed measure. We are concerned that HR 867 would impose new procedures and timetables to hasten termination of parental rights and adoptions without providing additional resources to enable children to move toward permanence.

We are joined in endorsing the SAFE Act by several of our member state associations, including the California Association of Services for Children, the Child Care Association of Illinois, the Children's Alliance of Kentucky, the Council of Family and Child Caring Agencies of New York, the Indiana Association of Residential Child Care Agencies, the Missouri Child Care Association, and the South Carolina Association of Children's Homes and Family Services.

We thank the committee for this opportunity to provide our comments on the SAFE Act.

STATEMENT OF THE

NATIONAL INDIAN CHILD WELFARE ASSOCIATION

SUBMITTED TO THE SENATE FINANCE SUBCOMMITTEE

ON SOCIAL SECURITY AND FAMILY POLICY

REGARDING S. 511

THE SAFE ADOPTIONS AND FAMILY ENVIRONMENTS ACT

MAY 30, 1997

Terry Cross
Executive Director

The National Indian Child Welfare Association submits this statement on S. 511, the Safe Adoptions and Family Environments Act. Attached is a brief description of the work of our organization.

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SUMMARY OF RECOMMENDATIONS

Indian Access to the IV-E Programs. Our primary recommendation is that S. 511 be modified to include an amendment to Title IV-E of the Social Security Act, Foster Care and Adoption Assistance, to make otherwise-eligible Indian children placed by tribal courts eligible for the federal entitlement services of that Act and to allow tribal governments to administer these programs. It was an oversight when the statute was written in 1980 that tribal governments and children placed by tribal courts were ignored. The statute has left out a class of children - Indian children living in tribal areas - for eligibility for this open-ended federal entitlement program, and Congress must correct this situation.

We have provided Committee staff with a draft amendment which would accomplish this goal, and urge you to adopt it as part of S. 511 and/or as part of budget reconciliation legislation.

Focus on Substance Abuse Treatment, Training, and Reunification. We are very supportive of the emphasis in S. 511 on substance abuse treatment including foster care payments for children whose parent(s) is in a residential treatment center. We support the bill's proposed funding for family reunification services. These are all very important components in a successful child welfare system, and we ask that these resources be made equitably available to tribes.

While progress is being made in Indian country regarding lessening substance abuse (the alcoholism age-adjusted death rates for Natives have decreased from 59/100,000 in 1980 to 38.4/100,000 in 1992), the size of the problem is still staggering[1].

- The alcoholism mortality rates of Native people is 6.3 times the U.S. White rate and 5.6 times the U.S. national rate.
- Fetal Alcohol Syndrome (FAS) for Native people in Alaska is five times the national rate; for Indian people in the Aberdeen (Great Plains) area, it is 4 1/2 times the national average.
- Indian Health Service residential alcohol treatment centers report incidences of child sexual abuse for females that range from 70-90 percent and for males of up to 50 percent.

Kinship Care Advisory Panel with Tribal Representation. The House adoption bill, H.R. 867, would establish a Kinship Care Advisory Panel which would include tribal representation. Kinship care is widely used in Indian country. We believe the presence of tribal representatives on this advisory panel will bring important knowledge and perspectives to the work of the advisory panel, and urge its retention in a final adoption bill.

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This statement focuses on Indian children and their limited opportunities to benefit from the Title IV-E Foster Care and Adoption Assistance program (herein referred to as Title IV-E) and what we believe to be an effective solution to this inequity. Our testimony will show that otherwise-eligible Indian and Alaska Native children have not enjoyed the same guarantees for foster or adoptive care services that other children have in this country. Native children are the only class of children without entitlement to foster care and adoptive services in this country. In our view, this issue, as much as any other issue, has impacted the ability of Indian children to secure a sense of permanency after being removed from their homes.

The Title IV-E Foster Care and Adoption Assistance Programs - Services Not Guaranteed to Indian Children

As you know, the IV-E program was enacted in 1980 as a part of major legislative changes to the child welfare system in this country. Enactment of Title IV-E and changes to the Title IV-B Child Welfare Services program under the Social Security Act established new federal protections for children who were removed from their homes and resources to help them gain permanency in their lives. Title IV-E provides states with a permanently authorized entitlement program that provides matching funds to support placements of AFDC-eligible children in foster care homes, private non-profit child care facilities, or public child care institutions. These foster care maintenance payments are intended to support the costs of food, shelter, clothing, daily supervision, school supplies, general incidentals, liability insurance for the child, and reasonable travel to the child's home for visits. Matching funds are also available for administrative activities that support the child's placement and training for professionals and parents involved in these placements. The foster care program had been mandatory for all states that participated in the former Aid to Families with Dependent Children (AFDC) program, and under the new welfare reform law it is mandatory for states that operate a Temporary Assistance for Needy Families (TANF) block grant.

