

1999 SENATE HUMAN SERVICES
SB 2171

SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2171

Senate Human Services Committee

Conference Committee

Hearing Date JANUARY 25, 1999

Tape Number	Side A	Side B	Meter #
1	X	X	
2	X	X	
2/2/99 2	X		2,515
2/2/99 2		X	
Committee Clerk Signature <i>Carol Galodeschuk</i>			

Minutes:

The Human Services Committee was called to order by Chairman SENATOR THANE . All senators were present.

The hearing was opened on SB2171.

PAUL RONNINGER, Children Family Services Director, ND Dept. of Human Services, introduced the bill and support of the bill (written testimony).

BLAINE NORDWALL, ND Dept of Human Services, explained each section of the bill.

SENATOR DEMERS asked for an definition of 'meaningful'. Mr. NORDWALL answered that it was just the basic meaning of the word. SENATOR DEMERS asked if this was going to be a judgment call. Mr. NORDWALL stated "basically, yes". SENATOR DEMERS was concerned about 16 of 22 months out of Federal funds. Mr. NORDWALL said that it came right out of Federal law. SENATOR THANE asked if this bill would require ND to have special legislation

and was told it was already contained in the bill. SENATOR DEMERS stated that the phrase permanent alteration puzzles me and it is not defined in the bill. Mr. NORDWALL stated that it was not defined; being we do not know what permanent living plans might develop that it is not appropriate at this time. We could not come up with an adequate definition. SENATOR DEMERS is concerned about being able to terminate parental rights with some obscure concept that is not defined in the law. SENATOR LEE: Does adoption address the desire of a white family to adopt a Native American child? Mr. NORDWALL: Federal law says the Indian Child Welfare Act must be upheld; there is nothing to make it different. SENATOR DEMERS: In your proposed amendment you talk about adopting emergency rules and changing 28-21-02 and why do you want to do that? MR. NORDWALL: This section describes what you have to have for an emergency rule; you have to have imminent danger to the welfare of member of the public, inability to carry out funds appropriated to an agency; we didn't think any of those would apply, yet we want to rapidly respond new information about what the FBI would do or wouldn't do or whatever other kinds of criminal records check that exist. SENATOR DEMERS asked if no public hearing meant that it doesn't go in front of administrative rules. MR. NORDWALL: This emergency rule making process is without any difference except for the effective date of the rule. Must adopt a rule within 180 days exactly like any other rule. MR. RONNINGEN explained the fiscal note. (Written testimony) Part of this was included in the Governor's budget; the cost we were able to anticipate in July of 1998. The remainder of the fiscal note is the cost the Dept has just recently been able to identify. SENATOR THANE: Are the new costs going to be general fund dollars? Can some of this be shifted into Federal dollars? MR. RONNINGEN: Yes, we rolled all into page 3. SENATOR DEMERS: These are

department costs; how about the other agencies that are participating. MR. RONNINGEN: Not part of department costs; some Federal, some county costs. SENATOR DEMERS asked what would we lose if this bill did not pass? MR. RONNINGEN: On the fax sheet at the bottom - the risk is IV-E funding or \$22.1 million for the biennium and IV-B funding, \$1 million for biennium.

KATHY NEIDOFFER, Administrator for Family Preservation Services with the Children and Family Services Division of the ND Department of Human Services, supports the bill with written testimony.

JULIE HOFFMAN, Administrator of Adoption Services for the Children and Family Services Division of the Department of Human Services, supports bill with written testimony.

JEAN DOLL, Administrator of the foster care program, Children and Family Services Division of the ND Department of Human Services, supports the bill with written testimony.

No opposition to the bill. The Hearing was closed on SB2171.

The hearing on SB2171 was reconvened on January 26, 1999. GREG introduced the bill. This bill will service approximately 110 terminating cases more leading to 40 hours of legal work for three attorneys - 8-10 hours per attorney. The supreme court has this in their budget.

Prosecution costs of the county \$286,000 based on these 110 new termination cases. SENATOR DEMERS: Have you budgeted for that? GREG: I do not believe so. We have asked for 10% increase of our budget, but that was before we knew of the 110 new cases.

CONNIE CLEVELAND, assistant State's Attorney in Cass County, representing Social Services Department in Cas County, supports bill. (written testimony). SENATOR THANE asked if some costs were included in Governor's budget. A lot of the cost was not; it has to go to

Appropriations again. Do you have any solutions for this situation? MS. CLEVELAND

explained that all participants of the system recognize the cost, but how to predict cost is the problem. This was discussed, but it is difficult to predict; a number of options were discussed; there isn't enough money to do what we need to do, so everybody is going to be a little bit unhappy and everybody is going to be working with a little bit less than they would like.

SENATOR DEMERS noted that Ms. Cleveland is a former Representative from Grand Forks.

SENATOR LEE: Are you aware of the dept amendments? MS. CLEVELAND is aware of those amendments. Yes, our concerns were satisfied, but the training will still be a significant issue and even if the financial part is born by the Department, there is still the time involved.

BETTY KEEGAN, Director of Rolette County Social Services, supports bill (written testimony).

SENATOR THANE stated how sad it is to have foster kids stay foster kids much too long.

SENATOR LEE: Would a child have any services through this bill for long term mental care that we discussed in previous sessions? Ms. KEEGAN answered yes, services will be available; the court will always retain ability not to move the case forward either through termination or any other means to retain their relationship with their birth family. It will not be an automatic.

SENATOR LEE asked is the same provisions remain that parents give up parental rights in order to get help. Would any of the options they have access to that care be affected at all? MS.

KEEGAN: No, these provisions are not a requirement. SENATOR DEMERS: Do you see

these services as increased or changed workload? MS. KEEGAN: We will be working within an accelerated time frame. We can rearrange how we approach cases. Monitoring through

attorneys and the court. The cost will be legal representation. SENATOR THANE: How

willing is a family to adopt a special needs child? MS. KEEGAN assured him that families most generally are willing to accept all children.

LINDA GERTZ, Regional Director of the Village Family Service Center, Minot Office, supports bill (written testimony). SENATOR THANE: Does this legislation deal with the length of time the dysfunctional family has the children. Ms. GERTZ: The bill puts into place the outcomes with timelines. This will make the outcomes, whether it be termination of parental rights, more quick and clear documentation of the effort toward reunification or the lack of it.

SENATOR KILZER asked when we are talking about goals, progress; are the case manager position pretty constant or is there a high turnover. Ms. GERTZ: Turnover in this field is not any different than any other area. Workers works together with family and attorneys and put a plan in place in which their voice is heard. It would reduce the frustration. Teamwork needs to occur between the services and reduce any kind of turnover that we have.

PAT PODOLL, supervisor of Family Focused Services, Cass County Social Services, supports bill (written testimony). SENATOR THANE: Do you see any change in the numbers that are involved in welfare reform. MS. PODOLL answered that they are seeing an increase in domestic violence within families, children having many more complex issues that formerly, more sibling groups being placed than ever before.

AL LICK, Director of Juvenile Services, supports bill. ND is unique state in the fact that we share same foster care with Human Services. There is a chain reaction - corrections through Foster Care System to the Federal Funds to kinds that are eligible. There are 230 corrections foster care system. 2171 brings the best practices as to how we do business; written plans that

have timelines. We need a backup plan always. We would have kids in foster care longer than 22 months in some instances.

LEANNE JOHNSON, Lutheran Social Services/ND, and Adoption Director for A.A.S.K.

(Adults Adopting Special Kids), supports bill (written testimony).

Distributed testimony from Gene and Sherry Harmon, adoptive parents of 5 children.

SENATOR THANE commented the many foster families are going a great job.

KATHY HOGAN, representing Counties, supports bill. Counties are very excited about this legislation. Concerned about the cost for Social Workers time. They have two to three times the case load size. We must meet the court requirements; you have to have a good plan. The other concern is: we are very excited about foster parents being able to adopt, but our pool of foster homes is constantly being depleted; we have difficulty recruiting foster care homes. SENATOR KILZER: The pool of foster parents is low, will it put more pressure on remaining. MS.

HOGAN: Yes, exactly. MR. LICK stated that they can deliver more foster homes if they have more money. MS. HOGAN: We are competing for homes; if they pay more for homes we are in a trauma of finding foster care. SENATOR KILZER: Some of these kids have been in multiple foster homes; why do they go from one to another. MS. HOGAN: The primary reason is the behavior of the child.

BONNIE POLECEK, Executive Director NDCAWA/CASAND, supports bill. (written testimony). There were concerns, but after conversing with Blaine Nordwall, they are satisfied that the concerns are clarified. SENATOR LEE: Do you have any recommendation? Will you work out some amendments? A letter in response was written to the committee.

CARROLL BURCHINAL, foster parent, supports bill with written testimony. SENATOR

MUTZENBERGER: How are you a foster parent for one hour. MR. BURCHINAL replied that it is the length of time the child is in your home.

The hearing was closed on SB2171.

The committee was reconvened on 2/2/99.

Mr. Zentner and Mr. Nordwall were present to answer questions.

SENATOR THANE: Are there some unfunded mandates to counties as far as hearings, parental rights, or are they protected. MR. NORDWALL: A number of cases on backlog looks like an increase with one exception. We are moving to 12 months (yearly) instead of 18 month evaluation. We don't know for two reasons: 12 months and we are going to try to have as many kids in permanent situation before. Permanent hearings won't be much different from before.

SENATOR DEMERS: What is the permanent alteration? Mr. NORDWALL said it may be a guardian, maybe a 16 year old ready for emancipation. Something that we don't know yet. The amendments would not influence against Federal law. SENATOR LEE: What is the cost of insurance? Mr. NORDWALL: Health care has limits on policies - assures children will receive health care through Medicare in ND. SENATOR THANE asked about page 20, line 24. Mr.

NORDWALL: Experienced counties would share with other counties. SENATOR DEMERS:

Why do we need 'criminal history record?' MR. NORDWALL: It is used in the Federal

process. SENATOR DEMERS asked about fingerprinting and check after child is living in

home. MR. NORDWALL: First the approval is received and then child is placed. If someone is moving into home while child is already present there would be a time lapse or individual would

not be allowed to remain until check was made. The impact to counties would be training time

2-2-99

for county employees. Major concern is time for Social Services people. We want more assertive and shorter length. Bill is very good - ND does not allow kids to get lost in foster care.

SENATOR LEE moved yellow pages of amendments - page 13, who with and, and SENATOR DEMERS amendments and be referred to appropriations. The motion was seconded by SENATOR DEMERS. Roll call vote carried 5-0-1.

SENATOR LEE moved DO PASS AS AMENDED and be REREFERRED to Appropriations. SENATOR DEMERS seconded the motion. Roll call vote carried 5-0-1. SENATOR THANE will carry the bill.

FISCAL NOTE

(Return original and 14 copies)

Bill / Resolution No.: _____

Amendment to: SB 2171 REVISED

Requested by Legislative Council

Date of Request: January 4, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

Senate Bill 2171 will bring the State into compliance with The Adoption Safe Families Act of 1997. This bill seeks to balance family preservation and reunification efforts with the safety, permanence and well-being of children. Children will move through the foster care system more quickly with the ultimate goal of a permanent living arrangement with their family, an adoptive home or guardian.

This bill includes additional family preservation services, a subsidized guardianship program, a half time position to facilitate criminal background checks, court costs for additional attorney time and adjustments in the foster care and adoption programs."

The DHS funds included in the current budget is \$1,232,057, of which is \$487,529 is general funds. We have also included Bureau of Criminal Investigations (BCI) anticipated revenues and expenditures in this fiscal note.

This amendment has no additional impact on the Department.

2. State fiscal effect in dollar amounts:

	1997-1999		1999-2001		2001-2003	
	Biennium		Biennium		Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
DHS Revenues:						
DHS Expenditures:	-0-		946,069	1,384,618	354,179	571,730
BCI Revenues:			20,000		20,000	
BCI Expenditures:	-0-		116,896		121,572	

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

a. For rest of 1997-99 biennium:	-0-
b. For the 1999-01 biennium:	2,330,687
c. For the 2001-03 biennium:	925,909

4. County, City, and School District fiscal effect in dollar amounts:

	1997-1999			1999-2001			2001-2003		
	Biennium			Biennium			Biennium		
	Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
Revenues:	0			2,289,452			1,126,265		
Expenditures:	(657)			2,422,224			1,122,600		

If additional space is needed, attach a supplemental sheet.

Signed

Brenda M. Weisz

Typed Name

Brenda M. Weisz

Date Prepared: February 24, 1999

Department

Human Services

Phone No.

328-2397

FISCAL NOTE

(Return original and 13 copies)

Bill / Resolution No.: SB 2171

Amendment to: _____

Requested by Legislative Council

Date of Request: January 4, 1999

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

Senate Bill 2171 will bring the State into compliance with The Adoption Safe Families Act of 1997. This bill seeks to balance family preservation and reunification efforts with the safety, permanence and well-being of children. Children will move through the foster care system more quickly with the ultimate goal of a permanent living arrangement with their family, an adoptive home or guardian.

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	1997-1999		1999-2001		2001-2003	
	Biennium		Biennium		Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
DHS Revenues:						
DHS Expenditur	-0-		946,069	1,384,618	354,179	571,730
BCI Revenues:			20,000		20,000	
BCI Expenditure	-0-		116,896		121,572	

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

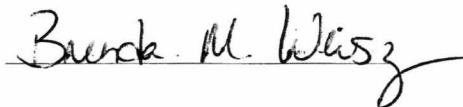
a. For rest of 1997-99 biennium:	-0-
b. For the 1999-01 biennium:	2,330,687
c. For the 2001-03 biennium:	925,909

4. County, City, and School District fiscal effect in dollar amounts:

	1997-1999			1999-2001			2001-2003		
	Biennium			Biennium			Biennium		
	Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
Revenues:	0			2,289,452			1,126,265		
Expenditures:	(657)			2,422,224			1,122,600		

If additional space is needed, attach a supplemental sheet.

Signed



Typed Name

Brenda M. Weisz

Date Prepared: January 22, 1999

Department

Human Services

Phone No.

328-2397

Date: 2/2/99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

Senate HUMAN SERVICES COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments

Motion Made By Sen Lee Seconded By Sen DeMers

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer					
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total _____ (yes) _____ (no)

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: _____
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

Senate HUMAN SERVICES COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen Lee Seconded By Sen DeMers

Senators	Yes	No	Senators	Yes	No
Senator Thane	✓				
Senator Kilzer	✓				
Senator Fischer					
Senator Lee	✓				
Senator DeMers	✓				
Senator Mutzenberger	✓				

Total _____ (yes) _____ (no)

Absent _____

Floor Assignment Sen Thane

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2171: Human Services Committee (Sen. Thane, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2171 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "four" with "five"

Page 2, line 21, after "Abandons" insert ", tortures, chronically abuses, or sexually abuses"

Page 13, line 2, replace "who" with "and"

Page 13, remove line 13

Page 13, line 14, replace "3" with "2" and replace "4" with "3"

Page 13, line 31, replace "who" with "and"

Page 14, line 1, replace "4" with "3"

Page 14, line 14, replace "5" with "4" and replace "3" with "2"

Page 14, line 29, replace "6" with "5" and replace "3" with "2"

Page 15, line 12, replace "7" with "6" and replace "3" with "2"

Page 15, line 19, replace "8" with "7"

Page 16, line 6, remove "or permanent alteration"

Page 16, line 8, remove "or permanent alteration"

Page 17, line 27, remove "or permanently altering" and after "rights" insert "or appointing a legal guardian"

Page 18, line 3, replace "otherwise permanently altering parental rights of a parent" with "appointing a legal guardian"

Page 18, line 4, replace the first "that" with "a" and replace "another person" with "the legal guardian"

Page 20, line 10, replace "Four" with "Five"

Page 20, after line 24, insert:

"Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights."

Page 21, line 26, overstrike "the National Child"

Page 21, overstrike line 27

Page 21, line 28, overstrike "as amended," and insert immediately thereafter "federal law"

Page 22, line 24, after "1." insert "a."

Page 22, line 26, remove "has resided continuously in"

Page 22, remove line 27

Page 22, after line 29, insert:

- "b. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
- (1) Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - (2) Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - (3) Is excused from providing fingerprints under rules adopted by the department."

Page 23, after line 12, insert:

- "6. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02."

Page 23, line 29, replace "the National Child Protection Act of 1993 [Pub. L.]" with "federal law"

Page 23, line 30, remove "103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.] as amended"

Page 24, replace lines 17 through 19 with:

- "6. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
- a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - c. Is excused from providing fingerprints under rules adopted by the department of human services."

Page 24, after line 23, insert:

- "8. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02."

Page 26, line 2, replace "the" with "federal law"

Page 26, remove line 3

Page 26, line 4, remove "5119, et seq.], as amended,"

Page 26, replace lines 22 through 25 with:

- "6. Fingerprints need not be taken and a nationwide background check need not be made if a prospective adoptive parent:"

- a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
- b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
- c. Is excused from providing fingerprints under rules adopted by the department of human services."

Page 26, after line 29, insert:

- "8. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02."

Renumber accordingly

1999 SENATE APPROPRIATIONS

SB 2171

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2171

Senate Appropriations Committee

Conference Committee

Hearing Date February 11, 1999

Tape Number	Side A	Side B	Meter #
1	X		98-4065
2-11-99 1	X		2215-2390
Committee Clerk Signature <i>Kathy C. Kottelrock</i>			

Minutes:

SENATOR NETHING: Opened the hearing on SB2171; A BILL FOR AN ACT TO CREATE AND ENACT THREE NEW SECTIONS TO CHAPTER 27-20, TWO NEW SUBSECTIONS TO SECTION 50-09-01, FOUR NEW SUBSECTIONS TO SECTION 50-09-02, TWO SUBSECTIONS TO 50-09-03, A NEW SECTION TO CHAPTER 50-09, TWO NEW SECTIONS TO CHAPTER 50-11, TWO NEW CHAPTERS TO TITLE 50, AND A NEW SECTION TO CHAPTER 50-12 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO IMPLEMENTING THE ADOPTION AND SAFE FAMILIES ACT OF 1997 AND THE INTERSTATE COMPACT ON ADOPTION AND MEDICAL ASSISTANCE; AND TO AMEND AND REENACT SUBSECTION 4 OF SECTION 14-15-11, SUBSECTION 2 OF SECTION 14-15.1-04, SECTIONS 27-20-02, 27-20-03, SUBSECTION 3 OF SECTION 27-20-24, SECTIONS 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-20-47, 27-21-02.1, AND 50-11-06.8 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO IMPLEMENTING THE ADOPTION AND SAFE FAMILIES ACT OF 1997.

PAUL RONNINGEN: Director of Children and Family Services Division of the North Dakota Department of Human Services to testify in support of SB2171 (testimony attached (tape 1, side A, meter 98-730).

SENATOR ANDRIST: Why wasn't this in the Human Services Bill. Did it have a low priority, is that why it was left out?

PAUL RONNINGEN: No, it doesn't have a low priority. All those expenses that we could anticipate back in June we included in June when the budgets were prepared. The expenses you see today, is what the work group was trying to figure out as they worked through the fall and early winter. I'm not authorized to prioritize.

SENATOR TALLACKSON: What part is the counties?

PAUL RONNINGEN: Most of the other costs include county funds. A small part.

SENATOR KRAUTER: The Adoption Safe Families act was implemented in 1997, it's now 1999. Why didn't the department start earlier in the planning process?

PAUL RONNINGEN: The department started planning back in the Spring of 1998. We had a delayed implementation portion from Congress since our legislature does not meet every year.

SENATOR BOWMAN: This program is an expansion and there will be Federal money that will follow?

PAUL RONNINGEN: Some of this could be perceived as an expansion. A lot will be focused in a timelier matter on the needs of kids. Instead of doing eighteen month court reviews, we are now going to be doing twelve month court reviews. We will be putting resources in up front to make sure kids don't have to go into Foster Care or out sooner.

SENATOR GRINDBERG: Explain why we couldn't do this within our existing administration we have now and why we need these additional General Fund dollars.

PAUL RONNINGEN: Referencing the spread sheet; court costs, background checks, guardianship program, Interstate Compact on Adoption Medical Assistance (ICAMA)-which we'll need to join to move kids from State-to-State under the program, family focused. The intent of the bill is to not allow Foster Care as a place to raise kids.

SENATOR GRINDBERG: Are those family focused positions funded now?

PAUL RONNINGEN: No, these are new positions.

SENATOR GRINDBERG: We couldn't absorb that with existing staff? Give me an example of the court costs.

PAUL RONNINGEN: No, we can't with existing staff. Some of the court costs will be from contract attorney work.

SENATOR ST. AUBYN: The family focused shows as an optional adjustment on the budget. It shows in both the items that are not in the budget and also in the areas that are in the budget. I can't understand how you say you weren't sure exactly what was happening and so you didn't have all those figures in time. If you had time to put part of it in there, why?

PAUL RONNINGEN: On the OAR and Family Focus, dropped off the table as the budget was being built. It was added back into this section. That was an anticipated cost that the department could not fund at a priority level. We were still feeling that we needed the family focused portion. There were two OAR's, one for four and one for five.

SENATOR BOWMAN: When you setup programs, does the department have objectives and goals that they try to reach? It seems like a lot of the things you are talking about doing in here should have been goals from the beginning.

PAUL RONNINGEN: These were goals of the department, however the time frame had been tightened and there is a real expediency at the Federal level to make sure there are permanent relationships for kids. Moving them more quickly from Foster Care to Adoption.

SENATOR ANDRIST: We are wrestling with tough choices on the General Funds. Would we be better if we can't find the \$463,000 to drop out of the program or could you do a half a job with what's in the budget?

PAUL RONNINGEN: We are really not talking General Funds when you look at the Adoption Safe Families Act. What I described earlier was putting our 4-E and 4-B dollars at risk which totals \$22-\$23M dollars. New York is already not receiving payment for 44,000 kids. So, we're looking at those Federal dollars that really are the base for our Child Welfare system.

SENATOR ANDRIST: If we can't find the new dollars, could you still do a job with what's in their?

PAUL RONNINGEN: The department will need to proceed with the resources you're able to give us.

SENATOR KRAUTER: We are evidently not a member of ICAMA, why do we call it an increase then?

PAUL RONNINGEN: It's actually a new allocation dollar and an increase from our current appropriation.

BLAINE NORDWALL: Director, Legal Advisory Unit. I am here on behalf of the North Dakota Department of Human Services to testify in support of SB2171 (testimony attached (tape 1, side A, meter 1674-2124).

SENATOR ST. AUBYN: You say you were unable to place this in the budget in time, one item talks about legal fees. I find it incredible that the department was not aware that would be a component in this ahead of time. I would like an explanation of why that was not included originally.

BLAINE NORDWALL: I don't have an explanation. I am not the finance guys. I'm responsible for preparing the draft. Others may be able to describe this.

SENATOR ST. AUBYN: From a legal standpoint, that was very much known though that there would be legal costs involved.

BLAINE NORDWALL: Yes, we knew court hearings would be held at a more excellerated pace. We didn't know is what the effect of holdings those hearings at an accelerated pace over a period of time. The idea of having hearings more quickly is to move the kids through the system and ultimately the kids interact less with the court. Knowing precisely what the effect would be is a lot different than knowing what kind of court proceedings there would be.

SENATOR GRINDBERG: Why should the state pay for these court costs and not the counties where these activities are taking place?

BLAINE NORDWALL: I think the issue of who pays has a lot to do with what kind of activity you are talking about. If it is a states attorney, the county will pay. If it is the Indigent Defense Fund, the state will pay.

SENATOR TOMAC: On Page 1 of your testimony, I note that if the legislature adjourns before April 1, apparently that activates a different date if we adjourn before April 1, then we are not held to this. We have more time?

BLAINE NORDWALL: It is the opposite. If legislature adjourns before April 1, then April 1 is our deadline date. If it is after April 1, the first quarter which begins after the legislature adjourns, is July 1.

PAUL RONNINGEN: A point of clarification, the federal rules regarding the Adoption Safe Families Act did not come out until September of this past year, well past our budgeting period. That is where some of the problems are.

SENATOR SOLBERG: I guess you can blame whoever you want. I think the Subcommittee on Human Services, have been meeting for the last two weeks, where the hell have you been, excuse my french.

PAUL RONNIGEN: When I testified last week in front of the subcommittee, I clearly stated to the subcommittee that I would be back this week with this bill which did not include \$1 million in this appropriation. I believe I was being as far and forthright as possible with this committee and subcommittee in doing this presentation. I think the other committee members clearly heard that statement.

SENATOR SOLBERG: I must have missed that, sorry.

SENATOR BOWMAN: What is the result of passing this versus not passing this?

PAUL RONNIGEN: We do have an adoption program at this time, a special needs adoption. We, however, have over 90 kids who are in foster care who have a goal of adoption and both parents have had termination of parental rights. We have children who need to move into this program today.

SENATOR BOWMAN: We delay this for two years. You'd have all the facts and figures together for the next budget. We still have an adoption program, we still are going to be able to take care of our kids the way we've been doing it. The only basic difference I can see is that we speed up the court cases and we move the kids out of the adoption centers faster. Is that right?

PAUL RONNIGEN: No, I think the basic premise that we would be continuing to operate as we are today is not accurate. If we don't come into compliance with this particular piece, we are putting our 4E and 4B dollars at risk which is the backbone of our current programming. If we can't implement this and they quit paying federal dollars for foster care, we wouldn't have a child welfare program in North Dakota.

SENATOR BOWMAN: So we are basically being held hostage to the federal government again?

PAUL RONNIGEN: We have some expectations that the federal government has for us.

SENATOR ST. AUBYN: You indicated in September that rules were adopted. At what time did you notify OMB?

ARVY SMITH: I was aware that this was an issue but we were not given any requests for funding as we were putting the budget together.

SENATOR ST. AUBYN: Did OMB ask the question when they were doing the budget?

ARVY SMITH: I can't answer specifically for this issue, but we are looking at many issues as we go through the budget. We do try and catch all the issues that are out there. I can't recall on this one specifically. Typically the department comes to us with requests.

SENATOR ST. AUBYN: Had you been aware of this figures during your budgeting process? Do you have any idea if you approved this request?

ARVY SMITH: I am certain we would have approved this request. We may have needed to take cuts in other areas to do it.

SENATOR NAADEN: Why would the OMB ask the question if they didn't know about it?

SENATOR TOMAC: To move forward, is there any chance to request a federal waiver on this for two years?

PAUL RONNIGEN: I don't believe so.

BLAINE NORDWALL: There is no provision at all on this law for a waiver.

SENATOR GRINDBERG: I would like a copy of this federal law.

SENATOR SOLBERG: I would too.

BLAINE NORDWALL: The material you have includes the federal law.

PAUL RONNIGEN: My colleagues informed me that I have given some misinformation. The rules are not final that I said were final in September. They were proposed in September and are not finalized.

SENATOR SOLBERG: If you are not acting on final rules yet, you want a final budget.

PAUL RONNINGEN: The Feds are quite clear about when we are needing to move ahead.

SENATOR SOLBERG: They want the money. This doesn't make sense, if the rules aren't final but the money is final?

PAUL RONNINGEN: We do have what this will cost the state.

SENATOR SOLBERG: But you don't know the rules.

PAUL RONNINGEN: We don't have the final rules, the proposed rules give us the framework.

SENATOR SOLBERG: So it could be more. That is good enough.

BLAINE NORDWALL: I just found the entry Senator Grindberg talked about, the 3rd attachment, page 2, it is a white sheet. It gives the requirements and relevant fees in order to be eligible for payment the state must have some kind of plan for child welfare services that have been developed.

SENATOR TOMAC: If the rules haven't been formally promagated or adopted, what is the time frame that it's expected to be finalized. If it is similar to what North Dakota's rules are, do these proposed rules have the force of law before they are adopted just because they are anticipated to be adopted or does the program really go into effect when they are adopted. What happens if they aren't adopted until next year?

BLAINE NORDWALL: They are not effective until they are final. The law is final and will go into effect and its observation will be incumbent on any state, in North Dakota's case, by July 1, 1999. We have to comply with the statute itself. There will be differences between the proposed regulations and the final regulations. I think there will be a need to change North Dakota's requirements but, I do not anticipate the Feds will enforce those final regulations upon us. They will enforce the statutes.

SENATOR TOMAC: They may force it, but in most cases that I am aware of, I think what happens is as they adopt the rules and promagate the rules, even though the statute is in force, there is a leniency period in there as we move from here to here. As we adopt rules even though

the statute is in law, isn't there somewhat of a chance that if we really didn't push this too hard, that we wouldn't be penalized until next session.

BLAINE NORDWALL: You don't want to say that there is no chance at all, but I sincerely believe there is no chance at all. The evidence is that the federal government is implementing the requirements with respect to the states that had to comply earlier. We have no reason to believe that the department and state would not suffer a loss of federal funds if we don't comply.

SENATOR TOMAC: I just hope that everybody realizes that the frustration of the committee isn't to the heart of the program. This certainly is a needy program. This happens to be the program that comes late and it throws the budget we had intended out of whack. The frustration isn't vented at the adoption program, but at the process and how it comes through the process.

BLAINE NORDWALL: I can assure the committee that the people are no less frustrated with this predicament. We would have liked to process this through the budget.

SENATOR BOWMAN: At this white sheet, I thought this was an adoption program, but it sounds to me like it is a little more than that. Would you tell me what the standards and requirements on that are. Item 3, under this new plan which talks about child day care service, Section 20.

BLAINE NORDWALL: The two Federal Statutes that are exerted are titles 4E and 4B of the Social Security Act. There are many other and long standing requirements completely aside from the new ones that are established under the Adoption and Safe Families Act. You've identified a long existing standard that we have had to comply with.

SENATOR NAADEN: Closed hearing and referred it to the Human Services Committee.

=====
2/11/99

SENATOR NETHING: Opened the hearing on SB2171.

SENATOR NETHING: Called for the motion on SB2171.

SENATOR ST. AUBYN: Moved a Do Pass As Engrossed.

SENATOR SOLBERG: Seconded the motion.

ROLL CALL: 14 YEAS; 0 NAYS; 0 ABSENT & NOT VOTING.

CARRIER: SENATOR THANE (Back to the original referral).

Date: 2/11/99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2171

Senate APPROPRIATIONS Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS ENGROSSED

Motion Made By Sen. St. Aubyn Seconded By Sen. Solberg

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment sen. - original committee

If the vote is on an amendment, briefly indicate intent: SENATOR THANE

REPORT OF STANDING COMMITTEE (410)
February 12, 1999 9:16 a.m.

Module No: SR-29-2670
Carrier: Thane
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2171, as engrossed: Appropriations Committee (Sen. Nething, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2171 was placed on the Eleventh order on the calendar.

1999 HOUSE HUMAN SERVICES

SB 2171

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2171

House Human Services Committee

Conference Committee

Hearing Date March 9, 1999

Tape Number	Side A	Side B	Meter #
2	x		26.5-end
2		x	0.0-end
3	x		0.0-end
Committee Clerk Signature <i>Wayne Bjork</i>			

Minutes:

PAUL RONNINGEN, Director of Children & Family Services Division of the North Dakota Department of Human Services testified in support of SB2171. (Testimony attached.) In response to committee questions Mr. RONNINGEN also said that the fiscal note reflects only the senate action to date, the department will not be able to implement the program by April 1 and the individual county representatives will have to speak on impact at that level.

BLAINE NORDWALL, North Dakota Department of Human Resources testified in favor of the bill. (Testimony attached.) There were several questions about the requirement for a background check of all individuals in the foster home, the length of time these could take and the impact on the child if there is a delay.

LEE CHRISTOFFERSON, District Juvenile Court Judge from Devils Lake, testified in support of SB2171 which will improve the way some children live in North Dakota. He wanted to

comment on some of the feature of the bill. The new concurrent planning procedure will balance the relocation process with the safety of the child. The children will not linger in foster care because of the greater frequency of hearings. Parents will be held more accountable for their conduct and actions. The bill also provides the mechanism for permanent guardianship. There are also some concerns of the impacts of the bill. There will have to be a change in social services and court actions because of the review requirements under shorter deadlines. More family preservation services will be needed. There will be additional legal costs for all entities involved in termination court cases. Even with all of these considerations the passage of the bill will be good for children. Mr. CHRISTOFFERSON asked for favorable consideration of the bill.

CONNIE CLEVELAND, Assistant State's Attorney in Cass County testified. (Testimony attached.)

BETTY KEEGAN, Director of Rolette County Social Services testified. (Testimony attached.)

Ms. KEEGAN added that, relative to an earlier question, there will be additional costs at the county level to implement the features of the bill.

PAT PODOLL, Cass County Social Services supervisor, testified. (Testimony attached.)

LINDA GERTZ, Regional Director and Clinical Supervisor of the Village Family Service Center, Minot office, testified. (Testimony attached.) Rep. WANDA ROSE asked about the follow-up done when a foster child is returned to the family to insure that the household continues to be safe. Ms. PODOLL said that it was a collaborative effort with all agencies in contact with the family providing input.

Page 3
House Human Services Committee
Bill/Resolution Number 2171
Hearing Date March 9, 1999

JULIE HOFFMAN, Administrator of adoption Services for the Department of Human Services testified. (Testimony attached.) Ms. HOFFMAN also gave the committee members written testimony from GENE AND SHERRY HARMON and LEANNE JOHNSON.

CONNIE HILDEBRAND, Legislative Chair of the North Dakota Conference of Social Welfare testified in support of SB2171. (Testimony attached.)

KATHY HOGAN, Director of Cass County Social Services testified. (Testimony attached.)

JEAN DOLL, Administrator of the foster care program, Children and Family Services Division of the North Dakota Department of Human Services testified in support of the bill. (Testimony attached.).

There was no OPPOSITION to SB2171.

Hearing closed on SB2171.


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2171

House Human Services Committee

Conference Committee

Hearing Date March 15, 1999

Tape Number	Side A	Side B	Meter #
1	x		0.0-end
1		x	0.0-end
2	x		0.0-16.9
Committee Clerk Signature 			

Minutes:

COMMITTEE DISCUSSION

The committee discussed the E-mail received by Rep. WILLIAM DEVLIN from Steve Christian of the National Conference of State Legislatures which contained section-by-section comments of SB2171. Mr. PAUL RONNINGEN, Director of Children & Family Services Division of the North Dakota Department of Human Services joined the committee meeting at the invitation of Chairman PRICE. He was joined by Ms. JEAN DOLL. It was decided that the committee would highlight those items that they most questioned and Mr. RONNINGEN would study the E-mail with his department and return to the committee later with the answers. Rep. CLARA SUE PRICE asked that the following items be addressed: the "compelling reason" on page 4, "permanency hearing" on page 5, items on page 6. She also wanted to have the information necessary to track the money aspects of the bill particularly for the appropriations

Page 2

House Human Services Committee

Bill/Resolution Number 2171mar15

Hearing Date March 15, 1999

committee. Rep. ROXANNE JENSEN asked how the neighboring states are handling the criminal investigation. Other items discussed were how to insure that adoption of foster children by the foster parents be made as easy as possible, the impact of the bill on the staff and resources of the county social services offices and states attorneys. Mr. RONNINGEN will return in the afternoon with the information requested.

The meeting was recessed and reconvened in the afternoon.

Mr. RONNINGEN returned with Mr. BLAINE NORDWALL, North Dakota Department of Human Services, who responded to the questions of the committee. Mr. NORDWALL reviewed the document from the National Conference of State Legislators with the committee section by section and commented on the situation as applied to North Dakota's situation. He identified four areas that seemed to warrant consideration in North Dakota and presented proposed amendments to address these issues. In response to committee questions Mr. NORDWALL provided additional information. The preparation of documentation by the State's Attorneys is important because they may have to prosecute the case based on the documentation. Some counties will contract this out but will still have to be signed off by the State's Attorney office. Relative to criminal background investigations, all states have the requirement in place except for New York and North Dakota. The investigations will require an additional full-time-equivalent to handle the workload. The increase in number of investigations could cause additional delays from the FBI trying to meet the needs of every state. However, there is little danger of these delays causing the state to miss required deadlines.

Mr. RONNINGEN handed out several memorandums (attached) on fiscal note amounts related to the bill, county expenditures and projected numbers of children in foster care and adoption.

Page 3
House Human Services Committee
Bill/Resolution Number 2171mar15
Hearing Date March 15, 1999

These were discussed with the committee. There was also discussion on the provisions of this law as they would affect or be affected by the adoption rules applicable to Native Americans and on the relationship of the bill to title 4B of the Social Security Act.

Rep. WILLIAM DEVLIN moved the amendments proposed by the Department of Human Services (attached). Seconded by Rep. BLAIR THORESON. Motion PASSED on voice vote: 13 YES, 0 NO, 2 ABSENT.

Rep. WILLIAM DEVLIN moved an amendment that would allow counties to continue to prepare petitions as they currently do and not require that petitions be prepared by the State's Attorney. Rep. RALPH METCALF seconded. After discussion the motion PASSED on a voice vote: 13 YES, 0 NO, 2 ABSENT.

Mr. RONNINGEN presented a memorandum (attached) showing county expenditures and revenues projected by SB2171. After some discussion Rep. WILLIAM DEVLIN moved a DO PASS AS AMENDED AND REREFERRED TO APPROPRIATIONS. Seconded by Rep. ROBIN WEISZ.

Motion PASSED on Roll Call Vote #1: 13 YES, 0 NO, 2 ABSENT.

CARRIER: Rep. WILLIAM DEVLIN.

Committee Discussion closed on SB2171.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171

Page 4, line 27, replace "Whether" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, have parental rights terminated, or be placed for adoption, with a fit and willing relative, or with a legal guardian, whether"

Page 9, line 7, replace "Establish" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, have parental rights terminated, or be placed for adoption, with a fit and willing relative, or with a legal guardian, establish"

Page 9, line 28, after "within" insert "thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 6 of this Act are not required, or"

Page 14, line 25, remove "or"

Page 14, line 27, replace the underscored period with "; or"

Page 14, after line 27, insert:

"(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent."

Renumber accordingly

Amendment #1

Passed
13-022

VK
3/16/99

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 HUMSER 3/16/99

Page 4, line 27, replace "Whether" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 HUMSER 3/16/99

Page 9, line 7, replace "Establish" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish"

Page 9, line 28, after "within" insert "thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 6 of this Act are not required, or"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 HUMSER 3/16/99

Page 14, line 8, replace "5" with "6"

Page 14, line 25, remove "or"

Page 14, line 27, after "care" insert "; or

- (3) The date a child is placed in foster care voluntarily and with the consent of the child's parent"

Re-number accordingly

Date: 3-15-99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB2171

House Human Services Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended to be Referred to Appropriations

Motion Made By Rep Devlin Seconded By Rep Weisz

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price - Chairwoman	✓		Bruce A. Eckre		
Robin Weisz - Vice Chairman	✓		Ralph Metcalf	✓	
William R. Devlin	✓		Carol A. Niemeier	✓	
Pat Galvin	✓		Wanda Rose	✓	
Dale L. Henegar	✓		Sally M. Sandvig	✓	
Roxanne Jensen	✓				
Amy N. Kliniske					
Chet Pollert	✓				
Todd Porter	✓				
Blair Thoreson	✓				

Total Yes 13 No 0
 Absent 2

Floor Assignment Rep Devlin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2171, as engrossed: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2171 was placed on the Sixth order on the calendar.

Page 4, line 27, replace "Whether" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether"

Page 9, line 7, replace "Establish" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish"

Page 9, line 28, after "within" insert "thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 6 of this Act are not required, or"

Page 14, line 8, replace "5" with "6"

Page 14, line 25, remove "or"

Page 14, line 27, after "care" insert "; or"

(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent"

Renumber accordingly

1999 HOUSE APPROPRIATIONS

SB 2171

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2171

House Appropriations Committee
Human Resources Division

Conference Committee

Hearing Date March 22, 1999

Tape Number	Side A	Side B	Meter #
1	X		0-end
Committee Clerk Signature <i>Paulita Gussias</i>			

Minutes:

A Bill for an Act to create and enact three new sections to chapter 27-20, two new subsections to section 50-09-01, five new subsections to section 50-09-02, two new subsections to 50-09-03, a new section to chapter 50-09, two new sections to chapter 50-11, two new chapters to title 50, and a new section to chapter 50-12 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997 and the interstate compact on adoption and medical assistance; and to amend and reenact subsection 4 of section 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03, subsection 3 of section 27-20-24, sections 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-10-47, 27-21-02.1, and 50-11-06.8 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997.

Tape 1, A, 0.0 Chairman Svedjan opened committee work for SB 2171. All members are present.

.9 Paul Ronningen (Director of Children and Family Service Division of the ND Department of Human Services) presented the bill with testimony.

9.0 Chairman Svedjan asked what do you know about the assentives, and what are the outcomes. Mr. Ronningen states there is a minor amount, he's not sure of the exact dollar.

12.5 Chairman Svedjan asked why the Department of Human Services were not able to project the cost when the bill was drawn. Mr. Ronningen states that when the department was putting together the budget the work group was only able to anticipate some of the costs.

14.6 Jean Doll (Foster Care Administrator) was able to answer some of the questions that the committee asked.

21.8 Rep. Delzer asks what the average stay in Foster Care was and how quick does the legislation require to be over. Ms. Doll states about 15 mo. is the average.

Page 2

Human Services, Appropriations

March 22, 1999

24.3 Chairman Svedjan asked if they had any anticipated reduction of the Adoption budget next biennium. Mr. Ronningen states that they do about 895,000.

32.0 Blaine Nordwall testified in support of the bill. See attached testimony.

37.6 Chairman Svedjan asked where the health insurance is coming from. Mr. Nordwall states it is coming from the Medicaid budget and it is not on the fiscal note.

48.7 Mrs. Gary Zentz testified in support of SB 2171.

53.9 Connie McHildeband (NDCSW) testified in support of SB 2171.

60.0 Chairman Svedjan closed committee hearing on SB 2171.

General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date March 25, 1999			
Tape Number	Side A	B Side	Meter #
1	x		29.7-end
1		x	0-8.7
Committee Clerk Signature <i>Paulette Grassie</i>			

Minutes:

A Bill for an Act to create and enact three new sections to chapter 27-10, two new subsections to section 50-09-01, five new subsections to section 50-09-02, two new subsections to 50-09-03, a new section to chapter 50-09, two new sections to chapter 50-11, two new chapters to title 50, and a new section to chapter 50-12 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997 and the interstate compact on adoption and medical assistance; and to amend and reenact subsection 4 of section 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03, subsection 3 of section 27-20-24, sections 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-20-47, 27-21-02.1, and 50-11-06.8 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997.

29.7 Chairman Bernstein opened committee work on SB 2171.

37.6 Rep. Devlin had given the committee some amendments and he explained them.

48.9 Rep. Delzer moves to adopt amendment 98211.0202, 2nd by Rep. Timm. The vote was 4 yes, 1 no, and 1 absent.

55.6 Rep. Price told the committee about the memorandums that did the break downs of the counties and a lot of they concern was that the states attorneys are part time.

Tape 1, B, 8.0 Rep. Hoffner moves a do pass. No one will second the motion, the bill is at stand still.

8.7 Chairman Bernstein closes the committee work on SB 2171.

General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

Date April 1, 1999			
Tape Number	Side A	B Side	Meter #
1	x		0-13.0
Committee Clerk Signature		<i>Roxanne Kone</i>	

Minutes:

Chairman Dalrymple opened the discussion on Senate Bill 2171.

1A: 1.3 Rep. Bernstein proposed two amendments **.0202** and **.0204** to the committee. Brief explanation of bill and amendments. **.0202**: removes language "states attorney shall prepare petitions under chapter." There is already a system that takes care of this. **.0204**: Has to do with legislative study and impact on DHS, county, and court systems. **Rep. Bernstein** made a motion to adopt both amendments. **Rep. Svedjan** 2nd the motion. On a Voice Vote the motion carried. **Rep. Bernstein** moved for a DO PASS AS AMENDED. **Rep Svedjan** 2nd the motion.

1A: 5.4 Rep. Poolman asked what the total determinable fiscal effect is. **Rep. Bernstein** replied that he is guessing that it is very difficult to get a handle on what it is going to cost the system in the end. **Rep. Svedjan** commented on dollar amounts; \$1.232 million total: \$482,029 General Funds, \$625,518 Federal Funds, \$124,010 County Funds. Further discussion on add backs to budget.

1A: 9.6 Chairman Dalrymple asked the reason for the number of adoptions to go up so dramatically. **Rep. Svedjan** replied that is the intent of the Adoption & Safe Family Act to get people out of foster care system and get them into a home. Just not certain there are the numbers

of homes and people who want to make these adoptions. There was a lot of concern expressed in the sub committee. Won't see the true impact for a couple of years.