Title IV-E also provides entitlement funds to support adoption assistance activities, and like the foster care program, is mandatory for all states that operated the former AFDC program or the new TANF block grant. Activities which qualify for matching funds include: maintenance payments for eligible children who are adopted, administrative payments for expenses associated with placing children in adoption, and training of professional staff and parents involved in adoption. To be eligible for these matching funds states must develop agreements with parents who adopt eligible children with special needs. Special needs children must be AFDC- or SSI- eligible. However, states may also claim non-reoccurring adoption expenses for children with special needs who are not AFDC- or SSI-eligible. While Title IV-E broadly defines special needs children as those who have characteristics that make them difficult to place, Title IV-E gives states discretion as to the specific categories of special needs children that they will recognize (e.g. older children, minority children, and children with physical, emotional, or behavioral problems).

Another area of support under Title IV-E is the Independent Living Program. Title IV-E was amended in 1986 to include a program that would assist youth who

would eventually be emancipated from the foster care system. The funding under this program was intended to support services for AFDC-eligible youth who were age 16 or over make a successful transition from the foster care system to independent living when they become ineligible for foster care maintenance payments at age 18. The program was expanded in 1988 to include all youth in foster care, regardless of AFDC-eligibility. Two years later amendments to Title IV-E gave states the option of providing services to youth up to the age of 21. Some examples of services provided under this program include: basic skills training, educational services (e.g. GED preparation), and employment preparedness.

We have given the above overview of the services provided under the Title IV-E entitlement program to emphasize that these are services not guaranteed to otherwise eligible Indian children.

Indian Children and Title IV-E

While Congress intended for the Title IV-E program to serve all eligible children in the United States, Indian children who are under the jurisdiction of their tribal court do not have an entitlement to this important program afforded other children. The statute provides services only for income-eligible children placed by states and public agencies with whom states have agreements.

We believe it is a drafting oversight that the Foster Care and Adoption Assistance Act of 1980 made no provision for funding for children placed by tribal courts nor for tribal governments to administer Title IV-E funds and seek reimbursement for foster care and adoption services provided Indian children under their jurisdiction. We see nothing in the legislative history to suggest otherwise, and conversations with the office of Representative George Miller, the primary author of the 1980 Act, suggests it was not intentional. During last year's consideration of welfare reform legislation a number of Members including Representative Don Young, Senator John McCain, and Representatives Bill Richardson and George Miller wrote this Subcommittee asking that the bill be amended to provide direct funding to tribes under the Title IV-E statute. Mr. Richardson introduced legislation, H.R. 261, on January 7, 1997 to provide direct funding to tribes under Title IV-E. Unfortunately, the Title IV-E statute is not the only social services related program which has given little thought to services for people living on Indian reservations.[2] We urge Congress to always keep in mind that tribal governments are not subsets of state governments. They are legally distinct and separate from state governments. Federal statutes authorizing services need to make specific provision for tribal delivery systems.

Title IV-E Tribal-State Agreements/Office of Inspector General Report. Only 50 of the 550 federally recognized tribes have been able to enter into agreements with states to provide access to at least some IV-E funds.[3] These agreements primarily provide foster care maintenance moneys only -- not administrative, training, and data system funding. In only 15 of the 50 agreements do states provide tribes with IV-E administration funds and to our knowledge only 2 of the agreements provide any IV-E training funds to tribes. None of the agreements provide funding for information systems development for tribes which are available to states under

Title IV-E. Even when agreements are reached, tribes and states realize that a more efficient system would be to fund tribes directly.

A picture of the situation for tribal access to Title IV-E and other federal social service and child welfare funds was provided in a report by the HHS Office of Inspector General (OIG), *"Opportunities for Administration for Children and Families to Improve Child Welfare Services and Protections for Native American Children"*, August 1994. The report documented that tribes receive little benefit or funding from federal Social Security Act programs, specifically Title IV-E Foster Care and Adoption Assistance, the Title XX Social Services Block Grant, and the Title IV-B Child Welfare Services and Family Preservation and Support Services moneys[4]. While tribes receive a small amount of direct funding under both of the IV-B programs (about $7.4 million combined in FY1997), there is no direct funding available to tribes under the much larger Title IV-E and Title XX programs[5].

In order for tribes to receive funding under these programs they have had to rely on states to share a portion of their allocation. This option has been available in only a handful of states and in amounts that are extremely small. Not surprisingly, the above-mentioned Office of Inspector General study -- in listing options for improving service to tribes -- *stated that the surest way to guarantee that Indian people receive benefits from these Social Security Act programs is to amend the authorizing statutes to provide direct allocations to tribes.*

With regard to funding passed through from the state to tribes, the OIG report states:

> In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993. In 1993 alone, these 15 states received $1.7 billion in Title IV-E funds and $1.3 billion in Title XX funds.
>
> Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993.
>
> Eight States reported that 46 Tribes received $1.9 million -- .2 percent--of the States' $82 million Title IV-E funds, while 4 States reported that 32 Tribes received $2.8 million -- .3 percent -- of the States' $98 million Title XX funds.

The OIG report discusses the barriers to tribal-state agreements regarding Title IV-E (and Title XX):

• *No explicit authority.* The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and the law neither requires nor encourages States to share funds with Tribes;

• *State Responsibility for Tribal Compliance with Requirements of P.L. 96-272 for Title IV-E funds is Problematic for States.* Some states are reluctant to enter into Title IV-E agreements with tribes because, under the law, the state would be held accountable for tribal compliance with Title IV-E. States could, if tribal records were out of compliance, lose their Title IV-E and Section 427 incentive funds. We know that this is an issue with a number of states, including Alaska, Arizona, and New Mexico.

• *Disputes between Tribes and States about Issues Unrelated to Child Welfare.* Both state and tribal officials reported that points of contention between state and tribal governments unrelated to child welfare have made agreements impossible to reach. Issues concerning land rights and jurisdiction have thwarted these agreements. At least one state made receipt of foster care money contingent upon the tribe adopting the complete set of state child welfare policies and procedures.

• *Matching Share Issue.* Most tribes will have difficulty providing the match required for Title IV-E funds, and most states do not want to provide it. In some cases where there are tribal-state IV-E agreements, the state has provided the match for foster care maintenance funds.

• *Tribal Lands which Extend into Multiple States.* In cases where tribal lands extend across state borders (e.g., Navajo is in Arizona, New Mexico and Utah) the prospects of concluding multiple IV-E agreements have proved infeasible. Eight federally recognized tribes have lands that extend into multiple states.

The OIG report also notes that state officials with whom they talked favored direct IV-E funding to tribes:

> With respect to IV-E funding, most State officials with whom we talked favored ACF (Administration on Children and Families) dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements, and because Title IV-E is an uncapped Federal entitlement, would not affect the moneys available to the States. (p. 13).

Tribal Efforts to Provide Foster Care/Adoption Services for Their Children Absent Title IV-E Agreements

While tribes cannot receive Title IV-E funds directly from the Department of Health and Human Services, and have had little success in obtaining IV-E funds through their states, a limited number have been able to put together some stop gap measures to partially fund these services. These attempts to provide foster care and adoption services are not a substitute -- or should not be -- for the reliable funding for services provided to states and children outside of Indian country under the Title IV-E statute. Indeed, because of the limited nature of these alternate resources, tribes may have no choice but to place IV-E eligible children in unsubsidized homes.

We begin with an estimate of need. There are approximately 405,000 Indian children who live on-or-near their tribal lands.[6] While not all of these children will need foster care or adoption services, the most recent data suggests that approximately 6,500 of these children will be placed in substitute care during the fiscal year.[7] Based on the characteristics of Indian children in care as identified through case reviews by Bureau of Indian Affairs staff and tribal child welfare administrators, it is estimated that between 3,900 to 4,600 of these children meet the eligibility criteria of Title IV-E.[8] Using the estimates of Title IV-E eligible Indian children and data obtained from the *1996 Green Book* for the twenty-four states with the largest tribal populations, we were able to estimate the federal shares of Title IV-E funds that could flow to eligible Indian children for foster care services (maintenance, training, information systems) at between $21.4 and $25.3 million a year.[9] This estimate does not take into consideration variable rates for therapeutic

foster care and institutional care for which we have insufficient data. Individual estimates for Adoption Assistance and Independent Living services expenditures for Indian children were not made because of a lack of data, but could be expected to increase expenditures by approximately 10%[10].