1A: 10.3 Rep. Delzer commented not being able to get around the cost is due to the Feds setting time lines when you have to have court reviews, parental determination hearings, and it is all being mandated and have used it in other states. It takes effect July 1. Thinks state of ND is doing a very good job. Don't want to not give them enough to try and do the right job though.

1A: 11.2 Rep. Svedjan commented \$22 million would be in jeopardy if the state did not comply.

1A: 11.5 On a Roll Call Vote the motion carried.

14 voting YES

6 voting NO

Carrier: Rep. Bernstein

VR
4/2/99
1992

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

In lieu of the amendments adopted by the House as printed on page 858 of the House Journal, Engrossed Senate Bill No. 2171 is amended as follows:

Page 1, line 6, remove the second "and"

Page 1, line 8, remove "subsection 3 of section 27-20-24, sections"

Page 1, line 10, after "1997" insert "; and to provide for a legislative council study"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 4, line 16, replace "24" with "23"

Page 4, line 27, replace "Whether" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 App 4-2-99

Page 6, remove lines 28 and 29

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 7, remove lines 1 through 3

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 9, line 7, replace "Establish" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish"

Page 9, line 28, after "within" insert "thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 5 of this Act are not required, or"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 14, line 25, remove "or"

Page 14, line 27, after "care" insert "; or"

(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 15, line 3, replace "15" with "14"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 21, line 24, replace "22" with "21" and replace "23" with "22"

202

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 22, line 25, replace "23" with "22"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 23, line 24, replace "22" with "21"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 26, line 12, replace "24" with "23"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2171 APP 4-2-99

Page 31, after line 5, insert:

"SECTION 26. LEGISLATIVE COUNCIL STUDY - IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT. The legislative council shall consider studying, during the 1999-2000 interim, the impact to the state department of human services, counties, court system, division of juvenile services, adoption agencies, and families of the Adoption and Safe Families Act of 1997 including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families."

Renumber accordingly

Date: 3-26-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

House _____ APPROPRIATIONS _____ Committee

Subcommittee on _____ HUMAN SERVICES _____
or
 Conference Committee

Legislative Council Amendment Number 98211.0202

Action Taken passed

Motion Made By Deton Seconded By Timm

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KEN SVEDJAN					
VICE CHAIRMAN LEROY BERNSTEIN	✓				
REP. JEFF DELZER	✓				
REP. SERENUS HOFFNER	✓				
REP. JAMES KERZMAN		✓			
REP. MIKE TIMM	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment _____
If the vote is on an amendment, briefly indicate intent:

Date: 3-25-99
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

House _____ APPROPRIATIONS _____ Committee

Subcommittee on _____ HUMAN SERVICES _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion fails

Motion Made By Hoffner Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KEN SVEDJAN					
VICE CHAIRMAN LEROY BERNSTEIN					
REP. JEFF DELZER					
REP. SERENUS HOFFNER					
REP. JAMES KERZMAN					
REP. MIKE TIMM					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
Motion fails - No one would 2nd

Date: 3-26-99
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

House _____ APPROPRIATIONS _____ Committee

Subcommittee on _____ HUMAN SERVICES _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No pass

Motion Made By Bernstein Seconded By Decker

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KEN SVEDJAN	✓				
VICE CHAIRMAN LEROY BERNSTEIN	✓				
REP. JEFF DELZER	✓				
REP. SERENUS HOFFNER	✓				
REP. JAMES KERZMAN		✓			
REP. MIKE TIMM		✓			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Bernstein
If the vote is on an amendment, briefly indicate intent:

Date: 4-1-99
 Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2171

House Appropriations Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number .0205 + .0204

Action Taken DP as amended 0205

Motion Made By Bernstein Seconded By Svedjan

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	✓		Nichols	✓	
Vice-Chairman Byerly		✓	Poolman	✓	
Aarsvold	✓		Svedjan	✓	
Bernstein	✓		Timm		✓
Boehm	✓		Tollefson	✓	
* Carlson	WAM	✓	Wentz	✓	
Carlisle	✓				
Delzer		✓			
Gulleson	✓				
Hoffner	✓				
Huether	✓				
Kerzman		✓			
Lloyd		✓			
Monson	✓				

Total (Yes) 14 No 6

Absent 0

Floor Assignment REP. BERNSTEIN

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2171, as engrossed: Appropriations Committee (Rep. Dalrymple, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2171 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on page 858 of the House Journal, Engrossed Senate Bill No. 2171 is amended as follows:

Page 1, line 6, remove the second "and"

Page 1, line 8, remove "subsection 3 of section 27-20-24, sections"

Page 1, line 10, after "1997" insert "; and to provide for a legislative council study"

Page 4, line 16, replace "24" with "23"

Page 4, line 27, replace "Whether" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether"

Page 6, remove lines 28 and 29

Page 7, remove lines 1 through 3

Page 9, line 7, replace "Establish" with "In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish"

Page 9, line 28, after "within" insert "thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 5 of this Act are not required, or"

Page 14, line 25, remove "or"

Page 14, line 27, after "care" insert "; or

(3) The date a child is placed in foster care voluntarily and with the consent of the child's parent"

Page 15, line 3, replace "15" with "14"

Page 21, line 24, replace "22" with "21" and replace "23" with "22"

Page 22, line 25, replace "23" with "22"

Page 23, line 24, replace "22" with "21"

Page 26, line 12, replace "24" with "23"

Page 31, after line 5, insert:

"SECTION 26. LEGISLATIVE COUNCIL STUDY - IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT. The legislative council shall consider studying, during the 1999-2000 interim, the impact to the state department of human services, counties, court system, division of juvenile services, adoption agencies, and

families of the Adoption and Safe Families Act of 1997 including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families."

Renumber accordingly

1999 SENATE HUMAN SERVICES

SB 2171

CONFERENCE COMMITTEE

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2171CC

Senate Human Services Committee

Conference Committee

Hearing Date APRIL 7, 1999

Tape Number	Side A	Side B	Meter #
2	X		
4/7/99 1	X		
4/8/99 1	X		2,095
Committee Clerk Signature <i>Barol Saldejchuk</i>			

Minutes:

SENATOR THANE called the conference committee to order. Roll call: SENATOR THANE, SENATOR LEE, SENATOR MUTZENBERGER, REPRESENTATIVE DEVLIN, REPRESENTATIVE TIMM, REPRESENTATIVE ECKRE. SENATOR THANE believes that there is not a lot of trouble with the changes in this bill. REPRESENTATIVE DEVLIN explained the House amendments. We took the whole bill and faxed it to NCSL, had their expert on Adoption Safe Family Act go through each section and they made their recommendations. We met with the Dept of Human Services to make sure we were in full compliance and they approved and went to Appropriations to finish the job. SENATOR THANE stated that the removal of subsection 3 of section 27-20-24 restored it to our existing century Code Law. Page 4, line 27. SENATOR LEE explained that we need to define the word home. Do we mean parental home, foster home, guardianship or what would be in the child's best interest.

Page 2
Senate Human Services Committee
Bill/Resolution Number SB2171CC
Hearing Date APRIL 7, 1999

REPRESENTATIVE DEVLIN asked for one more day before final passage of this bill on correct language.

The committee was recessed and rescheduled.

4/8/99

SENATOR THANE called the committee to order with all members present. SENATOR THANE stated that for all practical purposes we have reached agreements on the bill. A definition of "home" on page 4 was included. SENATOR LEE moved the Senate acceded to the House amendments and further amend to include the definition of home. REPRESENTATIVE TIMM seconded it. No further discussion. Roll call vote carried 6-0-0. SENATOR LEE moved a DO PASS AS AMENDED. REPRESENTATIVE TIMM seconded it. Roll call vote carried 6-0-0. The conference committee was adjourned.

Date _____

Roll call vote # _____

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2171

Senate Human Services Committee

Subcommittee on _____ (Identify or

Conference Committee (check where appropriate)

Legislative Council Amendment Number _____

Action Taken Acade to House

Motion Made By Speaker

Seconded By Rep Jimm

Senators	Yes	No	Representatives	Yes	No
<u>Shane</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Devlin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Lee</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Jimin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Mutzgenberger</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Eckre</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
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_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Total _____ (Yes) _____ (No)

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

Date _____

Roll call vote # _____

Please type or use black pen to complete

1997 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2171

Senate Human Services Committee

Subcommittee on _____ (Identify or

Conference Committee (check where appropriate

Legislative Council Amendment Number _____

Action Taken to pass as amended

Motion Made By Sen Lee

Seconded By Rep Jimin

Senators	Yes	No	Representatives	Yes	No
<u>Shane</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Devlin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Lee</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Jimin</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Mutzenberger</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Eckre</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

Total _____ (Yes) _____ (No)

Absent _____

Floor Assignment Sen Shane

If the vote is on an amendment, briefly indicate intent:

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF CONFERENCE COMMITTEE

SB 2171, as engrossed: Your conference committee (Sens. Thane, Lee, Mutzenberger and Reps. Devlin, Timm, Eckre) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 1104-1105, adopt further amendments as follows, and place SB 2171 on the Seventh order:

That the Senate accede to the House amendments as printed on pages 1104 and 1105 of the Senate Journal and pages 1151 and 1152 of the House Journal and that Engrossed Senate Bill No. 2171 be further amended as follows:

Page 4, after line 18, insert:

"10. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided."

Page 4, line 19, replace "10" with "11"

Page 4, line 20, replace "11" with "12"

Page 5, line 5, replace "12" with "13"

Page 5, line 7, replace "13" with "14"

Page 5, line 16, replace "14" with "15"

Page 5, line 17, replace "15" with "16"

Page 5, line 24, replace "16" with "17"

Page 6, line 5, replace "17" with "18"

Renumber accordingly

Engrossed SB 2171 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2171

SB 2171

Senate Human Services Committee

January 25, 1999

Chairman Thane and members of the Human Services Committee. I am Paul Ronningen, Director, Children and Family Services Division of the North Dakota Department of Human Services. I am providing additional information on the fiscal note, as requested by the committee.

Attached is a spread sheet showing the budget for the Adoption and Safe Families Act. The various activities of the budget proposal are listed in the left hand column. The proposed budget for the Division of Children and Family Services is in the center of the page while the funds not included in the Department of Human Services budget (SB 2012) are listed on the right hand side of the page. Finally , the funds are separated according to general, federal and other.

If the committee would like additional information on the fiscal note, please call me at 328-1725.

Thank you.

Ronningen
Children
& Family
Services

	In CFS Budget			Not In CFS Budget		
	General	Federal	Other	General	Federal	Other
Bskground checks-Admin				13,328.00	13,328.00	
Court Costs				360,000.00	360,000.00	
Grants - Guardianship				(104,703.00)	68,331.00	(30,161.00)
ICAMA				3,750.00	5,250.00	
OAR - Family Focus				186,077.00	164,156.00	38,923.00
Review Teams				5,088.00	15,263.00	
Grants - Adoption	334,146.00	343,623.00	95,158.00			
Grants - Foster Care	(377,299.00)	(411,642.00)	(106,627.00)			
OAR - Family Focus	232,596.00	205,195.00	48,653.00			
OAR - Parent Aid	293,086.00	488,342.00	86,826.00			
	<u>482,529.00</u>	<u>625,518.00</u>	<u>124,010.00</u>	<u>463,540.00</u>	<u>626,328.00</u>	<u>8,762.00</u>
			1,232,057.00			1,098,630.00

SB 2171

Senate Human Services Committee

January 25, 1999

Chairman Thane and members of the Human Services Committee. I am Paul Ronningen, Director of Children and Family Services for the North Dakota Department of Human Services. This segment of my testimony relates to the fiscal note for SB 2171.

First of all, I want to point out that the overall fiscal note for SB 2171 is \$2,330,687. Of this amount, \$1,232,057 was included in the Governors Budget for the Department of Human Services in SB 2012. These were the costs that the Department was able to anticipate in July 1998. The remainder of the fiscal note, \$1,098,630 are costs that the Department has just recently been able to identify.

The \$1,232,057 which is in SB 2012 of the Governor's Budget, represents the costs associated with the following services:

*Adoption Services - an increase of	\$772,927
*Foster Care Services - a decrease of	\$895,568
*Parent Aide Services - an increase of	\$868,254
*Family Focus Services - an increase of	\$486,444
TOTAL	\$1,232,057

The remaining \$1,098,630, which is not in SB 2012 of the Governor's Budget, includes:

*Court Costs (prosecution and defense) - an increase of (\$65/hr x 100 hrs/case x 110 cases)	\$720,000
*Review Team Costs - an increase of Includes travel, lodging, meals and legal aid time to review the status of children who have been in Foster care for 15 or more months.	\$ 20,351
*Background checks - an increase of A half time position will be added to CFS to complete an estimated 958 background checks during the 1999-01 biennium.	\$ 26,656
*ICAMA Dues - an increase of Interstate Compact on Adoption and Medical Assistance	\$ 3,000
*ICAMA Training - an increase of	\$ 6,000
*Guardianship Program - a decrease of	(\$66,533)
*Family Focus	\$ 389,156
Total	\$1,098,630

Thus, the Adoption and Safe Families Act has a fiscal note of \$2,330,687. The net effect on the funding sources are:

Federal	\$1,248,012
General	\$ 946,069
Other	\$ 178,236
County	(\$ 41,630)
TOTAL	\$2,330,687



Thank you for this opportunity to provide the committee with the fiscal note for SB 2171. I would be happy to answer any questions.



SB 2171

Senate Appropriations Committee

February 11, 1999

Chairman Nething and members of the Senate Appropriations Committee. I am Paul Ronningen, Director, Children & Family Services Division of the North Dakota Department of Human Services. I am here in support of SB 2171.

Overview of Adoption and Safe Families Act:

Senate Bill 2171 was drafted in response to P.L. 105-89, The Adoption and Safe Families Act of 1997 (ASFA) which became law on November 19, 1997. It is a significant piece of child welfare legislation with primary emphasis on providing safe and permanent living arrangements for youth who enter the foster care system or are at risk of out of home placement. It seeks to balance family preservation and reunification with the safety needs of children. It also emphasizes keeping families together. Thus, the health, safety and well being of children is paramount.

ASFA impacts the entire child welfare system. It has significant resource implications for state and county social services, the court system, states attorney offices, and agencies providing treatment services to families. A work group representing these various entities has been meeting since last spring to design and implement the many components of the Adoption and Safe Families legislation. Attached to this testimony is a roster of those individuals who have been involved on the ASFA work group during this past year (See Attachment A).

This legislation emphasizes that families should be kept together when possible and that community based family preservation and support services should be readily available. Thus, resources will be added to family focused

case management and parent aide services, delivered by the county social service offices, to help maintain children in their homes or to return these children to their families, when at all possible.

ASFA emphasizes that children should spend less time in foster care and move into permanency faster. Permanency would include children returning to their families, being provided an adoptive home or provided a guardianship arrangement. The federal law now requires a disposition (permanency) hearing within twelve months of placement as opposed to our current practice of eighteen months. When a child has been in foster care 15 of the most recent 22 months, the state will be required to file a petition for termination of parental rights. The federal legislation clarifies that in certain circumstances reasonable efforts to reunify a family are not required. In enacting this legislation, Congress was sensitive to the safety and developmental needs of children, that children need the stability of a permanent home and freedom from abuse in their lives.

In addition, the safety needs of children are further protected by a requirement that states have procedures in place for criminal background checks for prospective foster or adoptive parents. Finally, there are additional requirements that states develop and implement standards to ensure that children in foster care are provided quality services that protect the health and safety of children. Examples of these quality issues are: licensing, frequent caseworker contacts with children in care and foster parents, educational opportunities for foster and adoptive parents related to children's growth and developmental needs.

Outcome measures will be used to assess state child welfare programs and rate state performance. These standards will be developed by The Secretary of Health and Human Services and others. Performance on these standards will be assessed based on AFCARS (Adoption and Foster Care Analysis and

Reporting System) data generated by each state. Congress has expressed interest in developing an incentive system to provide payments under IV-B and IV-E of the Social Security Act to states based on their performance under this system.

States must provide health insurance coverage for all special needs children in subsidized adoption. North Dakota currently provides Medicaid coverage to all our children in special needs adoptions which has been available since 1980.

Adoption is also a major emphasis of the ASFA legislation. Adoption incentive payments are provided to states that increase the number of adoptions of children in foster care as compared with a base year. However, states are subject to severe penalties if they deny or delay the placement of a child for adoption when an approved family is available outside the jurisdiction responsible for handling the child's case.

When home or adoption aren't options for the child, a guardianship permanency option is important. This is more stable and less intrusive for the child. It may decrease some of the case management costs associated with keeping a foster care case open. Therefore, we propose a small subsidized guardianship program to address needs of children in our foster care system who could be more appropriately served by guardianship.

The Adoption and Safe Families Act contains significant mandates for states. It carries some fiscal incentives. However, non-compliance with ASFA carries risks in terms of loss of Title IV-E (\$22,149,730/biennium) and IV-B funding (\$1,034,300/biennium). But beyond all of this, the Department of Human Services believes ASFA builds a solid base for good casework practice. Even prior to the ASFA legislation, North Dakota has been striving to keep families together by providing a wide range of family based services.

**ADOPTION & SAFE FAMILIES ACT OF 1997
WORK GROUP**

Linda Schell, Previous Director of Children and Family Services, DHS

Jean Doll, Administrator, Foster Care Program, CFS, DHS

Blaine Nordwall, Director, Leal Advisory Unit, DHS

Lloyd Suhr, Attorney, Legal Advisory Unit, DHS

Greg Wallace, Asst. Court Administrator for the Trial Court, Supreme Court

Judge Lee A. Christofferson, Northeast Judicial Court

Kate Kenna, Regional Supervisor, Northeast Human Service Center, DHS

Betty Keegan, Director, Rolette County Social Service Board

Lannon Serrano, Director, Juvenile Court Services, Bismarck

Deb Petry, Human Service Program Specialist, CFS, DHS

Earnest Patenaude, Director, Turtle Mountain Tribal Child Welfare, Belcourt

Mary O'Donnell, Rolette County States Attorney

Damon Anderson, Asst. States Attorney, Juvenile Court, Grand Forks

Tara Muhlhauser, Director, Children and Family Services Training Center, UND

Dennis Herbeck, Director, Juvenile Court Services, Grand Forks

Julie Hoffman, Adoption Administrator, CFS, DHS

Kathy Neideffer, Family Preservation Services Administrator, CFS, DHS

Don Snyder, Administrator of Refugee Services & Independent Living Program, CFS

Tom Pomonis, CCWIPS Project Manager, CFS, DHS

Judge Ronald E. Goodman, Judge of the District Court, Ellendale

Dale Thompson, Juvenile Court Referee, Northeast Judicial Court, Bottineau

Connie Cleveland, Attorney, Cass County Social Services, Fargo

Theresa Grant, Tribal Liaison, DHS

Leo Gross, Director, Tribal Social Services, Fort Yates

Mike Swallow, Tribal Attorney, Tribal Social Services, Fort Yates

Al Lick, Director, Division of Juvenile Services

Gladys Cairns, Child Protection Services Administrator, CFS

Fact Sheet: Adoption & Safe Families Act of 1997 (ASFA) (SB 2171)

What is it?

P.L. 105-89, The Adoption and Safe Families Act of 1997, was signed into law by the President on November 19, 1997. ASFA is significant child welfare legislation which seeks to balance family preservation and reunification efforts with the safety, permanence and well-being of the child.

Key Provisions of ASFA:

- Keeping Families Together: Community based family preservation and support services are available to families.
- The Child's Health Safety and Well-Being are Primary.
- Reasonable Efforts to Reunify: Efforts are required to reunify families except in certain circumstances.

Less Time in Foster Care: "Foster care is not a place to grow up." When a child has spent 15 of the most recent 22 months in foster care, the state is required to file for termination of parental rights.
- Permanency Hearings: Current law requires a permanency hearing within 18 months of entry into foster care. The new law requires a permanency hearing within 12 months of entry into foster care.
- Quality Foster Care: States must develop and implement standards to ensure that children in foster care are provided **quality** services that protect the health and safety of the child.
- Failure to Use Cross-Jurisdictional Resources: States are subject to severe penalties if they deny or delay the placement of a child for adoption when an approved family is available outside the jurisdiction responsible for handling the child's case.
- Adoption Incentive Payments: States may receive payments for moving children out of foster care and into adoption.
- Criminal Background Checks: Criminal background checks are conducted for prospective foster or adoptive parents before a child is placed.

North Dakota's implementation date for ASFA is August 1, 1999. **SB 2171** responds to the ASFA requirements and ensures continued federal funding for North Dakota child welfare. At risk is Title IV-E funding (\$22,149,730/biennium) and Title IV-B funding (\$1,034,300/biennium).

Summary prepared January 1999 by the North
Dakota Department of Human Services
(701) 328-2316

SB 2171

House Human Services Committee

March 9, 1999

Chairman Price and members of the House Human Services Committee. I am Paul Ronningen, Director, Children & Family Services Division of the North Dakota Department of Human Services. I am here in support of SB 2171.

Overview of Adoption and Safe Families Act:

Senate Bill 2171 was drafted in response to P.L. 105-89, The Adoption and Safe Families Act of 1997 (ASFA) which became law on November 19, 1997. It is a significant piece of child welfare legislation with primary emphasis on providing safe and permanent living arrangements for youth who enter the foster care system or are at risk of out of home placement. It seeks to balance family preservation and reunification with the safety needs of children. It also emphasizes keeping families together. Thus, the health, safety and well being of children is paramount.

ASFA impacts the entire child welfare system. It has significant resource implications for state and county social services, the court system, states attorney offices, and agencies providing treatment services to families. A work group representing these various entities has been meeting since last spring to design and implement the many components of the Adoption and Safe Families legislation. Attached to this testimony is a roster of those individuals who have been involved on the ASFA work group during this past year (See Attachment A).

This legislation emphasizes that families should be kept together when possible and that community based family preservation and support services

should be readily available. Thus, resources will be added to family focused case management and parent aide services, delivered by the county social service offices, to help maintain children in their homes or to return these children to their families, when at all possible.

ASFA emphasizes that children should spend less time in foster care and move into permanency faster. Permanency would include children returning to their families, being provided an adoptive home or provided a guardianship arrangement. The federal law now requires a disposition (permanency) hearing within twelve months of placement as opposed to our current practice of eighteen months. When a child has been in foster care 15 of the most recent 22 months, the state will be required to file a petition for termination of parental rights. The federal legislation clarifies that in certain circumstances reasonable efforts to reunify a family are not required. In enacting this legislation, Congress was sensitive to the safety and developmental needs of children, that children need the stability of a permanent home and freedom from abuse in their lives.

In addition, the safety needs of children are further protected by a requirement that states have procedures in place for criminal background checks for prospective foster or adoptive parents. Finally, there are additional requirements that states develop and implement standards to ensure that children in foster care are provided quality services that protect the health and safety of children. Examples of these quality issues are: licensing, frequent caseworker contacts with children in care and foster parents, educational opportunities for foster and adoptive parents related to children's growth and developmental needs.

Outcome measures will be used to assess state child welfare programs and rate state performance. These standards will be developed by The Secretary of Health and Human Services and others. Performance on these standards will be assessed based on AFCARS (Adoption and Foster Care Analysis and Reporting System) data generated by each state. Congress has expressed interest in developing an incentive system to provide payments under IV-B and IV-E of the Social Security Act to states based on their performance under this system.

States must provide **health insurance coverage** for all special needs children in subsidized adoption. North Dakota currently provides Medicaid coverage to all our children in special needs adoptions which has been available since 1980.

Adoption is also a major emphasis of the ASFA legislation. Adoption incentive payments are provided to states that increase the number of adoptions of children in foster care as compared with a base year. However, states are subject to severe penalties if they deny or delay the placement of a child for adoption when an approved family is available outside the jurisdiction responsible for handling the child's case.

When home or adoption aren't options for the child, a **guardianship** permanency option is important. This is more stable and less intrusive for the child. It may decrease some of the case management costs associated with keeping a foster care case open. Therefore, we propose a small subsidized guardianship program to address needs of children in our foster care system who could be more appropriately served by guardianship.

The Adoption and Safe Families Act contains significant mandates for states. It carries some fiscal incentives. However, non-compliance with ASFA carries

risks in terms of loss of Title IV-E (\$22,149,730/biennium) and IV-B funding (\$1,034,300/biennium). Currently, New York has not received payment for 44,000 children in their foster care system for January and February due to their inability to come into compliance.

In addition, the federal legislation requires the state to implement its state plan the “first day of the first calendar quarter beginning after the close of the first regular session of the State Legislature....” In North Dakota, that day is July 1, 1999, assuming this Legislative Assembly does not adjourn sine die before April 1. However, if this legislative session ends in March, the effective date for North Dakota to be in compliance is April 1, 1999. An early end to the session could put North Dakota out of compliance with ASFA on April 1st. However, if the session continues into April, the effective date for implementation is July 1st. This is very important to North Dakota! If we are found to be out of compliance, the state may lose its IV-E and IV-B funding, like New York, until the state is in compliance. North Dakota is currently assessing its foster care caseload for appropriate action, will provide training to county social service staff, states attorneys and the courts on the requirements of ASFA, will be adding additional resources to the special needs adoption program and family preservation program and will be instituting a guardianship program. These are necessary activities to safeguard the State from penalties.

However, beyond all of this, the Department of Human Services believes ASFA builds a solid base for good casework practice. Even prior to the ASFA legislation, North Dakota has been striving to keep families together by providing a wide range of family based services.

Fiscal Note:

First of all, I want to point out that the overall fiscal note for SB 2171 is \$2,330,687. Of this amount, \$1,232,057 was included in the Governor's Budget for the Department of Human Services in SB 2012. These were the costs that the Department was able to anticipate in July 1998. The remainder of the fiscal note, \$1,098,630 are costs that the work group has just recently been able to identify.

The \$1,232,057 which is in SB 2012 of the Governor's Budget, represents the costs associated with the following services:

*Adoption Services - an increase of	\$772,927
*Foster Care Services - a decrease of	\$895,568
*Parent Aide Services - an increase of	\$868,254
*Family Focus Services - an increase of	\$486,444
TOTAL	\$1,232,057

The remaining \$1,098,630, which is not in SB 2012 of the Governor's Budget and which were not funded by the Senate, include:

*Court Costs (prosecution and defense) - an increase of (\$65/hr x 100 hrs/case x 110 cases)	\$720,000
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*Review Team Costs - an increase of	\$ 20,351
Includes travel, lodging, meals and legal aid time to review the status of children who have been in Foster care for 15 or more months.	
*Background checks - an increase of	\$ 26,656
A half time position will be added to CFS to complete an estimated 958 background checks during the 1999-01 biennium.	
*ICAMA Dues - an increase of	\$ 3,000
Interstate Compact on Adoption and Medical Assistance	
*ICAMA Training - an increase of	\$ 6,000
*Guardianship Program - a decrease of	(\$66,533)
*Family Focus	\$389,156
Total	\$1,098,630

The Department is requesting that the \$1,098,630 be appropriated through SB 2171. Of this \$1,098,630, \$463,540 is general fund, \$626,328 is federal and \$8,762 is other. This is consistent with the Governor's general fund adjustments to the Executive Budget as indicated in a memo to all legislators from OMB dated March 2, 1999 .

Attached is a spread sheet showing the budget for the Adoption and Safe Families Act. The various activities of the budget proposal are listed in the left hand column. The proposed budget for the Division of Children and Family Services is in the center of the page while the funds not included in the

Department of Human Services budget (SB 2012) are listed on the right hand side of the page. Finally , the funds are separated according to general, federal and other.

This ends my formal presentation on SB 2171. I will answer any questions the committee may have at this time.

Thank you.

SB 2171
House Human Services Committee
March 22, 1999

Representative Svedjan and members of the Appropriations Committee, House Human Resource Division. I am Paul Ronningen, Director, Children and Family Services Division of the North Dakota Department of Human Services. Today, Representative Delzer asked the following question: Doesn't this bill only affect the youth who have been in foster care for twelve or more months and therefore the budget should only reflect numbers for the youth in foster care for more than twelve months?

First of all, this bill affects all children in foster care and in addition, those children who are not in foster care but are at risk of foster care.

To provide an full answer to this question, the Department will be using the spread sheet, as provided in my testimony and attached to this document. A line item by line item analysis is provided.

A. Background checks - Administration:

The anticipated background checks on adoptive and foster parents (\$26,656) is not in any way linked to the length of stay for any particular child. This work is required to recruit foster and adoptive homes.

B. Court Costs:

Representative Delzer's question may have been triggered by the budget line item labeled "court costs" (\$720,000). These court costs anticipate 110 cases requiring 100 hours of legal work (prosecution and defense) at a cost of \$65 per hour. In addition, \$5,000 has been set aside for expert witness fees.

For this particular line item, court action could be initiated for termination of parental rights if the child has been in foster care for fifteen (15) of the last twenty two (22) months. Thus, Representative Delzer's observation of the "twelve or more months" would be accurate when considering court costs. Court action will only occur if the states attorney agrees that termination of parental rights is the appropriate course of action.

C. Grants - Guardianship

Children entering the guardianship program (The overall impact on the budget is a decrease of \$66,533.) may or may not have been in foster care for twelve months. For example, if a child has a dying parent and adoption is not in the best interests of the child, the child may be placed in the guardianship program prior to the twelve month court review.

D. ICAMA (Interstate Compact on Adoption and Medical Assistance):

The ICAMA expenses (\$9,000) again are not related to the length of stay in foster care for any particular child. These costs are directly tied to fees and training for the State of North Dakota to join this compact.

E. Family Focused Services:

The family focused service (\$389,156) is a preventative service provided to children and their families while they are still at home but at risk of a foster care placement. Again this service is not tied to the twelve months in foster care review. In fact, if a placement can be avoided there will not be a permanency hearing. This service is also utilized for reunification of youth who are in foster care to shorten their length of stay. Some of these children will have been in foster care for more than a year. However, these community based services are most likely delivered within the first year of placement.

F. Review Teams:

The review team (\$20,351) will conduct a case by case review to ensure that our obligations to ASFA are met. This line item will cover the costs of the team members' meals, travel and lodging to conduct this review process.

In conclusion, the budget item most directly associated with youth who have been in foster care for twelve or more months would be the "court costs". The remainder of the budget provides administrative support (background checks, ICAMA and review teams), community based services (family focused services) or new avenues to permanence for children (guardianship services).

Memorandum

To: House Human Services Committee
Rep. Price, Madam Chair

From: Children and Family Services

Date: March 12, 1999

Subject: SB 2171 - ASFA Decreases in Future Years

Why is the fiscal impact of the Adoption and Safe Families Act (ASFA) less in the 2001-03 biennium than in the 1999-01 biennium?

The ASFA impact will be less in 2001-03 than in 1999-01, as Children and Family Services (CFS) expects ASFA to slow the rate of growth in child welfare programs:

1. Children moving from Foster Care to Subsidized Adoption leads to lower costs, since Subsidized Adoption payments are negotiated at an amount slightly lower than Family Home Foster Care (on average) and irregular payments to Subsidized Adoption children are very limited. Overall average monthly costs for Subsidized Adoption children are lower due to these reasons.
2. With ASFA implemented, children will not remain in Foster Care as long or may not enter Foster Care at all due to the following:
 - A. Expanded/enhanced Family Preservation Services will keep children out of Foster Care and will return some children home sooner.
 - B. Guardianship, as an alternative, will decrease costs as children will be moved from Foster Care to guardianship at a significantly lower monthly cost than Family Home Foster Care.
 - C. The requirement to move toward termination of parental rights increases incentives for parents and social service staff to move quickly toward alternatives to Foster Care.
3. Family Preservation Services will be increased to a greater extent in the 1999-01 biennium than in the 2001-03 biennium.

Children -
Family
Service
Notes

Memorandum

To: House Human Services Committee
Rep. Price, Madam Chair

From: Children and Family Services

Date: March 15, 1999

Subject: SB 2171 - County Expenditures & Revenues

1999-01 Biennium

	County - ASFA	
	<u>Expenditures</u>	<u>Revenues</u>
Court Costs	720,000	720,000
OAR - Parent Aide	868,254	*781,428
OAR - Family Focus	486,444	*437,791
OAR - Family Focus	389,156	*350,233
Adoption Services	95,158	0
Foster Care Services	(106,627)	0
Guardianship Services	(30,161)	0
	<u>2,422,224</u>	<u>2,289,452</u>

* Currently the counties are responsible for 10% of the Family Preservation Services costs.

140 of poverty / 100, 75 & 50% of Utilization New Numbers / With and Without Dental & Optometric

Cost Per Year	100% Participation				75% Participation				50% Participation			
	1999	\$1,000	Projected Costs Without Dental & Optometric Start 10-1-99	Projected Costs With Dental & Optometric Start 10-1-99	1999	\$1,000	Projected Costs Without Dental & Optometric Start 10-1-99	Projected Costs With Dental & Optometric Start 10-1-99	1999	\$1,000	Projected Costs Without Dental & Optometric Start 10-1-99	Projected Costs With Dental & Optometric Start 10-1-99
			3,778	3,778			2,834	2,834			1,889	1,889
	2000	\$1,050	2,833,500	3,400,200 &	2000	\$1,050	2,125,500	2,550,600 &	2000	\$1,050	1,416,750	1,700,100 &
			3,966,900	4,760,280			2,975,700	3,570,840			1,983,450	2,380,140
			\$1,200	\$1,260			\$1,200	\$1,260			\$1,200	\$1,260
	Subtotal		6,800,400	8,160,480	Subtotal		5,101,200	6,121,440	Subtotal		3,400,200	4,080,240
Less Co-payment & Deductibles												
Number of Prescriptions @ \$2	26,446		(46,281)*	(46,281)*	19,838		(34,717)*	(34,717)*	13,223		(23,140)*	(23,140)*
Number of Emergency Room Visits @ \$5	2,078		(9,091)*	(9,091)*	1,559		(6,819)*	(6,819)*	1,039		(4,545)*	(4,545)*
Number of Inpatient Hospital Stays @ \$50	907		(39,669)*	(39,669)*	680		(29,757)*	(29,757)*	453		(19,835)*	(19,835)*
	Subtotal		(95,040)	(95,040)	Subtotal		(71,293)	(71,293)	Subtotal		(47,520)	(47,520)
	Total		6,705,360	8,065,440	Total		5,029,907	6,050,147	Total		3,352,680	4,032,720
Administration @ 10%			670,536	806,544			502,991	605,015			335,268	403,272
	Total		7,375,896	8,871,984	Total		5,532,898	6,655,162	Total		3,687,948	4,435,992
Federal			5,824,007	7,005,318			4,368,776	5,254,916			2,912,004	3,502,659
General Fund			1,551,888	1,866,665			1,164,122	1,400,246			775,944	933,333
			7,375,895	8,871,983			5,532,898	6,655,162			3,687,948	4,435,992

& 3/4 of yearly total.
 * 7/8 of biennial cost total.

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
 FOSTER CARE (INCLUDING SUBSIDIZED ADOPTION)
DESCRIPTIVE CHARACTERISTICS AND UNDUPLICATED COUNTS OF CHILDREN
 BY ADMINISTRATIVE COUNTY
 FISCAL YEAR 1998

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COUNTY	TOT UNDUP # OF CHILDREN	TOT TIME IN CARE (MONTHS)	AVG TIME IN CARE (MONTHS)	SEX		RACE			AGE				MATCH SYMBOL	
				MALE	FEMALE	WHITE	INDIAN	OTHER	0-4	5-12	13-18	19+	FEDERAL MATCH	REGULAR
ADAMS	3	19.6	6.5	2	1	3	0	0	0	1	2	0	0	3
BARNES	35	253.8	7.3	22	13	23	0	3	13	9	13	0	20	15
BBNSON	56	1,727.4	30.8	32	24	1	55	0	7	32	17	0	54	2
BILLINGS	3	7.6	2.5	2	1	3	0	0	0	0	3	0	0	3
BOTTINEAU	11	262.8	23.9	8	3	9	2	0	0	2	9	0	4	7
BOWMAN	3	19.0	6.3	3	0	3	0	0	0	0	3	0	0	3
BURKE	1	13.0	13.0	0	1	1	0	0	0	0	1	0	0	1
BURLEIGH	202	2,732.7	13.5	102	100	125	74	3	22	62	117	1	90	112
CASS	307	5,920.7	19.3	153	154	233	53	21	61	103	141	2	95	212
CAVALIER	3	100.5	33.5	2	1	3	0	0	0	0	3	0	1	2
DICKEY	8	192.7	24.1	4	4	8	0	0	0	0	7	1	1	7
DIVIDE	4	22.7	5.7	1	3	4	0	0	1	0	3	0	2	2
DUNN	17	260.1	15.3	6	11	4	13	0	0	13	4	0	11	6
EDDY	2	24.8	12.4	1	1	2	0	0	0	0	2	0	1	1
EMMONS	5	221.2	44.2	3	2	4	1	0	0	2	3	0	1	4
FOSTER	3	22.6	7.5	2	1	3	0	0	0	0	3	0	0	3
GOLDEN VALLEY	7	152.6	21.8	4	3	7	0	0	0	0	6	1	0	7
GRAND FORKS	146	1,894.5	13.0	89	57	117	17	12	29	41	76	0	77	69
GRANT	0	0.0	0.0	0	0	0	0	0	0	0	0	0	0	0
GRIGGS	7	28.0	4.0	6	1	7	0	0	2	1	4	0	1	6
HETTINGER	3	20.2	6.7	1	2	2	1	0	0	0	2	1	1	2
KIDDER	3	22.7	7.6	3	0	3	0	0	0	0	3	0	1	2
LAMOURE	5	71.7	14.3	4	1	5	0	0	0	0	5	0	1	4
LOGAN	0	0.0	0.0	0	0	0	0	0	0	0	0	0	0	0
MCHENRY	10	71.3	7.1	5	5	10	0	0	1	2	7	0	4	6
MCINTOSH	1	13.0	13.0	1	0	1	0	0	0	0	1	0	0	1
MCKENZIE	25	422.3	16.9	13	12	2	22	1	5	7	13	0	19	6
MCLEAN	24	686.1	28.6	16	8	13	11	0	0	6	18	0	13	11
MERCER	10	74.4	7.4	7	3	8	1	1	0	1	9	0	1	9
MORTON	80	896.8	11.2	44	36	63	16	1	20	10	49	1	30	50
MOUNTRAIL	26	825.8	31.8	12	14	8	17	1	2	9	15	0	17	9
NELSON	8	35.9	4.5	2	6	6	2	0	0	0	8	0	4	4
OLIVER	2	11.1	5.6	1	1	2	0	0	0	0	2	0	1	1
PEMBINA	9	88.3	9.8	5	4	5	2	2	2	2	5	0	5	4
PIERCE	9	71.2	7.9	5	4	6	3	0	1	1	7	0	3	6
RAMSEY	47	622.9	13.3	26	21	13	33	1	5	16	26	0	25	22
RANSOM	2	28.5	14.3	2	0	2	0	0	0	0	2	0	0	2
RENVILLE	1	19.3	19.3	0	1	1	0	0	0	0	1	0	0	1
RICHLAND	49	852.1	17.4	26	23	45	3	1	4	13	31	1	13	36
ROLETTE	147	3,380.4	23.0	74	73	7	140	0	28	76	43	0	136	11
SARGENT	1	12.7	12.7	1	0	1	0	0	0	0	1	0	1	0
SHERIDAN	2	24.1	12.1	2	0	2	0	0	0	0	2	0	1	1
SIOUX	33	340.5	10.3	19	14	0	33	0	3	10	20	0	31	2
SLOPE	1	4.9	0.0	1	0	1	0	0	0	0	1	0	0	1
STARK	83	913.3	11.0	55	28	60	22	1	13	17	53	0	33	50
STEELE	2	10.0	5.0	1	1	2	0	0	0	0	2	0	1	1
STUTSMAN	48	620.7	12.9	30	18	46	1	1	4	9	35	0	20	28
TOWNER	6	79.7	13.3	4	2	4	2	0	1	0	5	0	1	5
TRALL	9	46.7	5.2	8	1	7	2	0	1	0	8	0	0	9
WALSH	29	260.6	9.0	13	16	23	0	6	5	6	18	0	14	15
WARD	156	1,499.5	9.6	86	70	111	35	10	33	33	89	1	50	106
WELLS	4	81.9	20.5	3	1	3	1	0	1	0	3	0	4	0
WILLIAMS	70	784.9	11.2	36	34	53	16	1	7	11	52	0	27	43
TOTALS	1,728	26,769.8	15.5	948	780	1,084	578	66	271	495	953	9	815	913

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Memorandum

To: House Human Services Committee
Rep. Price, Madam Chair

From: Children and Family Services

Date: March 15, 1999

Subject: SB 2171 - County Expenditures & Revenues

Grants

<i>With ASFA</i>	<u>Total Costs</u>	<u>Federal</u>	<u>General</u>	<u>County</u>	<u>Other</u>
Adoption	772,927	343,623	334,146	95,158	0
Foster Care	<u>(895,568)</u>	<u>(411,642)</u>	<u>(377,299)</u>	<u>(106,627)</u>	<u>0</u>
	(122,641)	(68,019)	(43,153)	(11,469)	0
<i>With Guardianship</i>					
Foster Care	(235,193)	(100,329)	(104,703)	(30,161)	0
Guardianship	<u>168,660</u>	<u>0</u>	<u>168,660</u>	<u>0</u>	<u>0</u>
	(66,533)	(100,329)	63,957	(30,161)	0

Court Costs

Defense Costs:	
\$65 per hour X 40 hours X 110 cases	286,000
Prosecution Costs:	
\$65 per hour X 60 hours X 110 cases	429,000
Special Witness Costs	<u>5,000</u>
	720,000

Memorandum

To: Human Resources Appropriations Committee
Rep. Svedjan, Chairman

From: Children and Family Services

Date: March 18, 1999

Subject: Child Protection Assessment Outcomes

For the calendar year ending December 31, 1997 there was 4,165 full assessment child abuse and neglect reports filed.

There are 3 decisions on services that can be made. There are as follows:

1. Services Required.

The risk assessment summary identifies a high level of risk for the child(ren) and / or family needs are such that immediate service is required. This decision reflects the belief that a child is abused or neglected as defined in NDCC 50-25.1.

Calendar Year 1997: 561 Reports

No Services Required.

This is a decision that reflects the belief that the child is not abused or neglected as defined in NDCC 50-25.1. However, the risk assessment could show the family may benefit from services recommended.

2. Services Recommended.

The risk assessment summary identifies a low to intermediate risk level for the child(ren) and the family has service needs, but court action will not be required at the time of the decision.

Calendar Year 1997: 2,480 Reports

3. No Services Recommended.

1) The risk assessment summary identifies no to low risk for the child(ren); and / or 2) the Child Protection Service Team suggests discussion with the family on the availability of services, which are unrelated to any specific risk factors, or; 3) the risk assessment summary indicates the family's service need is non-existent.

Calendar Year 1997: 1,124 Reports

Memorandum

To: Human Resources Appropriations Committee
Rep. Svedjan, Chairman

From: Children and Family Services

Date: March 18, 1999

Subject: Children Count for the Next Biennium

X Parent Aide

A total of 1,334 children were served by 34 parent aides in fiscal year 1998. Adding 18 FTE's more in the next biennium would allow for an additional 702 children per fiscal year, or 1,404 children per biennium, to be served.

X Family Focus

A total of 282 children were served by 14 family focus social workers in fiscal year 1998. Adding 5 more FTE's in the next biennium would allow for an additional 100 children per fiscal year, or 200 children per biennium, to be served.

X Foster Care - Residential Child Care Facilities / Group Homes

The Department is projecting a monthly average increase of 19 children for the fiscal year 2000 and 13 for the fiscal year 2001.

X Foster Care - Family Homes

The Department is projecting a monthly average decrease of 18 children for the fiscal year 2000 and 34 for the fiscal year 2001. Essentially, the decrease is due to the implementation of the Adoption and Safe Families Act (ASFA).

The total effect on Foster Care is a monthly average net increase of 1 for the fiscal year 2000 and a decrease of 21 for the fiscal year 2001.

X Subsidized Adoption

The Department is projecting an increase, on a monthly basis, of 81 children for the fiscal year 2000 and 71 for the fiscal year 2001.

**North Dakota Department of Human Services
1999-01 Budget
Children and Family Services - Early Childhood Services**

	1997-99 Budget	Spent (As of 12/31/98)	Projection (1)	1999-01 Budget
Early Childhood Resource & Referrals	225,463	137,000	218,963	225,463
Funding				
General	56,366	61,229	81,720	56,366
Federal	169,097	75,771	137,243	169,097
Early Childhood				2,440,074
Administration	135,480	121,527	135,480	
Child Care Resource & Referrals				
Regional staff / Child Care Issues				
Healthy Child Care Project				
School Age Child Care Conferences				
Mentor Program				
Subtotal	875,592	638,054	1,056,076	
Licensing Inspections / Co. Reimb.	418,243	295,549	418,243	
Consumer Education	95,850	95,850	95,850	
Infant / Toddler Project	12,888	8,544	12,888	
Child Care Mini Grants	33,783	26,547	33,783	
Subtotal	560,763	426,491	560,764	
Total	1,571,835	1,186,072	1,752,320	2,440,074
Funding				
General	0	0	0	665,312
Federal	1,571,835	1,186,072	1,752,320	1,774,762

(1) Current projection exceeds budget but CFS as a whole will still be within their 1997-99 budget request.