Child Welfare Assistance Funds Provided by the Bureau of Indian Affairs (BIA). The BIA has provided a limited amount of discretionary funds -- about $21 million annually -- to a relatively small number of tribes for use as a "resource of last resort". The program provides only foster care maintenance payments and institutionalized care but has no administration, training or information systems funds connected to them. These funds are also in competition with other programs under the BIA Tribal Priority Allocation category. This means that if there is an urgent need to increase funding for other programs such as road repairs, employment and training services, or emergency burial assistance services, Child Welfare Assistance funds may be subject to reduction. The BIA has no funds specified for use in promoting permanency planning as are available in the Title IV-E Adoption Assistance program.

The BIA funds clearly fall short of need. The total number of substitute care placements subsidized under this program for FY 1996 was 3,400 with approximately 60% to 70% of those children estimated to be Title IV-E eligible.[11] Distribution patterns of these funds reveals that approximately 90% of the funds go to Navajo Nation and tribes in just six other states (Arizona, New Mexico, Utah, Nevada, North Dakota and South Dakota).[12] Tribes in California which number 100 (and who do not have IV-E agreements with their state) have not been able to access these limited BIA funds.

Even though the Navajo Nation receives a major portion of the BIA Child Welfare Assistance funds, they still report placing 301 children last year children a year in unsubsidized homes.[13] This illustrates the inadequacy of the BIA funds.

Unsubsidized Homes. Not wanting to leave children in harmful situations, tribes have had to resort to alternative vehicles for protecting children who must be removed from their homes. A common method is the placement of Indian children in unsubsidized homes. This often requires the good will of a family in the community who will commit their personal resources, time and home to a foster care, legal guardianship, or pre-adoptive placement for a needy child. Even though the commitment is made with love, the vast majority of these families find this event to be stressful and sometimes unworkable after a period of time, especially when considering the numbers of Indian families on tribal lands who live in or close to poverty.[14]

Most tribes will still license the unsubsidized family foster home and provide assistance on foster parenting, even though it often involves shifting scarce child protection funds from one account to another in order to meet emergency and other pressing needs. However, additional services that support the child and foster family which are reimbursable under Title IV-E state programs are not always available, causing additional stress on the foster or pre-adoptive family and putting the placement at risk for disruption.

The lack of Title IV-E funding is also felt at the front end of developing permanency for Indian children. Tribal child welfare programs which are responsible for recruiting potential foster care and adoptive families have difficulties recruiting and maintaining families because they cannot guarantee basic maintenance payments and few support services for the placement. While strong community values and individual generosity often prevail in helping provide temporary homes for needy Indian children, the numbers of homes actually needed often does not meet the need because of limitations on support that can be offered to these families.

Elements of a Tribal Title IV-E Amendment

We recommend an amendment to Title IV-E of the Social Security Act which contains the following elements:

- extend the Title IV-E entitlement to tribal placements in foster and adoptive homes which meet eligibility requirements

- authorize tribal governments to receive direct funding from HHS for administration of the IV-E program

- recognize tribal standards for foster home licensing.

- allow the Secretary flexibility to modify the requirements of the IV-E law for tribes if those requirements are not in the best interests of Indian children

- allow the Secretary to modify IV-E matching requirements in recognition that tribes, unlike states, have not previously received funding to build the type of service delivery systems available to the states, and permit other federal and state funds to be used for any required tribal match

- continue to allow tribal-state IV-E agreements

- develop HHS regulations in partnership with tribes and others with expertise in the child welfare field.

Tribal Administration of Foster Care/Adoption Assistance Program Would be Consistent with Welfare Reform Law and Proposed Adoption Legislation

Our recommendation that the Foster Care and Adoption Assistance Act be amended to provide direct funding to eligible children on Indian reservations and to tribal governments for the administration of the program serves the purposes of the newly enacted welfare reform law and Congressional and Administration interest in adoption legislation.

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a state cannot receive Temporary Assistance for Needy Families (TANF) funding unless it operates a foster care/adoption assistance and child support

enforcement programs under Titles IV-E and D of the Social Security Act. Congress explicitly recognized the interrelationship between the effort to end dependence on public assistance with the need for a strong child support enforcement program and an effective system for helping our most vulnerable children -- those living in poverty who require temporary or permanent placements outside their homes. Sadly, the federal entitlement statutes concerning foster care and adoption and child support enforcement have been of very little benefit to Indian children living on reservations.