Reimbursement to Counties for 50% of their licensing inspections costs: according to NDCC 50-11.1-04, the County Social Services has the responsibility for the licensure inspection.

Regional staff who issue child care licenses: according to NDCC 50-11.1-02(9) and 50-11.1-08, the Department has the responsibility to issue the license and to make rules and regulations for child care licensure. The regional staff review the licensing studies conducted by the counties and make determinations regarding issuance of license.

Consumer education - federal requirement: information provided to parents to assist them in finding and selecting child care for their children.

Child Care Resource and Referral Services- aside, from the core services (outlined in Century Code 50-11.1) which is providing assistance to families in finding child care, Child Care Resource and Referral has developed a training delivery system for child care providers. As a result, Child Care Resource and Referral administers:

- The Mentor Program matches experienced child care providers with newly licensed providers and offers six monthly training sessions for all participants for the purposes of retention.
- The Infant / Toddler Project is a state-wide training project designed to train those professionals working with the smallest of North Dakota's children.
- Child Care Mini Grants are offered to licensed child care providers to purchase developmentally appropriate equipment for their businesses.
- Healthy Child Care Project makes available nurse consultants to child care providers.

North Dakota Department of Human Services

Foster Care Scenarios for 1999-01 Biennium Budget per House Human Resources
Appropriation Committee Requests

Residential Child Care Facility/Group Home Scenarios with Family Home Increase at 2.7%

Increase Scenario	Total	Federal	State	County	Other
5.4%	32,369,329	17,152,371	7,466,252	5,242,481	2,508,225
5.0%	32,241,021	17,125,887	7,389,319	5,217,590	2,508,225
Change from 5.4%	(128,308)	(26,484)	(76,933)	(24,891)	0
4.5%	32,081,016	17,092,847	7,293,397	5,186,547	2,508,225
Change from 5.4%	(288,313)	(59,524)	(172,855)	(55,934)	0
4.0%	31,921,453	17,059,901	7,197,737	5,155,590	2,508,225
Change from 5.4%	(447,876)	(92,470)	(268,515)	(86,891)	0

Family Home Scenarios with Residential Child Care Facility/Group Home Increase at 5.4%

Increase Scenario	Total	Federal	State	County	Other
2.7%	32,369,329	17,152,371	7,466,252	5,242,481	2,508,225
2.5%	32,347,457	17,143,142	7,456,446	5,239,644	2,508,225
Change from 2.7%	(21,872)	(9,229)	(9,806)	(2,837)	0
2.25%	32,320,189	17,131,600	7,444,242	5,236,122	2,508,225
Change from 2.7%	(49,140)	(20,771)	(22,010)	(6,359)	0
2.0%	32,292,865	17,120,035	7,432,019	5,232,586	2,508,225
Change from 2.7%	(76,464)	(32,336)	(34,233)	(9,895)	0

Subsidized Adoption Scenarios

Increase Scenario	Total	Federal	State	County	Other
2.7%	4,581,083	2,257,820	1,779,511	543,752	0
2.5%	4,567,277	2,251,008	1,774,153	542,116	0
Change from 2.7%	(13,806)	(6,812)	(5,358)	(1,636)	0
2.25%	4,550,055	2,242,506	1,767,471	540,078	0
Change from 2.7%	(31,028)	(15,314)	(12,040)	(3,674)	0
2.0%	4,532,806	2,233,997	1,760,774	538,035	0
Change from 2.7%	(48,277)	(23,823)	(18,737)	(5,717)	0

Costs of In-State and Out-of State Foster Care Placements Group/Residential Child Care Facilities

- **The total cost per child for foster care placement in a group or residential facility is a combination of the daily service rate and the daily maintenance rate and irregular payments (clothing, etc.).**
- **The composite daily rate for North Dakota facilities ranges from \$76.26 to \$129.93. This would yield an annual cost ranging from \$27,835 to \$47,424.**
- **The composite daily rate for out-of-state facilities ranges from \$67.00 to \$240.00. This would yield an annual cost ranging from \$24,455 to \$87,600.**
- **Out-of-state placements are made when in-state resources are exhausted. Most often these placements occur at the higher end of the cost continuum.**
- **North Dakota also operates a level of group treatment for children called Residential Treatment Facilities. This is a more intense treatment for children with emotional disorders. The composite daily rates in these facilities ranges from \$173.10 to \$238.31. This would yield an annual cost ranging from \$63,181 to \$86,983.**
- **The goal of the family centered services piloted through the Partnership project is to prevent or reduce the length of stay in high cost placements whenever possible, through providing a comprehensive array of supports to the child and the family in the community.**

Foster Care Maintenance/Service Payments
Group/Residential Child Care Facilities
As of 9/1/98

<u>Facility</u>	<u>Rate*</u> <u>Date</u>	<u>Current</u> <u>Daily Service</u>	<u>Maintenance</u> <u>Monthly</u>	<u>Daily</u>
Charles Hall	9/1/98	\$9.86	\$2468	81.12
Harmony House	5/1/98	7.91	2079	68.35
HOTR/RRVR	7/1/98	9.86	2265	74.48
DBR RCCF/Fargo Youth Home	5/1/98	9.86	3652	120.07
Eckert Youth Home	6/1/98	9.86	2300	75.62
PLC	7/1/97	8.33	2108	69.30
Lake Oahe	7/1/98	9.86	2271	74.67
Southwest Key	6/1/98	5.34	3242	106.58

*Last rate adjustment

The Service & Maintenance rate together represent the daily cost per child.

DAILY RATE RANGES* FOR OUT-OF-STATE FACILITIES
November 1998 Care

South Dakota:

Abbot House	\$67
Chamberlain	\$80
Our Home	\$72 - \$156
Woodfield	\$121

Minnesota:

Bar None	\$136 - \$207
Gilfillan	\$161
Leo Hoffman	\$145
Mille Lacs	\$80 - \$194
Northwood	\$67 - \$138
Woodfield	\$125

Colorado:

Cleo Wallace	\$130 - \$240
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*Range: Some facilities offer differing levels of care. The rate is more or less depending on the child's needs and structure of the placement.

**FOSTER CARE MAINTENANCE PAYMENTS
POLICIES AND PROCEDURES**

North Dakota Department
of Human Services Manual

Division 20
Program 600

Service 623
Chapter 05

Residential Treatment Centers

Name of Center	No. of Beds	Effective Date of RTC FC Rate	Monthly Rate	<u>Daily Rate</u>	<u>Daily Rate</u>
				Room & Board (FC*)	Rehabilitation Rate **
Manchester House c/o West Central HSC 600 South 2nd Street Bismarck, ND 58504	10	01-01-98	\$1806	\$59.36	\$178.95
Ruth Meiers RTC c/o Northeast HSC 1407 24th Avenue S. Grand Forks, ND 58201	10	02-25-98	1693	55.67	117.43
Luther Hall Box 389 Fargo, ND 58107	16	01-01-98	1322	43.45	189.09
Dakota Boys Ranch Assn. P.O. Box 5007 Minot, ND 58702	16	05-01-98	1901	62.51	146.55 (1-1-98)
Southwest Key RTC**** 1406 2nd Street SW Mandan, ND 58554	16	06-01-98	1479	48.62	179.33 (6-1-98)

*****RTC**

- * Amount of RTC rate charged to Foster Care, provided that child is foster care eligible, and all permanency planning and other requirements have been followed, and written approval received for RTC placement.
- ** This may be paid through third party, Title XIX, or some other resource. It cannot be paid through foster care.
- *** NOTE: This is RTC rate. This facility has separate rate for RCCF. Foster care reimbursement in the RTC requires specific RTC placement approval by regional supervisor.
- **** Effective 6-1-98, Southwest Key ARTC changed to RTC. The maintenance rate quoted applies only to children eligible for Foster Care payments.

**TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
REGARDING SENATE BILL NO. 2171
January 25, 1999**

Blaine Nordwall

Chairman Thane and members of the Senate Human Services Committee, my name is Blaine Nordwall. I appear on behalf of the North Dakota Department of Human Services. The department requested the introduction of Senate Bill 2171 to implement the requirements of a federal law, the Adoption and Safe Families Act of 1997 (ASFA). The department has also prepared some amendments to this bill which I will describe during my testimony. The department requests your consideration and urges the committee recommend a "do pass" as amended.

My written testimony has five attachments. They are:

- **ATTACHMENT 1:** a matrix identifying the North Dakota law affected by each section of the bill, any federal requirement the bill section is based upon, and brief comments about that section.
- **ATTACHMENT 2:** a bill analysis of ASFA (Public Law 105-89), prepared by staff of the National Conference on State Legislatures.
- **ATTACHMENT 3:** a compilation of Titles IV-B and IV-E of the Social Security Act that reflects the ASFA changes by overstriking language removed and highlighting language added.
- **ATTACHMENT 4:** a copy of a draft internal memo of the United States Department of Justice relating to federal criminal history record investigations (first acquired January 19, 1999).

- **ATTACHMENT 5: proposed amendments to Senate Bill No. 2171.**

ASFA was effective on November 19, 1997, but a delay was permitted if state legislation was required for its implementation. Section 501 of ASFA requires states to comply as of "the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act." In North Dakota, that day is July 1, 1999, assuming this Legislative Assembly does not adjourn sine die before April 1. That built-in delay has provided us with an opportunity to review the efforts of other states that have already been obliged to implement ASFA. It has also allowed us to consider proposed implementing regulations issued by the United States Department of Health and Human Services on September 18, 1998. However, the bill you see before you is not derived from some other state's approach. This is a North Dakota approach.

Any time I attempt to describe a lengthy and complicated bill, I try to be mindful that you have only hours to learn about and understand something that others may have spent months with. I tried to think how best to convey the elements of this bill so as not to cause confusion or impede your understanding. I believe we may be best served by separately addressing the six general areas covered in the bill:

1. **Increasing the pace of providing services to children (Sections 6, 8, and 16);**
2. **Altering termination of parental rights process (Sections 10 and 11);**
3. **Facilitating adoption (Sections 14, 18, 24, 25, and 26);**
4. **Facilitating guardianship and other planned permanent living arrangements for children (Sections 4, 7, 8, 12, 13, 14, 15, and 24);**

5. Expanding criminal records investigation (Sections 1, 2, 21, 23, and 24); and
6. Supporting program administration (Sections 5, 9, 17, 18, 19, and 20).

This approach requires six quick trips through parts of the bill, but I believe that is superior to attempting to describe the interaction of related but widely separated provisions while on one long trip through the bill.

As I touch upon each provision, I will attempt to identify language that is specifically required by federal law, language that clarifies or effectively modifies federal law, and language that was designed to limit potentially adverse consequences of some aspects of the federal law.

We are not before you today to tell you the feds are making us do this. Virtually all of the changes required by ASFA are sound policy. They are focused on avoiding long-term foster care placements and assuring safety for children. Federal law facilitates adoptions and guardianships or other planned permanent living arrangements for those children whose adoption is not a viable option. We initially were concerned that the federal law might force attempts to terminate parental rights in cases that we knew to be inappropriate. However, we had no difficulty in drafting legislation to avoid inappropriate terminations of parental rights. The work group that developed this bill came to see this as an opportunity to help and protect children and to build families. While the initial nudge came from Congress, we see this as an opportunity to improve the way government addresses the needs of troubled families.

With that, I would like to describe the bill.

- INCREASING THE PACE OF PROVIDING SERVICES TO CHILDREN -

(Sections 6, 8, and 16)

Section 6 (page 7, line 4). Before ASFA, states were required to make "reasonable efforts" to prevent the breakup of a family or to reunify a family with a child in foster care. Section 6 redefines reasonable efforts to require that child's health and safety must be the paramount concern. Section 6 also identifies, in subsection 4, the circumstances in which reasonable efforts to preserve and reunify families are not required. These circumstances arise if a court has determined the parent has subjected the child to "aggravated circumstances" or if the parental rights with respect to another child of the parent have already involuntarily terminated.

Federal law identifies some aggravated circumstances and authorizes the state to identify others. The definition of "aggravated circumstances" is in section 3, beginning on page 2, line 20, and is primarily derived from federal law. The aggravated circumstances described in federal law include subjecting the child to abandonment, torture, chronic abuse, and sexual abuse. They also include circumstances where a parent has murdered or committed voluntary manslaughter with respect to another child of the parent; aided, abetted, attempted, conspired, or solicited to commit a murder or a voluntary manslaughter of another child; or committed a felony assault that resulted in serious bodily injury of any child of the parent. Those provisions are included in subdivisions a, c, d, and e of subsection 3 of Section 3 of the bill. Subdivision a involves abandonment. The bill provides a definition of abandonment that is primarily derived from existing North Dakota law. One item is new. At page 2, line 13, abandonment includes leaving a child in a hospital for ten days after hospital care is no longer required. Subdivisions c, d, and e describe criminal conduct involving sex offenses against children, homicides, assaults producing serious bodily injury, and assaults on children. We

also propose an amendment, on page 2, line 21, to specifically identify torture, chronic abuse, and sexual abuse as aggravated circumstances. These were omitted from the introduced bill by oversight.

The work group described two additional "aggravated circumstances" at subdivisions b and f. Subdivision b cases reflect a parent's failure to make substantial meaningful efforts to secure treatment for addiction, mental illness, behavior disorder, or a combination, for a period equal to the lesser of one year or one-half of the child's lifetime. This concerns parents who make no efforts to address the identified problems that prevent their reunification with their children. Subdivision f cases are parents incarcerated under a sentence for which the latest release date is after the child's majority in a case of a child age nine or older, or twice the current age of a younger child. This concerns parents who, by their conduct, have effectively prevented reunification.

While "aggravated circumstances" excuse reasonable efforts, they do not prevent an agency from making reasonable efforts if reunification is consistent with the child's health and safety.

Finally, Section 6 allows reasonable efforts to take place concurrently with other permanent plans for the child. Formerly, many thought it was legally impossible to begin any other permanency plans for the child until all "reasonable efforts" had been exhausted. Under concurrent planning, agencies can immediately go to a "plan B" if efforts at reunification fail. This is far superior to the common practice of making no alternative plans until reunification fails.

Section 6 is derived from federal law, except for the definition of "reasonable efforts" found in subsection 1. Perhaps the most important state contribution to the definition is the requirement that the agency "use appropriate and available services to meet the needs of the child and the child's family." We do not intend

this law to allow individuals to insist on the creation and delivery of currently unavailable services. That possibility would have grave fiscal consequences, particularly for county social service offices.

Section 8 (page 9, line 11) adjusts the period of time for review of cases in which a child has entered foster care. The federal law uses the term "permanency hearing" to describe these required annual reviews. Such reviews were formerly required only every 18 months. The federal requirements for a permanency hearing are included in a definition in section 3 at page 4, line 20.

The permanency hearing would typically be carried out by the court. However, if a child is in the custody of the Division of Juvenile Services, that division could conduct a permanency hearing unless to do so would exceed the authority of the Division of Juvenile Services or unless the juvenile court preferred to conduct the permanency hearing.

All aspects of the amendments to Section 8 are derived directly from federal requirements.

Section 16 (page 19, line 15) specifically authorizes the Division of Juvenile Services to conduct the permanency hearings required in Section 8.

- ALTERING TERMINATION OF PARENTAL RIGHTS PROCESS -

(Sections 10 and 11)

ASFA appears to require us to automatically proceed to termination of parental rights if a child has been in foster care for 15 of the most recent 22 months. This was of particular concern because many older children under the jurisdiction of the Division of Juvenile Services are maintained in foster care. However, a close

reading of ASFA reveals the possibility of creating state law exceptions. This bill creates exceptions tailored to North Dakota practices. As a consequence, we believe that North Dakota can comply with ASFA in a manner that would not greatly alter the types or circumstances of cases appropriate for termination of parental rights.

Section 10 (page 12, line 8) describes specific circumstances in which the juvenile court would be authorized to terminate parental rights. These provisions are based on the federal requirements for commencing termination of parental rights actions. The only deviation from federal requirements is the use of the phrase "four hundred fifty out of the previous six hundred sixty nights" in lieu of "fifteen of the most recent twenty-two months." This approach is taken to avoid questions about the effect of partial months on the calculation.

Section 11 (page 13, line 8) describes the same federal requirements, here in the context of what must be in the petition. It also describes the broad North Dakota designed exception. If this approach becomes law, the likely impact is that cases that are candidates for termination of parental rights, under current law, will reach that conclusion more quickly. Cases inappropriate for termination of parental rights under current law will remain inappropriate.

The federally required petition provisions are in subsection 3, beginning on page 13, line 14. The federal exceptions are in subsection 4, beginning on page 14, line 1. Lines 3 through 6, consistent with federal law, provide an exception if there is a documented compelling reason for determining that filing such a petition would not be in the child's best interests. The state-designed definition of "compelling reason," beginning on page 15, line 25, only requires a document that reflects consideration of five factors. The factors include the child's age, the portion of the child's life spent in the household of a parent, the availability of a suitable adoptive home, whether the child has special needs, and the expressed wishes of

a child who is age 10 or older. These factors for consideration can be determined in any case, and would always allow inappropriate terminations to be avoided.

Most of the remainder of Section 11 establishes what days are counted in determining how long the child has been in foster care.

The department's proposed amendments to this bill would remove line 13 on page 13. That line calls for the department to determine if a petition for termination of parental rights is required under Section 11. The state's attorneys have correctly pointed out that those determinations are currently made by state's attorneys. The language was included in the bill due to concerns within the work group about the reluctance of some state's attorneys to proceed in cases where the evidence plainly calls for a termination of parental rights. We are satisfied that this reluctance primarily arises because terminations are rare and most state's attorneys lack experience in the proceedings. As this is more of a training issue than a matter of philosophy, we agreed with the state's attorneys to ask that you remove that language from the bill and substitute a provision in Section 18 authorizing the department to make training available to state's attorneys and assistance state's attorneys who are willing to collaborate with colleagues in other counties on a petition to terminate parental rights. The goal is to both enhance knowledge and to enhance the spread of knowledge in these matters.

- FACILITATING ADOPTION -
(Sections 14, 18, 24, 25, and 26)

Section 14 (page 18, line 7). Under current law, if parental rights are terminated with respect to a child, and the child is not placed for an adoption within 18 months, the child must be returned to the court. The amendment to subsection 3, beginning on page 18, line 23, reduces that period of time to 12 months.

Section 18 (page 20, line 10) creates four new subsections describing duties of the department.

The first new subsection, at page 20, lines 12 through 14, authorizes the department to approve families who are outside the jurisdiction of the state of North Dakota for placement of children for adoption. This provision actually serves a dual purpose. The language also protects North Dakota from a federal provision that would deprive the state of all funding under Title IV-E of the Social Security Act, if the state denies or even delays the placement of a single child for adoption when an approved family is available outside of the state's jurisdiction. In the unlikely event the federal government ever asserted that North Dakota had denied or delayed an adoptive placement, we could assert that the family is not "approved" until the department provides that approval. We hope never to use this second reason for describing the approval duty. We intend to work with other states to ask Congress to remove such a massive penalty for a potentially minor delay.

Section 24 (page 23, line 19) creates a new chapter to Title 50 that would apply criminal history records investigations and the results of that investigation to adoptive homes. These reports would be reflected in the licensed child-placing agency's adoption recommendation. See Sections 1 and 2 of the bill. Federal law requires procedures for criminal records investigations for prospective adoptive parents unless the state specifically opts otherwise. I'll discuss this section at greater length when touching upon the general expansion of criminal records investigations.

Section 25 (page 25, line 21) creates a new section to the law governing licensed child-placing agencies to require those agencies to include criminal history investigations reviewing applications of prospective adoptive parents. The goal is to protect children's safety by identifying individuals with specific kinds of criminal backgrounds, and limiting their opportunities to become adoptive parents.

Section 26 (page 26, line 30) provides for North Dakota to join the Interstate Compact on Adoption and Medical Assistance. ASFA requires each state, as a part of its adoption and assistance program, to provide for health coverage for all special needs children with an adoption assistance agreement. Federal law does not require this be done by entering into the Interstate Compact on Adoption and Medical Assistance, but that is the way virtually all states have achieved that goal. Under the compact, the family of a child with special needs is free to travel from state to state without fear of loss of medical assistance coverage.

North Dakota law already defines children with special needs and requires that assistance continue regardless of the residence of adopting parents. See N.D.C.C. § 50-09-02.2. However, when a special needs child requires medical care, parents often face great difficulty in finding medical providers who will agree to serve under the medical assistance program of a distant state. Under the compact, such families can rely upon the medical assistance program of the state in which they live. The compact does not in any way diminish the medical assistance benefits available from the state originally entering into the special needs adoption agreement.

Currently, 46 states have adopted or are in the process of adopting this compact. That number virtually assures adoptive families of freedom to travel without concern about a loss of medical benefits. The federal Health Care Financing Administration, which is responsible for administering medical assistance benefits on the federal law, has agreed that these special needs adoption children will be permitted to maintain medical assistance eligibility, both in the state that entered into the special needs adoption agreement and the family's state of residence, if different.

- FACILITATING GUARDIANSHIP AND OTHER PLANNED PERMANENT
LIVING ARRANGEMENTS FOR CHILDREN -
(Sections 4, 7, 8, 12, 13, 14, 15, and 24)

A feature of ASFA is the idea that families can be built in arrangements besides birth families and adoptive families. The federal law recognizes, and this bill proposes, to do this through guardianship proceedings.

Section 4 (page 6, line 6) adds a new subsection to Section 4 giving the juvenile court concurrent jurisdiction with the district court for a proceeding for appointment of a minor. Those juvenile court proceedings would be governed by chapter 27-20, which generally concerns the juvenile court, and chapter 30.1-27, which generally governs minors' guardianships. The approach of using concurrent jurisdiction avoids the need to commence a new guardianship proceeding in district court.

Section 7 (page 8, line 10). This section specifically authorizes a juvenile court to appoint a guardian or establish some other planned permanent living arrangement if a child has been found to be deprived. This allows courts to help children build families without first ordering the child torn away from a birth family. This section, at page 9, line 5, first introduces the concept of appointing a "fit and willing relative or other appropriate individual" as guardian. That phrase is defined in Section 2 (page 4, line 14) to incorporate the existing guardianship requirements under chapter 30.1-27 and to provide for an assessment. The term "relative" is also given a very broad definition (page 5, line 13).

Section 8 (page 9, line 11). As already discussed, this section primarily addresses the requirement for permanency hearings to be conducted every 12 months. It also includes an amendment, on page 9, line 14, providing that legal guardianships are without limit as to duration. Guardianships would be self-sustaining until terminated by court order or by the child reaching adulthood.

Section 12 (page 16, line 4). Amendments in this section allow for a permanent alteration of parental rights short of termination. An appropriate example might concern an older child whose parents have conducted themselves in a way that would make termination of parental rights appropriate, but where the child has little chance of adoption. Typically, even if parental rights were to be terminated, the child and the parent would resume a relationship upon the child reaching adulthood. It may be necessary, for the child's health and safety, to separate the child from the parents, but it is inappropriate to pursue a termination of parental rights with respect to a child who has no prospect of adoption. This change would allow a middle road.

Section 13 (page 17, line 25) describes the effect of an order permanently altering parental rights. The judge could decide what rights a parent might retain, but a parent would always be entitled to be treated as a party in any subsequent juvenile court proceeding.

Section 14 (page 18, line 7) is amended to permit a court to appoint a guardian or establish some other planned permanent living arrangement in cases of termination of parental rights. While adoption is always the first choice if parental rights have been terminated with respect to a child, this amendment specifically recognizes and provides for other possibilities for building a family.

Section 15 (page 18, line 28) complements Section 14 by authorizing a court to take the same actions under existing guardianship laws (chapter 30.1-27).

Section 24 (page 23, line 19) provides for assessments of guardians that include the results of a criminal history record investigation. Federal law requires such investigations for foster parents and adoptive parents, and forbids approval if certain crimes are revealed. This section requires the same background check for prospective guardians. However, rather than automatically disqualifying individuals with specific criminal backgrounds, the report of a criminal history

record investigation would be reported to the court as a part of the assessment. The court would then determine if any criminal history made appointment of a guardian inappropriate.

- EXPANDING CRIMINAL RECORDS INVESTIGATION -

(Sections 1, 2, 21, 23, and 24)

The federal law, at 42 U.S.C. § 671(a)(20), provides that a state must adopt procedures for criminal records checks for any perspective foster parent or adoptive parent before final approval of foster care payments or adoption assistance payments. The federal law also identifies specific kinds of criminal violations that preclude or limit qualification as a foster parent or adoptive parent. Finally, the federal law specifically authorizes a state legislature or state governor to elect to make those requirements inapplicable to the state.

Mixed with this issue is the process by which the federal Bureau of Investigation uses fingerprints to identify individuals before undertaking national criminal history record investigations. The FBI has been reluctant to accommodate non-law enforcement requests for criminal history record investigations unless it is absolutely required to do so. The FBI has refused to assist in these criminal history record investigations except to the extent that a state has, in place, a statute that unambiguously requires the use of fingerprints. Congress recently addressed that problem, but it is yet unclear exactly how the FBI will apply new congressional requirements. ATTACHMENT 4 is a copy of a draft Internal Justice Department memorandum, secured only on January 19, 1999. That draft memorandum reflects an apparent expectation that states with "required" fingerprinting must continue those requirements. North Dakota already required fingerprinting of foster care facility staff, but did not have a requirement in place with respect to foster family members, guardians, and adoptive family members.

The bill, as introduced, was based on the assumption the FBI would continue to insist that these national record checks are only available if state statute required fingerprinting. We have prepared amendments that would allow some exceptions by statute, and would also allow additional exceptions to be created by rule.

We prefer using fingerprints and also seek exceptions because fingerprint identification is our only avenue to national criminal history records, but the FBI response time (typically three to six weeks) has real potential to delay placements. We also believe the legislature can elect to apply the procedures for criminal record checks for some situations and to avoid them for other situations. Accordingly, the bill provides that currently licensed foster families would not have to undergo criminal history record checks.

Section 1 (page 1, line 12) amends the Uniform Adoption Act to require the child-placing agencies' report to include a criminal history record investigation.

Section 2 (page 1, line 18) similarly requires the assessment provided to the court in identified adoption cases to include a criminal history record.

Section 21 (page 21, line 18) amends current law requiring criminal history record investigations for foster care facilities in order to identify exceptions.

We also proposed an amendment at page 21, lines 26, 27, and 28, to remove the reference to the National Child Protection Act of 1993 and substitute a reference to "federal law." The FBI has identified three public laws that impact on its responses to these requests.

Section 22 (page 22, line 21) identifies the circumstances in which a criminal history record investigation would be undertaken without fingerprinting. These investigations would be based solely upon North Dakota records. As introduced,

the exception would be available only to long-term North Dakota residents. However, the proposed amendments would extend that exception to persons on active United States military duty or persons who have resided continuously in North Dakota since receiving an honorable discharge and to persons excused from providing fingerprints under rules adopted by the department. The first additional exception is proposed because military background checks would preclude any individual convicted of specified crimes from entering or continuing in the military. The second new proposed exception would allow the department to expand exceptions as we become more informed about situations that can be resolved with a North Dakota criminal history record investigation.

Section 23 (page 23, line 15) excepts currently licensed family foster care homes for children from any criminal history record investigation.

Section 24 (page 23, line 19) creates a new chapter to Title 50 with two sections. The first section describes the manner of securing criminal history records for legal guardians. We propose amendments similar to those proposed for Sections 21 and 22.

The second section describes the effect of the results of that investigation. In developing this section, we attempted to combine the requirements of the federal law with North Dakota law.

The list of crimes that absolutely preclude an individual from becoming a foster parent or an adoptive parent are found at subsection 1 (beginning page 24, line 29) and are identical to the federal requirements, with one exception. The federal law requires a felony conviction of spouse abuse. North Dakota law uses the broader term, "domestic violence," and thus includes individuals who are not married to each other.

Federal law also identifies certain crimes that preclude an individual from becoming a foster parent or an adoptive parent for five years after conviction. Those crimes are identified in subsection 2 (beginning on page 25, line 6). An additional provision not included in the federal law, beginning at line 10, adds attempts, facilitations, solicitations, or conspiracies to commit the conduct described in subsection 1. Under existing North Dakota law, attempts, facilitations, solicitations, or conspiracies are as serious as the predicate crime.

Existing North Dakota law concerning the rights of convicts, at chapter 12.1-33, requires convicts seeking licensure under state law to bear the burden of showing rehabilitation for five years after the conclusion of any term of incarceration or probation, parole, or community corrections. After that time, the burden falls to anyone who would deny a license to show the individual is not sufficiently rehabilitated. Subsections 3 and 4 (beginning at page 25, line 12) incorporate that approach.

We believe that this process will not only identify individuals convicted of the felonies described in the federal law, but will also alert courts and placing agencies of other convictions that may bear on an individual's fitness to serve as a foster parent or as an adoptive parent. At the same time, individuals with criminal records will have an opportunity to demonstrate rehabilitation.

Section 25 (page 25, line 21) creates a new section to the chapter on licensed child-placing agencies. This describes the process by which these agencies would secure necessary criminal history records. The licensed child-placing agencies would follow the standards set forth in Section 24, and would report the results in the reports described in Sections 1 and 2. Again, we propose amendments similar to those proposed for Sections 21 and 22.

- SUPPORTING PROGRAM ADMINISTRATION -

(Sections 5, 9, 17, 18, 19, and 20)

Section 5 (page 6, line 28) would require the state's attorney to prepare petitions and present evidence in juvenile court matters without a specific request from the court. Currently, state's attorneys present evidence, but do not always prepare the petitions. In some areas of the state, petitions are prepared by non-law-trained individuals. We believe the state's attorney involvement should not depend upon a request from the court, and should begin prior to the date of a hearing.

Section 9 (page 11, line 28) amends the statement of the rights and duties of legal custodians. Legal custodians are typically public or private agencies. It has not always been clear that custodians have the authority to "place" children in the absence of a court order specifically granting that authority. This change would include "placement" in the statutory authority, but would also specifically allow a court to limit the authority of a legal custodian.

Section 17 (page 20, line 4) adds two definitions to chapter 50-09. Chapter 50-09 has historically governed services furnished under Title IV of the Social Security Act. That title originally included only AFDC (now TANF - Title IV-A). However, it has gradually expanded to include federally financed child welfare services (Title IV-B) and federal foster care and adoption assistance (Title IV-E), and has, since 1977, included child support (Title IV-D). Section 17 defines Title IV-B and Title IV-E.

Section 18 (page 20, line 10) creates four subsections describing powers and duties of the department. The first duty I've already mentioned in discussing adoption changes. The remaining three in the bill authorize the agency to act as the official agency under Titles IV-B and IV-E, and also to provide technical assistance on the requirements of Titles IV-B and IV-E to courts, state's attorneys,

and tribal prosecutors. I have already mentioned the proposed amendment that would add a subsection authorizing training to state's attorneys and assistant state's attorneys.

Section 19 (page 20, line 25) adds two subsections to this section describing the powers and duties of county social service offices. The counties have long assumed the described responsibilities. This section would codify existing practice.

Section 20 (page 21, line 3) would also codify existing practices. This new section would authorize the department to submit state plans and take necessary actions under Titles IV-B and IV-E. It also specifically authorizes the department to seek waivers that are authorized by federal law and to apply for additional funds that might be made available under Title IV-B or Title IV-E. The only currently available additional or conditional funds are adoption incentive payments relating to foster child adoptions and special needs adoptions. These are incentives for increasing the numbers of such adoptions. We anticipate the dollars involved would be modest, but want to be prepared for the possibility of more useful federal incentive programs.

That concludes my description of the bill.

Prepared by:

Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services

**TESTIMONY BEFORE THE
SENATE APPROPRIATIONS COMMITTEE
REGARDING ENGROSSED SENATE BILL NO. 2171
February 11, 1999**

Chairman Nething and members of the Senate Appropriations Committee, my name is Blaine Nordwall. I appear on behalf of the North Dakota Department of Human Services in support of Senate Bill 2171.

My written testimony has four attachments. They are:

- **ATTACHMENT 1:** a matrix identifying the North Dakota law affected by each section of the bill, any federal requirement the bill section is based upon, and brief comments about that section.
- **ATTACHMENT 2:** a bill analysis of ASFA (Public Law 105-89), prepared by staff of the National Conference on State Legislatures.
- **ATTACHMENT 3:** a compilation of Titles IV-B and IV-E of the Social Security Act that reflects the ASFA changes by overstriking language removed and highlighting language added.
- **ATTACHMENT 4:** a copy of a draft internal memo of the United States Department of Justice relating to federal criminal history record investigations (first acquired January 19, 1999).

ASFA was effective on November 19, 1997, but a delay was permitted if state legislation was required for its implementation. Section 501 of ASFA requires North Dakota to comply by July 1, 1999, assuming this Legislative Assembly does not adjourn sine die before April 1.

Virtually all of the changes required by ASFA are sound policy. They are focused on avoiding long-term foster care placements and assuring safety for children. The work group that developed this bill came to see this as an opportunity to help and protect children and to build families. While the initial nudge came from Congress, we see this as an opportunity to improve the way government addresses the needs of troubled families.

There are six general areas covered in the bill:

1. Increasing the pace of providing services to children (Sections 6, 8, and 16);
2. Altering termination of parental rights process (Sections 10 and 11);
3. Facilitating adoption (Sections 14, 18, 24, 25, and 26);
4. Facilitating guardianship and other planned permanent living arrangements for children (Sections 4, 7, 8, 12, 13, 14, 15, and 24);
5. Expanding criminal records investigation (Sections 1, 2, 21, 23, and 24); and
6. Supporting program administration (Sections 5, 9, 17, 18, 19, and 20).

- INCREASING THE PACE OF PROVIDING SERVICES TO CHILDREN -
(Sections 6, 8, and 16)

Section 6 (page 7, line 4). Before ASFA, states were required to make "reasonable efforts" to prevent the breakup of a family or to reunify a family with a child in foster care. Section 6 redefines reasonable efforts to require that child's health

and safety must be the paramount concern. Section 6 also identifies the circumstances in which reasonable efforts to preserve and reunify families are not required.

Finally, Section 6 allows reasonable efforts to take place concurrently with other permanent plans for the child. Under concurrent planning, agencies can immediately go to a "plan B" if efforts at reunification fail. This is far superior to the common practice of making no alternative plans until reunification fails.

Section 8 (page 9, line 11) adjusts the period of time for review of cases in which a child has entered foster care from every 18 months to every 12 months. The annual review would be carried out by the court unless a child is in the custody of the Division of Juvenile Services.

Section 16 (page 19, line 16) specifically authorizes the Division of Juvenile Services to conduct the permanency hearings required in Section 8.

- ALTERING TERMINATION OF PARENTAL RIGHTS PROCESS -

(Sections 10 and 11)

Sections 10 and 11 (page 12, line 8) describe specific circumstances in which the juvenile court would be authorized to terminate parental rights. These provisions are based on the federal requirements for commencing termination of parental rights actions. The bill uses the phrase "four hundred fifty out of the previous six hundred sixty nights" instead of "fifteen of the most recent twenty-two months" to avoid questions about the effect of partial months on the calculation.

Section 11 also describes exceptions to bringing termination proceedings and establishes what days are counted in determining how long the child has been in foster care.

- FACILITATING ADOPTION -
(Sections 14, 18, 24, 25, and 26)

Section 14 (page 18, line 8). Under current law, if parental rights are terminated with respect to a child, and the child is not placed for an adoption within 18 months, the child must be returned to the court. The bill reduces that time to 12 months.

Section 18 (page 20, line 10) creates five new subsections describing duties of the department.

The first new subsection authorizes the department to approve families who are outside the jurisdiction of the state of North Dakota for placement of children for adoption. This provision protects North Dakota from a federal provision that could deprive the state of all funding under Title IV-E of the Social Security Act, if the state denies or even delays the placement of a single child for adoption when an approved family is available outside of the state's jurisdiction.

Section 24 (page 23, line 27) creates a new chapter to Title 50 that would apply criminal history records investigations to adoptive homes. Federal law requires procedures for criminal records investigations for prospective adoptive parents unless the state specifically opts otherwise.

Section 25 (page 26, line 7) creates a new section to the law governing licensed child-placing agencies to require those agencies to include criminal history investigations when reviewing applications of prospective adoptive parents.

Section 26 (page 27, line 21) provides for North Dakota to join the Interstate Compact on Adoption and Medical Assistance. ASFA requires each state, as a part of its adoption and assistance program, to provide for health coverage for all

special needs children with an adoption assistance agreement. Federal law does not require this be done by entering into the Interstate Compact on Adoption and Medical Assistance, but that is the way virtually all states have achieved that goal. Under the compact, the family of a child with special needs is free to travel from state to state without fear of loss of medical assistance coverage.

**- FACILITATING GUARDIANSHIP AND OTHER PLANNED PERMANENT
LIVING ARRANGEMENTS FOR CHILDREN -**
(Sections 4, 7, 8, 12, 13, 14, 15, and 24)

A feature of ASFA is the idea that families can be created through arrangements besides birth families and adoptive families. The federal law recognizes, and this bill proposes, to do this through guardianship proceedings.

Section 4 (page 6, line 6) gives the juvenile court concurrent jurisdiction with the district court for a proceeding for appointment of a guardian for a minor. This avoids the need to commence a new guardianship proceeding in district court.

Section 7 (page 8, line 10) authorizes a juvenile court to appoint a guardian or establish some other planned permanent living arrangement if a child has been found to be deprived.

Section 8 (page 9, line 11) primarily addresses the requirement for permanency hearings to be conducted every 12 months. It also provides that legal guardianships are without limit as to duration.

Section 12 (page 16, line 3) removes any responsibility for the state's attorney to act as the parent's counsel in a proceeding to terminate parental rights. State's attorneys invariably have conflicts of interest.

Section 13 (page 17, line 25) describes the effect of an order appointing a legal guardian.

Section 14 (page 18, line 8) would permit a court to appoint a guardian in cases of termination of parental rights.

Section 15 (page 18, line 29) complements Section 14 by authorizing a court to take the same actions under existing guardianship laws (chapter 30.1-27).

Section 24 (page 23, line 27) provides for criminal history record investigations of guardians. Federal law requires such investigations for foster parents and adoptive parents, and forbids approval if certain crimes are revealed. This section requires the same background check for prospective guardians.

- EXPANDING CRIMINAL RECORDS INVESTIGATION -
(Sections 1, 2, 21, 23, and 24)

Federal law, at 42 U.S.C. § 671(a)(20), requires a state to adopt procedures for criminal records checks for any perspective foster parent or adoptive parent. The federal law also identifies specific kinds of criminal violations that preclude or limit qualification as a foster parent or adoptive parent. Finally, the federal law authorizes a state legislature or state governor to elect to make those requirements inapplicable to the state.

Fingerprinting is the only way we can obtain national criminal history records.

We prefer using fingerprints, but the FBI response time (typically three to six weeks) has real potential to delay placements. We also believe the legislature can elect to apply the procedures for criminal record checks for some situations and

to avoid them for other situations. Accordingly, the bill exempts some persons from criminal history record checks and authorizes the department to create other exceptions.

Section 1 (page 1, line 12) amends the Uniform Adoption Act to require the child-placing agencies' report to include a criminal history record investigation.

Section 2 (page 1, line 18) similarly requires the assessment provided to the court in identified adoption cases to include a criminal history record.

Section 21 (page 21, line 20) amends current law requiring criminal history record investigations for foster care facilities in order to identify exceptions.

Section 22 (page 22, line 22) identifies the circumstances in which a criminal history record investigation would be undertaken without fingerprinting. These investigations would be based solely upon North Dakota records.

Section 23 (page 23, line 21) excepts currently licensed family foster care homes for children from any criminal history record investigation.

Section 24 (page 23, line 19) creates a new chapter to Title 50 with two sections. The first section describes the manner of securing criminal history records for legal guardians. The second section describes the effect of the results of that investigation. In developing this section, we attempted to combine the requirements of the federal law with North Dakota law.

The list of crimes that absolutely preclude an individual from becoming a foster parent or an adoptive parent are in subsection 1 (beginning page 25, line 14).

Subsection 2 (page 25, line 22) identifies certain crimes that preclude an individual from becoming a foster parent or an adoptive parent for five years after conviction.

Existing North Dakota law concerning the rights of convicts, at chapter 12.1-33, requires convicts seeking licensure under state law to bear the burden of showing rehabilitation for five years after the conclusion of any term of incarceration or probation, parole, or community corrections. After that time, the burden falls to anyone who would deny a license to show the individual is not sufficiently rehabilitated. Subsections 3 and 4 (beginning at page 25, line 18) incorporate that approach.

Section 25 (page 26, line 7) creates a new section to the chapter on licensed child-placing agencies. This describes the process by which these agencies would get and use necessary criminal history records.

- SUPPORTING PROGRAM ADMINISTRATION -

(Sections 5, 9, 17, 18, 19, and 20)

Section 5 (page 6, line 28) would require the state's attorney to prepare petitions and present evidence in juvenile court matters without a specific request from the court. Currently, state's attorneys present evidence, but do not always prepare the petitions. In some areas of the state, petitions are prepared by non-law-trained individuals.

Section 9 (page 11, line 28) clarifies that legal custodians have the authority to "place" children.

Section 17 (page 20, line 4) defines Title IV-B and Title IV-E for chapter 50-09.

Section 18 (page 20, line 10) creates five subsections describing powers and duties of the department. The first duty I've already mentioned in discussing adoption changes. The remaining four authorize the agency to act as the official agency under Titles IV-B and IV-E, and also to provide technical assistance and training on the requirements of Titles IV-B and IV-E to courts, state's attorneys, and tribal prosecutors.

Section 19 (page 20, line 28) adds two subsections describing the powers and duties of county social service offices. The counties have long assumed the described responsibilities.

Section 20 (page 21, line 5) would also codify existing practices. This new section would authorize the department to submit state plans and take necessary actions under Titles IV-B and IV-E.

That concludes my description of the bill.

Prepared by:

Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services

**TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
REGARDING ENGROSSED SENATE BILL NO. 2171
March 9, 1999**

Chairman Price and members of the House Human Services Committee, my name is Blaine Nordwall. I appear on behalf of the North Dakota Department of Human Services. The department requested the introduction of Senate Bill 2171 to implement the requirements of a federal law, the Adoption and Safe Families Act of 1997 (ASFA). The department requests your consideration and urges the committee recommend a "do pass".

My written testimony has four attachments. They are:

- **ATTACHMENT 1:** a matrix identifying the North Dakota law affected by each section of the bill, any federal requirement the bill section is based upon, and brief comments about that section.
- **ATTACHMENT 2:** a bill analysis of ASFA (Public Law 105-89), prepared by staff of the National Conference on State Legislatures.
- **ATTACHMENT 3:** a compilation of Titles IV-B and IV-E of the Social Security Act that reflects the ASFA changes by overstriking language removed and highlighting language added.
- **ATTACHMENT 4:** a copy of a draft internal memo of the United States Department of Justice relating to federal criminal history record investigations (first acquired January 19, 1999).

ASFA was effective on November 19, 1997, but a delay was permitted if state legislation was required for its implementation. Section 501 of ASFA requires states to comply as of "the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act." In North Dakota, that day is July 1, 1999, assuming this Legislative Assembly does not adjourn sine die before April 1. That built-in delay has provided us with an opportunity to review the efforts of other states that have already been obliged to implement ASFA. It has also allowed us to consider proposed implementing regulations issued by the United States Department of Health and Human Services on September 18, 1998. However, the bill you see before you is not derived from some other state's approach. This is a North Dakota approach.

We are not before you today to tell you the feds are making us do this. Virtually all of the changes required by ASFA are sound policy. They are focused on avoiding long-term foster care placements and assuring safety for children. Federal law facilitates adoptions and guardianships or other planned permanent living arrangements for those children whose adoption is not a viable option. We initially were concerned that the federal law might force attempts to terminate parental rights in cases that we knew to be inappropriate. However, we had no difficulty in drafting legislation to avoid inappropriate terminations of parental rights. The work group that developed this bill came to see this as an opportunity to help and protect children and to build families. While the initial nudge came from Congress, we see this as an opportunity to improve the way government addresses the needs of troubled families.