While tribes are eligible to apply to administer TANF under the new welfare reform law, it does not require them to operate foster care/adoption assistance and child support enforcement programs. It would have been disingenuous to have made these requirements, since tribal governments -- unlike state governments -- have never received annual federal funding from the IV-D and IV-E programs. The welfare reform law includes a new provision which we hope will assist tribes in establishing Title IV-D programs, but we know that development of child support enforcement programs will take time.

Providing direct Title IV-E services to children in Indian country also serves the interest as we understand it of Congress and the Clinton Administration in promoting quicker permanent placement of children. While a few tribes have access to IV-E foster care maintenance payments, even fewer have access to funding to any IV-E infrastructure (training, information systems, recruitment of families) needed to operate the complete range of services for intervention and making permanent placements of children. The HHS Adoption 2002 report states that slightly over half of the children in foster care awaiting adoption who are designated as having "special needs" are minority children. These children are considered harder to adopt. If tribal communities were provided their rightful institutional role under the Title IV-E law, they could be of tremendous assistance in placing Indian and Alaska Native children.

Tribal governments and tribal communities are in the best position to place their children in permanent homes, but they have been thwarted by a federal statute which ignores them. When Indian children have been under the care of tribal programs, as compared to public, private or Bureau of Indian Affairs programs, these children have a shorter length of time in substitute care and are more likely to secure family-based permanency.[15] This last consideration may be the most important in terms of why we should keep Indian children under the care of their tribal communities.

We should now use the opportunity of what apparently will be federal adoption legislation to provide Title IV-E services for Indian children and tribal governments comparable to that provided to other eligible children and to state governments.

END NOTES

[1]Source of alcohol-related statistics is the Department of Health and Human Services Fiscal Year 1998 budget justification for the Indian Health Service.

[2] In 1981, when several federal block grants were created from existing federal programs, little attention was given to funding for tribes in those block grants. President Reagan, recognizing the disservice done to tribes under the 1981 block grants, proposed in his January 24, 1983 Indian Policy statement, that the laws be amended to provide for direct funding for tribes under federal block grants.

Subsequently, a February 1984 study commissioned by the Department of Health and Human Services, *"Block Grants and the State-Tribal Relationship"*, documented the inequitable treatment given to tribes in the development of several federal block grants created in 1981. The report stated:

> Congress failed to perceive two things: first, in many cases direct funding to tribes would be nominal, and second that states would be placed in the awkward position of being expected to respond to tribal needs through tribal governments, which do not comprise part of the usual state constituency and states cannot require or enforce accountability. (p. 38)

In addition, the report stated:

> While it seems clear that Indians as state citizens are constitutionally entitled to a fair share of state services, this general principle does not address the issue of the delivery system; that is, the degree to which services on the reservation should be delivered by tribal rather than state and municipal governments. This vacuum in federal law and policy is the source of unnecessary complications in the state-tribal relationship when, as here, federal legislation adjusts the delivery system for federally funded services without clearly addressing its impact on the delivery system relationships at the reservation level. (p. 38)

One of the 1981 block grants, the Title XX Social Services Block Grant, provided no funding for tribes, and some other block grants were available to tribes only if a tribe had received funding the previous year from one of the categorical programs included in the block grant. This excluded most tribes.

[3] Fiscal year 1997 data on state-tribe Title IV-E agreements compiled by the Children's Bureau under the Department of Health and Human Services, February 24, 1997.

[4] Since this OIG report, HHS has amended its regulations regarding tribal access to the IV-B programs, and the result has been an increase in tribal IV-B funds.

[5] In a very small number of situations, Indian children have received IV-E paymants without a tribal-state agreement where a tribe has declined to exercise its jurisdiction and the child has been placed through the state system.

[6] *Indian Service Population and Labor Force Estimates, 1995* produced by the Bureau of Indian Affairs.

[7] *Indian Child Welfare: A Status Report, Final Report of the Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act, and Section 428 of the Adoption Assistance and Child Welfare Act of 1980*, prepared by CSR, Inc. in Washington, D.C. and Three Feathers Associates in Norman, Oklahoma, April 18, 1988. This report, containing the most current data available,

indicated that 16 of every 1,000 Indian children in 1986 were placed in substitute care. This rate was than applied to the 405,000 Indian children age 16 and under who live on-or-near their tribal lands.