Any time I attempt to describe a lengthy and complicated bill, I try to be mindful that you have only hours to learn about and understand something that others may have spent months with. I tried to think of how best to convey the elements of this bill so as not to cause confusion or impede your understanding. I believe

we may be best served by separately addressing the six general areas covered in the bill:

- 1. Increasing the pace of providing services to children (Sections 6, 8, and 16);**
- 2. Altering termination of parental rights process (Sections 10 and 11);**
- 3. Facilitating adoption (Sections 14, 18, 24, 25, and 26);**
- 4. Facilitating guardianship and other planned permanent living arrangements for children (Sections 4, 7, 8, 13, 14, 15, and 24);**
- 5. Expanding criminal records investigation (Sections 1, 2, 21, 22, 23, and 24);
and**
- 6. Supporting program administration (Sections 5, 9, 12, 17, 18, 19, and 20).**

This approach requires six quick trips through parts of the bill, but I believe that is superior to attempting to describe the interaction of related but widely separated provisions while on one long trip through the bill.

As I touch upon each provision, I will attempt to identify language that is specifically required by federal law, language that clarifies or effectively modifies federal law, and language that was designed to limit potentially adverse consequences of some aspects of the federal law.

- INCREASING THE PACE OF PROVIDING SERVICES TO CHILDREN -

(Sections 6, 8, and 16)

Section 6 (page 7, line 4). Before ASFA, states were required to make "reasonable efforts" to prevent the breakup of a family or to reunify a family with a child in foster care. Section 6 redefines reasonable efforts to require that child's health and safety must be the paramount concern. Section 6 also identifies, in subsection 4, the circumstances in which reasonable efforts are to preserve and reunify families are not required. These circumstances arise if a court has determined the parent has subjected the child to "aggravated circumstances" or if the parental rights with respect to another child of the parent have already involuntarily terminated.

Federal law identifies some aggravated circumstances and authorizes the state to identify others. The definition of "aggravated circumstances" is in section 3, beginning on page 2, line 20, and is primarily derived from federal law. The aggravated circumstances described in federal law include subjecting the child to abandonment, torture, chronic abuse, and sexual abuse. They also include circumstances where a parent has murdered or committed voluntary manslaughter with respect to another child of the parent; aided, abetted, attempted, conspired, or solicited to commit a murder or a voluntary manslaughter of another child; or committed a felony assault that resulted in serious bodily injury of any child of the parent. Those provisions are included in subdivisions a, c, d, and e of subsection 3 of Section 3 of the bill. Subdivision a involves abandonment. The bill provides a definition of "abandonment" that is primarily derived from existing North Dakota law. One part of that definition is new. At page 2, line 13, abandonment includes leaving a child in a hospital for ten days after hospital care is no longer required. Subdivisions c, d, and e describe criminal conduct involving sex offenses against children, homicides, assaults producing serious bodily injury, and assaults on children.

The work group described two additional "aggravated circumstances" at subdivisions b and f. Subdivision b cases reflect a parent's failure to make substantial meaningful efforts to secure treatment for addiction, mental illness, behavior disorder, or a combination, for a period equal to the lesser of one year or one-half of the child's lifetime. This concerns parents who make no efforts to address the identified problems that prevent their reunification with their children. Subdivision f cases are parents incarcerated under a sentence for which the latest release date is after the child's majority in a case of a child age nine or older, or twice the current age of a younger child. This concerns parents who, by their conduct, have effectively prevented reunification. While "aggravated circumstances" excuse reasonable efforts, they do not prevent an agency from making reasonable efforts if reunification is a consistent with the child's health and safety.

Finally, Section 6 allows reasonable efforts to take place concurrently with other permanent plans for the child. Formerly, many thought it was legally impossible to begin any other permanency plans for the child until all "reasonable efforts" had been exhausted. Under concurrent planning, agencies can immediately go to a "plan B" if efforts at reunification fail. This is far superior to the common practice of making no alternative plans until reunification fails.

Section 6 is derived from federal law, except for the definition of "reasonable efforts" found in subsection 1. Perhaps the most important state contribution to the definition is the requirement that the agency "use appropriate and available services to meet the needs of the child and the child's family." We do not intend this law to allow individuals to insist on the creation and delivery of currently unavailable services. That possibility would have grave fiscal consequences, particularly for county social service offices.

Section 8 (page 9, line 11) adjusts the period of time for review of cases in which a child has entered foster care. The federal law uses the term "permanency hearing" to describe these required annual reviews. Such reviews were formerly required only every 18 months. The federal requirements for a permanency hearing are included in a definition in section 3 at page 4, line 20.

The permanency hearing would typically be carried out by the court. However, if a child is in the custody of the Division of Juvenile Services, that division could conduct a permanency hearing unless to do so would exceed the authority of the Division of Juvenile Services or unless the juvenile court preferred to conduct the permanency hearing.

All changes in Section 8 are derived directly from federal requirements.

Section 16 (page 19, line 16) specifically authorizes the Division of Juvenile Services to conduct the permanency hearings required in Section 8.

- ALTERING TERMINATION OF PARENTAL RIGHTS PROCESS -

(Sections 10 and 11)

ASFA appears to require states to automatically proceed to termination of parental rights if a child has been in foster care for 15 of the most recent 22 months. This was of particular concern because many older children under the jurisdiction of the Division of Juvenile Services are maintained in foster care. However, a close reading of ASFA reveals the possibility of creating state law exceptions. This bill creates exceptions tailored to North Dakota practices. As a consequence, we believe that North Dakota can comply with ASFA in a manner that would not greatly alter the types or circumstances of cases appropriate for termination of parental rights.

Section 10 (page 12, line 8) describes specific circumstances in which the juvenile court would be authorized to terminate parental rights. These provisions are based on the federal requirements for commencing termination of parental rights actions. The only deviation from federal requirements is the use of the phrase "four hundred fifty out of the previous six hundred sixty nights" in lieu of "fifteen of the most recent twenty-two months." This approach is taken to avoid questions about the effect of partial months on the calculation.

Section 11 (page 13, line 8) describes the same federal requirements, but in the context of what must be in a petition to terminate parental rights. This section also includes a broad North Dakota designed exception. If this approach becomes law, the likely impact is that cases that are candidates for termination of parental rights, under current law, will reach that conclusion more quickly. Cases inappropriate for termination of parental rights under current law will remain inappropriate.

The federally required petition provisions are in subsection 2, beginning on page 13, line 13. The federal exceptions are in subsection 3, beginning on page 13, line 31. Lines 2 through 5, on page 14, consistent with federal law, provide an exception if there is a documented compelling reason for determining that filing such a petition would not be in the child's best interests. The state-designed definition of "compelling reason," beginning on page 15, line 23, only requires a document that reflects consideration of five factors. The factors include the child's age, the portion of the child's life spent in the household of a parent, the availability of a suitable adoptive home, whether the child has special needs, and the expressed wishes of a child who is age 10 or older. These factors for consideration can be determined in any case, and would always allow inappropriate terminations to be avoided.

Subsections 4, 5, and 6 establish what days are counted in determining if the child has been in foster care for 450 out of the previous 660 nights.

- FACILITATING ADOPTION -

(Sections 14, 18, 24, 25, and 26)

Section 14 (page 18, line 8). Under current law, if parental rights are terminated with respect to a child, and the child is not placed for an adoption within 18 months, the child must be returned to the court. The amendment to subsection 3, beginning on page 18, line 24, reduces that period of time to 12 months.

Section 18 (page 20, line 10) creates five new subsections describing duties of the department.

The first new subsection, at page 20, lines 12 through 14, relates to adoption and authorizes the department to approve families who are outside the jurisdiction of the state of North Dakota for placement of children for adoption. This provision actually serves a dual purpose. The language also protects North Dakota from a federal provision, at 42 U.S.C. 674(e), that would deprive the state of all funding under Title IV-E of the Social Security Act, if the state denies or even delays the placement of a single child for adoption when an approved family is available outside of the state's jurisdiction. In the unlikely event the federal government ever asserted that North Dakota had denied or delayed an adoptive placement, we could assert that the family is not "approved" until the department provides that approval. We hope never to use this second reason for describing the approval duty. We intend to work with other states to ask Congress to remove such a massive penalty for a potentially minor delay.

Section 24 (page 23, line 27) creates a new chapter to Title 50 that would apply criminal history records investigations and the results of that investigation to adoptive homes. These reports would be reflected in the licensed child-placing agency's adoption recommendation. See Sections 1 and 2 of the bill. Federal law requires procedures for criminal records investigations for prospective adoptive parents unless the state specifically opts otherwise. I'll discuss this section at greater length when touching upon the general expansion of criminal records investigations.

Section 25 (page 26, line 7) creates a new section to the law governing licensed child-placing agencies to require those agencies to include criminal history investigations when reviewing the applications of prospective adoptive parents. The goal is to protect children's safety by identifying individuals with specific kinds of criminal backgrounds, and limiting their opportunities to become adoptive parents.

Section 26 (page 27, line 21) provides for North Dakota to join the Interstate Compact on Adoption and Medical Assistance. ASFA requires each state, as a part of its adoption and assistance program, to provide for health coverage for all special needs children with an adoption assistance agreement. Federal law does not require this be done by entering into the Interstate Compact on Adoption and Medical Assistance, but that is the way virtually all states have achieved that goal. Under the compact, the family of a child with special needs is free to travel from state to state without fear of loss of medical assistance coverage.

North Dakota law already defines children with special needs and requires that assistance continue regardless of the residence of adopting parents. See N.D.C.C. § 50-09-02.2. However, when a special needs child requires medical care, parents often face great difficulty in finding medical providers who will agree to serve under the medical assistance program of a distant state. Under the compact, such

families can rely upon the medical assistance program of the state in which they live. The compact does not in any way diminish the medical assistance benefits available from the state originally entering into the special needs adoption agreement.

Currently, 46 states have adopted or are in the process of adopting this compact. That number virtually assures adoptive families of freedom to travel without concern about a loss of medical benefits. The federal Health Care Financing Administration, which is responsible for administering medical assistance benefits on the federal law, has agreed that these special needs adoption children will be permitted to maintain medical assistance eligibility, both in the state that entered into the special needs adoption agreement and the family's state of residence, if different.

**- FACILITATING GUARDIANSHIP AND OTHER PLANNED PERMANENT
LIVING ARRANGEMENTS FOR CHILDREN -**
(Sections 4, 7, 8, 13, 14, 15, and 24)

A feature of ASFA is the idea that families can be built in arrangements besides birth families and adoptive families. The federal law recognizes, and this bill proposes, to do this through guardianship proceedings.

Section 4 (page 6, line 6) adds a new subsection to Section 4 giving the juvenile court concurrent jurisdiction with the district court for a proceeding for appointment of a ^{guardian for a} minor. Those juvenile court proceedings would be governed by chapter 27-20, which generally concerns the juvenile court, and chapter 30.1-27, which generally governs minors' guardianships. The approach of using concurrent jurisdiction avoids the need to commence a new guardianship proceeding in district court.

Section 7 (page 8, line 10). This section specifically authorizes a juvenile court to appoint a guardian or establish some other planned permanent living arrangement if a child has been found to be deprived. This allows courts to help children build families without first ordering the child torn away from a birth family. This section, at page 9, line 5, first introduces the concept of appointing a "fit and willing relative or other appropriate individual" as guardian. That phrase is defined in Section 3 (page 4, line 14) to incorporate the existing guardianship requirements under chapter 30.1-27 and to provide for an assessment. The term "relative" is also given a very broad definition (page 5, line 13).

Section 8 (page 9, line 11). As already discussed, this section primarily addresses the requirement for permanency hearings to be conducted every 12 months. It also includes an amendment, on page 9, line 14, providing that legal guardianships are without limit as to duration. Guardianships would be self-sustaining until terminated by court order or by the child reaching adulthood.

Section 13 (page 17, line 25) describes the effect of an order appointing a guardian. The judge could decide what rights a parent might retain, but a parent would always be entitled to be treated as a party in any subsequent juvenile court proceeding.

Section 14 (page 18, line 8) is amended to permit a court to appoint a guardian in cases of termination of parental rights. While adoption is always the first choice if parental rights have been terminated with respect to a child, this amendment specifically recognizes and provides for use of guardianship to build a family.

Section 15 (page 18, line 29) complements Section 14 by authorizing a court to take the same actions under existing guardianship laws (chapter 30.1-27).

Section 24 (page 23, line 27) provides for assessments of prospective guardians that include the results of a criminal history record investigation. Federal law requires such investigations for foster parents and adoptive parents, and forbids approval if certain crimes are revealed. This section requires the same background check for guardians. However, rather than automatically disqualifying individuals with specific criminal backgrounds, the report of a criminal history record investigation would be reported to the court as a part of the assessment. The court would then determine if any criminal history made appointment as a guardian inappropriate.

- EXPANDING CRIMINAL RECORDS INVESTIGATION -

(Sections 1, 2, 21, 22, 23, and 24)

The federal law, at 42 U.S.C. § 671(a)(20), provides that a state must adopt procedures for criminal records checks for any perspective foster parent or adoptive parent before final approval of foster care payments or adoption assistance payments. The federal law also identifies specific kinds of criminal violations that preclude or limit qualification as a foster parent or adoptive parent. Finally, the federal law specifically authorizes a state legislature or state governor to elect to make those requirements inapplicable to the state.

Mixed with this issue is the process by which the federal Bureau of Investigation uses fingerprints to identify individuals before undertaking national criminal history record investigations. The FBI has been reluctant to accommodate non-law enforcement requests for criminal history record investigations unless it is absolutely required to do so. The FBI has refused to assist in these criminal history record investigations except to the extent that a state has, in place, a statute that unambiguously requires the use of fingerprints. Congress recently addressed that problem, but it is yet unclear exactly how the FBI will apply new

congressional requirements. ATTACHMENT 4 is a copy of a draft Internal Justice Department memorandum, secured only on January 19, 1999. That draft memorandum reflects an apparent expectation that states that "required" fingerprinting must continue those requirements. North Dakota already required fingerprinting of foster care facility staff, but did not have a requirement in place with respect to foster family members, guardians, and adoptive family members.

The bill is based on the assumption the FBI would continue to insist that these national record checks are only available if state statute required fingerprinting. The bill allows some exceptions by statute, and would also allow additional exceptions to be created by rule.

We prefer using fingerprints and also seek exceptions because fingerprint identification is our only avenue to national criminal history records, but the FBI response time (typically three to six weeks) has real potential to delay placements. We also believe the legislature can elect to apply the procedures for criminal record checks for some situations and to avoid them for other situations. Accordingly, the bill provides four categories of individuals who would not have to undergo the fingerprinting necessary for nationwide criminal history record checks. They are: (1) currently licensed foster care families as long as they retain their licenses (these licensed foster care families would not have any criminal background check); (2) individuals who have lived continuously in North Dakota for 11 years or since reaching age 18; (3) active duty military personnel and honorably discharged military personnel who have resided continuously in North Dakota since discharge; and (4) others who may be excused by rules adopted by the department.

Section 1 (page 1, line 12) amends the Uniform Adoption Act to require the child-placing agencies' report to include a criminal history record investigation.

Section 2 (page 1, line 18) similarly requires the assessment provided to the court in identified adoption cases to include a criminal history record.

Section 21 (page 21, line 20) amends current law requiring criminal history record investigations for foster care facilities in order to identify exceptions.

Section 22 (page 22, line 22) identifies three circumstances in which a criminal history record investigation would be undertaken without fingerprinting. These investigations would be based solely upon North Dakota records.

Section 23 (page 23, line 21) excepts currently licensed family foster care homes for children from any criminal history record investigation.

Section 24 (page 23, line 27) creates a new chapter to Title 50 with two sections. The first section describes the manner of securing criminal history records for legal guardians. The exceptions for nationwide background checks for guardians are found in this Section.

The second section describes the effect of the results of that investigation. In developing this section, we attempted to combine the requirements of the federal law with North Dakota law.

The list of crimes that absolutely preclude an individual from becoming a foster parent or an adoptive parent are found at subsection 1 (beginning page 25, line 14) and are identical to the federal requirements, with one exception. The federal law requires a felony conviction of spouse abuse. North Dakota law uses the broader term, "domestic violence," and thus includes individuals who are not married to each other.

Federal law also identifies certain crimes that preclude an individual from becoming a foster parent or an adoptive parent for five years after conviction. Those crimes are identified in subsection 2 (beginning on page 25, line 22). An additional provision not included in the federal law, beginning at line 26, adds attempts, facilitations, solicitations, or conspiracies to commit the conduct described in subsection 1. Under existing North Dakota law, attempts, facilitations, solicitations, or conspiracies are as serious as the predicate crime.

Existing North Dakota law concerning the rights of convicts, at chapter 12.1-33, requires convicts seeking licensure under state law to bear the burden of showing rehabilitation for five years after the conclusion of any term of incarceration or probation, parole, or community corrections. After that time, the burden falls to anyone who would deny a license to show the individual is not sufficiently rehabilitated. Subsections 3 and 4 (beginning at page 25, line 28) incorporate that approach.

We believe that this process will not only identify individuals convicted of the felonies described in the federal law, but will also alert courts and child-placing agencies of other convictions that may bear on an individual's fitness to serve as a foster parent, an adoptive parent, or a child's guardian. At the same time, individuals with criminal records will have an opportunity to demonstrate rehabilitation.

Section 25 (page 26, line 7) creates a new section to the chapter on licensed child-placing agencies. This describes the process by which these agencies would secure necessary criminal history records for adoptive parents. The fingerprinting exceptions are included. The licensed child-placing agencies would follow the standards set forth in Section 24, and would report the results in the reports described in Sections 1 and 2.

- SUPPORTING PROGRAM ADMINISTRATION -

(Sections 5, 9, 12, 17, 18, 19, and 20)

Section 5 (page 6, line 28) would require the state's attorney to prepare petitions and present evidence in juvenile court matters without a specific request from the court. Currently, state's attorneys present evidence, but do not always prepare the petitions. In some areas of the state, petitions are prepared by non-law-trained individuals. The work group believes the state's attorney involvement should not depend upon a request from the court, and should begin prior to the date of a hearing.

Section 9 (page 11, line 28) amends the statement of the rights and duties of legal custodians. Legal custodians are typically public or private agencies. It has not always been clear that custodians have the authority to "place" children in the absence of a court order specifically granting that authority. This change would include "placement" in the statutory authority, but would also specifically allow a court to limit the authority of a legal custodian.

Section 12 (page 16, line 3) removes any responsibility for the state's attorney to act as the parents' counsel in a proceeding to terminate parental rights. State's attorneys invariably have conflicts of interest, and thus cannot serve as parents' counsel in any case.

Section 17 (page 20, line 4) adds two definitions to chapter 50-09. Chapter 50-09 has historically governed services furnished under Title IV of the Social Security Act. That title originally included only AFDC (now TANF - Title IV-A). However, it has been expanded to include federally financed child welfare services (Title IV-B) and federal foster care and adoption assistance (Title IV-E), and has, since 1977, included child support (Title IV-D). Section 17 defines Title IV-B and Title IV-E.

Section 18 (page 20, line 10) creates five subsections describing powers and duties of the department. The first duty I've already mentioned in discussing adoption changes. Two of the remaining four subsections authorize the agency to act as the official agency under Titles IV-B and IV-E. That would codify existing practice. Two of the subsections authorize the department to provide technical assistance on the requirements of Titles IV-B and IV-E to courts, state's attorneys, and tribal prosecutors, and to provide training to state's attorneys and assistant state's attorneys.

Section 19 (page 20, line 28) adds two subsections to this section describing the powers and duties of county social service offices. The counties have long assumed the described responsibilities. This section would codify existing practice.

Section 20 (page 21, line 5) would also codify existing practices. This new section would authorize the department to submit state plans and take necessary actions under Titles IV-B and IV-E. It also would specifically authorize the department to seek waivers that are authorized by federal law and to apply for additional funds that might be made available under Title IV-B or Title IV-E. The only currently available additional or conditional funds are adoption incentive payments relating to foster child adoptions and special needs adoptions. These are incentives for increasing the numbers of such adoptions. We anticipate the dollars involved would be modest, but want to be prepared for the possibility of more useful federal incentive programs.

That concludes my description of the bill.

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ADOPTION AND SAFE FAMILIES ACT BILL PROVISIONS

Bill Section	Law Affected	Federal Requirement	Comments
1	14-15-11(4)	42 U.S.C. 671(a)(20)	Implements requirement of federal law that there be procedures for criminal history checks for prospective foster/adoptive parents.
2	14-15.1-04	42 U.S.C. 671(a)(20)	Implements requirement of federal law that there be procedures for criminal history checks for prospective foster/adoptive parents.
3	27-20-02	42 U.S.C. 675(5)(c)	Defines a number of terms used but not defined by federal law; identifies the required contents of the permanency plan discussed during the permanency hearing.
4	27-20-03	--	Allows for concurrent jurisdiction between Juvenile Court and District Court where permanent guardian appointed.
5	27-20-24(3)	42 U.S.C. 675(5)(c)	Implements federal law requiring state to file petition for termination of parental rights in certain cases.
6	Ch. 27-20 (New section)	42 U.S.C. 671(a)(15)	Defines "reasonable efforts" to preserve and reunite families, which must be made in certain cases under federal law.
7	27-20-30	42 U.S.C. 675(5)(c)	Consistent with provisions in federal law allowing placement of child with a guardian or in other permanent living arrangement, this section adds to disposition power of the Juvenile Court to order such appointment or other permanent arrangement.
8	27-20-36	42 U.S.C. 675(5)(c)	Implements federal requirements regarding permanency hearings.
9	27-20-38	--	Recognizes power of court to limit rights of legal custodian.
10	27-20-44	42 U.S.C. 675(5)(E)	Implements federal law discussing when court may terminate parental rights.
11	Ch. 27-20 (New section)	42 U.S.C. 675(5)(E) 42 U.S.C. 675(5)(F)	Implements federal law regarding when a petition to terminate parental rights must be brought; defines foster care entry date; defines term "compelling reason".
12	27-20-45	--	Emphasizes permanent alteration of parental rights as possibility; removes conditions to parental right to counsel.
13	27-20-46	--	Describes the effect of an order permanently altering parental rights.
14	27-20-47	42 U.S.C. 675(5)(c)	Implements federal law allowing appointment of a fit and willing relative as guardian, or other planned permanent living arrangement.
15	Ch. 27-20 (New section)	42 U.S.C. 675(5)(c)	Implements federal law allowing for a fit and willing relative or other appropriate individual to be appointed as child's guardian (deals with "difficult cases" in which termination is inappropriate or adoption is unlikely).
16	27-21-02.1	--	Authorizes DJS to conduct permanency hearing required by federal law, if permanency plan can be carried out without exceeding authority of DHS.