[8] These estimates, due to lack of hard data, were developed based on the assumption that 60% to 70% of Indian children in substitute care who reside on-or-near tribal lands were eligible for Title IV-E services. The percentages were arrived at after consultation with Bureau of Indian Affairs staff who have performed case reviews of Indian children receiving BIA Child Welfare Assistance grants (foster care maintenance payments) and a number of tribal child welfare administrators with responsibility for providing foster care services to tribal children.

8 This estimate was developed using data from the *1996 Green Book* and Federal Medical Assistance Rates for the 24 states with the largest reservation-based populations. The assumption was that tribal governments would be eligible to administer the Title IV-E program under the same guidelines as states currently do. The calculations are as follows:

average rate of Foster Care Basic Monthly Maintenance Payment Rates for 9 year olds in FY 1994 for 24 states with largest reservation based populations (federal and tribal shares) - $344

maximum federal share pursuant to Federal Medical Assistance Rate formula of 83%

multiply $344 x .83 = $285 estimated average federal share of monthly Foster Care Maintenance Payments under IV-E for Indian children

total combined federal expenditures for Administrative, Training, and Information Systems during FY 1994 and total federal expenditures for Foster Care Maintenance Payments under Title IV-E as a percentage of the total federal expenditures under Title IV-E Foster Care - 48% and 52% respectively, now calculate

.52	x	.48
$344		?

? = $317 or the estimated average monthly amount of Administration, Training and Information Systems expenditures for Foster Care under Title IV-E for Indian children (federal and tribal share)

calculate the proportions that Administration, Training and Information Systems comprise of $317 based on their proportions under the total expenditures for Foster Care Services under Title IV-E
$263 (83%) - Administration $32 (10%) - Training $22 (7%) - Information Systems

Now apply the statutory federal match rate to each of these figures
$263 x .50=$132 $32 x .75=$24 $22 x .75=$17

Add all of these sums together:
$132 + $24 + $17 = $173 estimated average monthly federal share of Foster Care Administration, Training and Information Systems payments under Title IV-E for Indian children

Now add the estimated average federal share of monthly Foster Care Maintenance Payments for Indian children plus the estimated average monthly federal share of Foster Care Administration, Training and Information Systems payments for Indian children

$285 + $173 = $458 or the estimated average monthly federal share for Foster Care Maintenance, Administration, Training and Information Systems payments under Title IV-E for Indian children.

Finally, multiply the estimated average monthly federal share for Foster Care Maintenance, Administration, Training and Information Systems payments under Title IV-E for Indian children by the number of Title IV-E Indian children estimated to need Foster Care services and then multiply this figure by 12 (months in a year)

$458 x (3,900 and 4,600) x 12 = $21.4 to $25.3 million or the estimated range of federal expenditures for Title IV-E Foster Care Services for eligible Indian children during a fiscal year

[10] The 10% increase figure was based on figures in the *1996 Green Book*, and we calculated the ratio of Adoption Assistance and Independent Living funds relative to the total expenditure of IV-E program and services funds.

[11] Data for FY 1996 provided by the Bureau of Indian Affairs, Division of Social Services in Washington, D.C., February, 1997.

[12] Ibid.

[13] Interview with Ms. Delores Greyeyes, Director of the Navajo Nation Indian Child Welfare Program, February, 1997.

[14] Indian poverty in reservation areas is 3.9 times the U.S. average (50.7% vs. 13.1%) (1990 Census). The poverty rate for Indian children in reservation areas is 60.3%, or three times the national average (1990 Census).

[15] See note 7, above.

ATTACHMENT

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The National Indian Child Welfare Association (NICWA) provides a broad range of service to tribes, Indian organizations, states and federal agencies, and private social service agencies throughout the United States. These services are not direct client services such as counseling or case management, but instead help strengthen the programs that directly serve Indian children and families. NICWA services include: 1) professional training for tribal and urban Indian social service professionals; 2) consultation on social service program development; 3) facilitating child abuse prevention efforts in tribal communities; 4) analysis and dissemination of policy information that impacts Indian children and families; and 5) helping state, federal and private agencies improve the effectiveness of their services to Indian people. NICWA maintains a strong network in Indian country by working closely with the Affiliated Tribes of Northwest Indians and the National Congress of American Indians, as well as having members on the Indian Child Welfare Committees of both organizations.

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ISBN 0-16-058259-8