Bill Section	Law Affected	Federal Requirement	Comments
17	50-09-01	--	Defines Title IV-B and IV-E of Social Security Act.
18	50-09-02	--	Identifies DHS as the official agency of the state to supervise county administration of services and payments under Title IV-B and IV-E.
19	50-09-03	--	Delegates duty of administering Title IV-B and IV-E services and payments to counties, subject to state supervision.
20	Ch. 50-09 (New section)	--	Allows DHS to submit plans or take such actions as reasonably necessary to conform to Title IV-B and IV-E.
21	50-11-06.8	42 U.S.C. 671(a)(20)	Requires fingerprinting for foster care facility as part of criminal history check, with limited exception.
22	Ch. 50-11	42 U.S.C. 671(a)(20)	Recognizes exception to fingerprinting requirement for foster care facility as part of criminal history check.
23	Ch. 50-11 (New section)	--	Grandfathers family foster care homes, licensed or approved on the effective date of the section, from criminal record investigation requirements .
24	Title 50 (New chapter)	42 U.S.C. 671(a)(20)	Requires legal guardian to have criminal history record investigation; prohibits foster care licensure or approval of adoptive homes where investigation reveals conviction of certain felony offenses.*
25	Ch. 50-12 (New section)	--	Requires child-placing agencies to secure criminal record investigations and include results in home study, with limited exception.
26	Title 50 (New chapter)	--	Adopts the Interstate Compact on Adoption and Medical Assistance (ICAMA).

* The bill language adds to federal law in this section:

- (1) Federal law prohibits licensure or approval where record reveals "spousal abuse". State language provides for "domestic violence" as defined by North Dakota law, instead of "spousal abuse". "Domestic violence" is broader than "spousal abuse" as "domestic violence" does not require a spousal relationship.
- (2) The bill prohibits licensure or approval in cases where a conviction exists for attempt, facilitation, solicitation, or conspiracy to commit the federally described felony offenses. Federal law does not mention attempt, facilitation, solicitation, or conspiracy crimes.
- (3) The bill prohibits licensure or approval for certain felony convictions where five years have not elapsed after final discharge or release from community corrections without subsequent conviction unless the convict provides evidence of sufficient rehabilitation, consistent with existing North Dakota law (12.1-33-02.1). Federal law does not look at the five-year period following such final discharge or release.
- (4) The bill prohibits licensure or approval for misdemeanor convictions in which the child was a victim absent a determination that the convict is rehabilitated. Federal law does not include misdemeanor convictions.



National Conference of State Legislatures

Bill Analysis of P.L. 105-89, *Adoption and Safe Families Act of 1997*

December 8, 1997

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Legislative History of P.L. 105-89
The Adoption and Safe Families Act of 1997

Prior to adjourning for the year, the U.S. Congress passed a final conference agreement on child welfare and adoption legislation. H.R. 867/H. Res. 327 was overwhelmingly agreed to in the House of Representatives by a vote of 406-7 and by unanimous consent in the Senate. The Adoption and Safe Families Act was signed into law by the President on November 19, 1997 as Public Law 105-89. The final legislation was the cumulative result of numerous proposals and many months of negotiations in the House and Senate. (The Administration had also weighed in with the President's Adoption 2002 proposal.)

The Senate introduced the *Safe Adoptions and Family Environments Act* (S. 511—"S.A.F.E.") Act in March, which eventually stalled due to a lack of consensus. In April, the House passed the *Adoption Promotion Act of 1997* (H.R. 867) sponsored by Representatives Dave Camp (MI) and Barbara B. Kennelly (CT). The original sponsors of S. 511, Senators John H. Chafee (RI) and John D. Rockefeller (WV) then formed a bipartisan working group of Senators which introduced a second Senate bill in September, the *Promotion of Adoption, Safety, and Support for Abused and Neglected Children* (S. 1195--"P.A.S.S."). Several controversial provisions again stalled the Senate bill, particularly a provision to use state food stamp and Medicaid administrative funds to finance its provisions. In a last attempt to resuscitate child welfare and adoption legislation prior to adjournment, the House and Senate negotiated an agreement and passed H.R. 867/H. Res. 327, the *Adoption and Safe Families Act of 1997*.

This new law will assist state efforts to balance family preservation and reunification with the health and safety of a child. However, the legislation contains significant mandates in addition to fiscal incentives for states. Many states will need legislation to conform current state adoption and child welfare statutes to the new federal law. Key provisions of the law include:

- a clarification of "reasonable efforts," including a provision that reasonable efforts to reunify a child with their birth parent(s) are not required if a court has determined that there are aggravated circumstances;
- a requirement that states initiate termination proceedings for all children who have been in foster care for 15 out of the most recent 22 months;
- the reauthorization and expansion of the Family Preservation and Support Services program;
- adoption incentive payments to states that increase the number of adoptions of children in foster care as compared with a base year--\$4,000 per child plus an additional \$2,000 per special needs adoption;
- a requirement that states provide health insurance coverage for all special needs children in subsidized adoptions, regardless of whether they are Title IV-E adoptions;
- a requirement that a permanency planning hearing be held at 12 months after a child enters foster care, rather than 18 months as in current statute; and
- a requirement that states have procedures for criminal records checks for prospective foster or adoptive parents before a child eligible for federal subsidies is placed with the prospective parents. States can opt out of this provision through state law enacted by the legislature or through written notification of the Governor to the Secretary of HHS.

**Adoption and Safe Families Act of 1997
(P.L. 105-89)**

This analysis describes the major provisions of the *Adoption and Safe Families Act of 1997* and its impact on states. Wherever possible, fiscal penalties for state noncompliance are noted. However, federal regulations will be promulgated by the United States Department of Health and Human Services to further clarify and interpret the law. Section numbers referencing the public law citation are noted.

Defines and Clarifies “Reasonable Efforts” in Family Reunification (*Section 101*)

- Clarifies that a child’s health and safety is paramount in determining reasonable efforts to reunify.
- Reasonable efforts must be made to preserve and reunify families prior to the placement of a child in foster care (to prevent or eliminate the need for removing the child from their home or to make it possible for a child to return home safely).
- Reasonable efforts are not required if a court has determined that there are aggravated circumstances. Aggravated circumstances must be defined in state law. The federal legislation provides an illustrative list which includes abandonment, torture, chronic abuse and sexual abuse.
- Reasonable efforts are not required if the parent has murdered or committed voluntary manslaughter of another sibling (of the child), has aided, abetted, attempted, conspired or solicited to commit such a murder or voluntary manslaughter, or if the parent has committed felony assault resulting in serious bodily injury to the child or another sibling. These provisions are already mandated by CAPTA, the *Child Abuse Prevention and Treatment Act of 1996* (P.L. 104-235).
- Reasonable efforts are not required if the parental rights of the parent to a sibling have been involuntarily terminated.
- Does not preclude state courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described above.
- This provision is a state plan requirement; states which do not have an approved state plan under this part could be found by HHS to be out of compliance and potentially lose federal funding.

New “Reasonable Efforts” Requirement to Move Children Towards Adoption or Other Permanent Homes (*Sections 101, 107*)

- If continuing reasonable efforts to reunify is inconsistent with the permanency plan for the child, reasonable efforts to place the child in a timely manner in a permanent placement according to the permanency plan must be made.
- If reasonable efforts to reunify are determined by a court to be unnecessary, a permanency hearing must be held within 30 days after the court’s determination.
- Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to reunify.

- Defines legal guardianship as a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person and decisionmaking. A child's "legal guardian" refers to the caretaker in such a relationship. The term "self-sustaining" is undefined and may be subsequently defined in regulations.
- States must document the steps taken to find an adoptive family or other permanent living arrangement for a child, to place the child with an adoptive family or other permanent living arrangement (including relative care or legal guardianship), and to finalize the adoption or legal guardianship. This must include child specific recruitment efforts, such as the use of state, regional and national adoption exchanges.

Permanency Hearings *(Sections 101, 302)*

- Requires a permanency hearing at 12 months after a child enters foster care, rather than 18 months as in the current statute.
- Clarifies that the permanency plan for a child include whether and when the child will be returned to the parent or placed for adoption.
- If reasonable efforts to reunify are determined by a court to be unnecessary, a permanency hearing must be held within 30 days after the court's determination.

Termination of Parental Rights *(Section 103)*

Requires states to file a petition to terminate parental rights in the following circumstances:

- a child (of any age) has been in foster care for 15 of the most recent 22 months;
- if a court determines the child to be an abandoned infant;
- if the court determines that the parent has committed murder or voluntary manslaughter of another sibling of the child or has aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter;
- if the court determines that the parent has committed a felony assault that has resulted in serious bodily injury to the child or a sibling.

This is not a requirement that states terminate parental rights in these circumstances, but states must initiate termination proceedings by filing a petition. This provision is a state plan requirement; states which do not have an approved state plan under this part could be found by HHS to be out of compliance and potentially lose federal funding.

States are not required to file a petition to terminate in the following situations:

- at state option, the child is being cared for by a relative;
- the state agency has documented a compelling reason why filing a termination petition would not be in the best interest of the child; or
- the state has not provided services consistent with the case plan that the state deems necessary for the safe return of the child to their home.

This provision will impact many states' current termination statutes. Additionally, if a termination petition has been filed by another party, the state must seek to join the petition. Concurrent with the filing of a termination petition, the state must identify, recruit, process and approve a qualified family for adoption.

- For determining the length of time that a child has been in foster care, the entry date is the earlier of the date of the first judicial finding that the child has been subjected to abuse or neglect or 60 days after the child has been removed from the home.
- For those children who enter care after November 19, 1997, a petition must be filed when a child is in care for 15 months or, if action cannot be taken because of the need for state legislation, within 3 months after the end of the first regular session of the legislature that begins after November 19, 1997.
- For children already in foster care on November 19, 1997, states can phase in the filing of termination petitions. At least 1/3 of children already in care on November 19, 1997 must have petitions filed within 6 months after the first regular session of the legislature (giving priority to children for whom the permanency plan is adoption and children who have been in foster care the longest). At least 2/3 of the children already in care on November 19, 1997 must have petitions filed within 12 months and all such children must have petitions filed within 18 months.

Adoption Across State and County Jurisdictions (Section 202)

- States are required to develop plans to effectively utilize cross-jurisdictional resources to facilitate timely adoptive or permanent placements.
- States receiving federal funds may not deny or delay the placement of a child for adoption when an approved family is available outside the jurisdiction responsible for handling the child's case. There is no definition of an "approved" family and this may need to be clarified in regulations.
- The state must grant the opportunity for a fair hearing to any individual who alleges denial of adoption approval as a result of residing outside the jurisdiction responsible for placing the child. States who deny a request for such a fair hearing or do not act with reasonable promptness will lose federal funds. An additional question to be examined during the regulatory process is the definition of an "individual."
- The Comptroller General will conduct a study of interjurisdictional adoption issues and a report to Congress within one year on the results of the study and recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children.
- This is a new state plan requirement; the failure to develop such plans or grant a fair hearing could result in the loss of federal funds.

State Requirement to Provide Health Insurance Coverage for Children with Special Needs (Section 306)

- As part of their state IV-E plan, states are required to provide health insurance coverage for children with special needs (determining factors include age, race, emotional or medical disability, or sibling group status) for whom the state has an adoption assistance agreement

with the adoptive parent(s) and who the state has determined cannot be placed for adoption without medical assistance.

- The state may choose to comply with this provision by covering the child under Medicaid.
- This coverage could also be provided through one or more state medical assistance programs, but the state must ensure that the medical benefits provided (including mental health benefits) are equivalent to those provided under Medicaid.
- If a state chooses to provide medical coverage through a state medical assistance program other than Medicaid, and a state exceeds its funding for services under the alternate program, a child would be deemed to be IV-E eligible for purposes of Medicaid.
- In determining cost-sharing requirements, the state must take into consideration the circumstances of the adopting parent(s) and the needs of the child.
- This is a state plan requirement. If a state chooses not to comply with this provision, they could be found out of compliance and lose federal IV-E funding. The state would also be ineligible for the adoption bonuses provided under this law.

Continuing Eligibility for Adoption Assistance Payments for Special Needs Children Whose Initial Adoption is Dissolved (Section 307)

Any special needs child who had previously been eligible for federal adoption assistance payments, and who again becomes available for adoption due to a dissolution of the original adoption or because the child's adoptive parents have died, remains eligible for the assistance as if the prior adoption had never occurred. This provision only applies to children adopted on or after October 1, 1997.

Adoption Incentive Payments (Section 201)

- The Secretary of HHS is authorized to make incentive payments to states in FY 1998-2002 which increase the number of adoptions of children in foster care as compared to the average number of adoptions in FY 1995-1997 with respect to FY 1998. For subsequent fiscal years, the base will be the greatest number of adoptions in any fiscal year, beginning with FY 1997 and ending with the fiscal year preceding the "subsequent" fiscal year. (Based on AFCARS--Adoption and Foster Care Analysis and Reporting System--data; alternative data sources may be used by the Secretary for FY 1995-1997.) Bonus is \$4,000 per child plus an additional \$2,000 for each special needs adoption (\$20 million maximum allocation for each fiscal year).
- States which do not provide health coverage to children with special needs, and for whom there is an adoption assistance agreement between the state and the adoptive parents, in FY 2001 and 2002 are not eligible for adoption bonuses.
- If the total amount of adoption bonus payments in any fiscal year exceeds the annual appropriation for the incentive payments, the bonus will be calculated on a percentage of the incentive otherwise payable for the fiscal year.
- Bonus payments in any given fiscal year remain available to a state for two years.
- States are required to reinvest incentive bonuses back into IV-B or IV-E programs.
- Bonuses cannot count as a state expenditure for purposes of federal matching payments.

State Quality Standards for Out-of-Home Care (Section 308)

As part of a state IV-E plan, states are required to develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.

This is a state plan requirement. If a state chooses not to comply with this provision, they could be found out of compliance by HHS and potentially lose federal IV-E funding.

Substance Abuse and Child Welfare (Section 405)

Requires the Secretary of HHS to prepare and submit a report to the House Ways and Means Committee and the Senate Finance Committee within one year on the extent and scope of substance abuse in the child welfare population, the types of services provided to this population and their outcome. The report will be based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families at HHS. The report will include recommendations for legislation to improve coordination of services to this population. There are no new requirements on states.

Data Reporting (Sections 201, 203, 402)

- Many new federal data reporting requirements.
- States are required to report AFCARS data to be eligible for adoption incentive payments.
- Authorizes the Secretary of HHS to modify the data requirements of AFCARS to meet the needs of the legislation.
- Potential new outcome measures which will be used to assess state child welfare programs and rate state performance (see "State Report Cards").

Criminal Records Checks (Section 106)

- States are required to provide, as part of their Title IV-E plan, procedures for criminal records checks for prospective foster or adoptive parents before a child eligible for federal subsidies is placed with the prospective parents.
- Cases in which a record check reveals a felony conviction for child abuse or neglect, spousal abuse, crimes against children (including child pornography), or for crimes involving violence (including rape, sexual assault, or homicide, but not other physical assault or battery) will not be approved. Cases which reveal a felony conviction for physical assault, battery or a drug-related offense will not be granted if the felony was committed in the past 5 years.
- This is a state plan requirement *unless* the state opts out of this provision through state law enacted by the legislature or through written notification of the Governor to the Secretary of HHS. If a state does not opt out nor comply, they could be found out of compliance by HHS and potentially lose federal funding.

Technical Assistance (Section 201)

The Secretary of HHS may, either directly or through grants (\$10 million maximum annual appropriation, FY 1998-2000), provide technical assistance to states to reach their targets for increased adoptions or alternative permanent placements for children in foster care. This may include, but is not limited to:

- the development of best practice guidelines for expediting termination of parental rights;
- models to encourage the use of concurrent planning;
- the development of expertise in moving children toward adoption as a permanency goal;
- the development of risk assessment tools to facilitate early identification of children who would be at risk if returned home;
- models to encourage fast tracking children under the age of one into pre-adoptive placements;
- the development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

The Secretary of HHS is required to use at least half of the technical assistance funds to provide assistance to the courts.

Independent Living Services (Section 304)

Children who are ineligible for IV-E because their assets exceed \$1,000 can still be eligible for independent living services, provided their assets do not exceed \$5,000.

Expansion of State Child Welfare Demonstrations (Section 301)

- The Secretary of HHS is authorized to approve up to 10 states in each of FY 1998-2002 to conduct demonstration projects which are likely to promote the objectives of Title IV-B or IV-E.
- If appropriate applications are submitted, the Secretary is required to consider authorizing a demonstration project designed to identify and address barriers that result in adoption delays for children in foster care; parental substance abuse problems that endanger children and result in foster care placements, including through the placement of children with their parents in residential treatment facilities (including facilities for post-partum depression); and kinship care.
- Waivers will only be approved for those states which provide health insurance coverage to any child with special needs for whom the state and the adoptive parents have an adoption assistance agreement.
- The Secretary of HHS has the discretion to waive the current requirement that demonstration projects end after 5 years.

Kinship Care (Section 303)

The Secretary of HHS is required to convene an advisory panel, and submit an initial report to the panel on the extent to which children in foster care are placed in the care of a relative, by June 1, 1998. The Secretary must submit a final report to Congress no later than June 1, 1999.

Notification of Reviews and Hearings (Section 104)

Foster parents and any preadoptive parent or relative providing care must be provided notice of and have an opportunity to be heard in any review or hearing to be held with respect to the child. Does not require that any foster parent, preadoptive parent or relative providing care be made a party to such a review or hearing solely on the basis of this notification.

Case Planning and Case Review (Section 102)

References to the safety of a child must be included in case planning and case reviews for children in foster care.

State Report Cards (Section 203)

The Secretary of HHS, in conjunction with governors, state legislatures, state and local public officials responsible for administering child welfare programs and child welfare advocates are required to develop a set of outcome measures which will be used to assess state child welfare programs and rate state performance. Outcome measures will include length of stay in foster care, number of foster care placements and number of adoptions. State performance will be assessed based on AFCARS (Adoption and Foster Care Analysis and Reporting System) data. Authorizes the Secretary of HHS to issue regulations requiring states to report on performance measures; states must provide this data in order to receive federal funds. HHS will submit annual reports to Congress on state performance beginning on May 1, 1999.

Additionally, the Secretary of HHS, in consultation with state and local welfare administrators and child welfare advocates, will study, develop and recommend to Congress an incentive system to provide payments under IV-B and IV-E of the Social Security Act to states based on their performance under such a system. The final report must be submitted to the House Ways and Means Committee and the Senate Finance Committee within 15 months.

Federal Parent Locator Service (Section 105)

Authorizes child welfare agencies to use the Federal Parent Locator Service to assist in locating absent parents.

Sense of Congress on Standby Guardianship (Section 403)

Sense of Congress that states have laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the

parent's minor children, whose authority would take effect upon the death or mental incapacity of the parent, or with the parent's consent if the parent becomes physically debilitated. This provision does not have the weight of law.

Reauthorization, Expansion and Renaming of the Current Family Preservation and Support Services Program (Title IV-B, subpart 2) (Section 305)

- Reauthorizes the Family Preservation and Support Services Act for three years at \$65 million above the current funding level (\$275 million in FY1999; \$295 million in FY2000; \$305 million in FY2001), renaming the program "Promoting Safe and Stable Families."
- Existing allocation formula provisions, including a 1 percent set-aside for Indian tribes, remain intact. Set-asides for court improvement grants and for evaluation and research are also reauthorized.
- States cannot spend more than 10 percent of their allotment for administrative costs.
- States are required to devote significant portions of their expenditures to community-based family support services, family preservation services, time-limited family reunification services and adoption promotion and support services. The definition of "significant portion" will be addressed in regulations. Currently, the definition of "significant portion" requires states to spend at least 25 percent of the funds on both family preservation and family support. Some states have received waivers of this requirement. Whether waivers will still be allowed will also be determined in regulations.
- Time-limited family reunification services are defined as services and activities that are provided to a child that has been removed from their home and placed in foster care (and their family) to facilitate the reunification of the child in a safe and timely manner, but limited to the 15-month period beginning on the date the child enters foster care. Applicable services and activities are individual, group and family counseling; inpatient, residential or outpatient substance abuse treatment centers; mental health services; assistance to address domestic violence; temporary child care and therapeutic services; and transportation to or from these services and activities. Adoption promotion and support services are defined as those which encourage more adoptions out of the foster care system (when in the best interest of the child).
- Maintenance of effort provisions in current law are clarified to define nonfederal funds as state funds or, at state option, state and local funds.

Decrease in TANF Contingency Fund as Funding Mechanism (Section 404)

The \$2 billion federal contingency fund for the Temporary Assistance for Needy Families created by the 1996 welfare reform law is reduced by a total of \$40 million over 5 years (1998-2002) to fund the provisions of this legislation. The legislation also requires the Secretary of HHS to make recommendations to Congress by March 1, 1998 for improving the operation of the contingency fund for state welfare programs.

Preservation of Reasonable Parenting (Section 401)

Nothing in the legislation is intended to disrupt the family unnecessarily or intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

Purchase of American-made Equipment and Products (Section 406)

Sense of the Congress that to the extent possible, all equipment and products purchased with funds provided under this legislation should be American-made. This provision does not carry the weight of law.

Effective Date for Passage of State Legislation (Section 501)

- The effective date of this law is the date of enactment, November 19, 1997.
- If a state plan under IV-B or IV-E is determined by the Secretary of HHS to require state legislation in order to meet the requirements imposed by this Act (other than legislation appropriating funds), the state plan would not be considered out of compliance solely because it fails to meet the new requirements until after the close of the next regular session of the State Legislature. In states with a 2-year legislative session, each year would be deemed a separate regular session.

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*Compilation of Titles IV-B and IV-E of the Social Security Act (11/19/97) - Page 1***TITLE IV****PART B--CHILD AND FAMILY SERVICES****Subpart 1--Child Welfare Services****APPROPRIATION**

SEC. 420. [42 U.S.C. 620] (a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of \$325,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

ALLOTMENTS TO STATES

SEC. 421. [42 U.S.C. 621] (a) The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: He shall first allot \$70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most

recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

STATE PLANS FOR CHILD WELFARE SERVICES¹

SEC. 422. [42 U.S.C. 622] (a) In order to be eligible for payment under this subpart, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1), and which meets the requirements of subsection (b).

(b) Each plan for child welfare services under this subpart shall—

(1) provide that (A) the individual or agency that administers or supervises the administration of the State's services program under title XX will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980), and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under title XX, under the State program funded under part A, under the State plan approved under subpart 2 of this part, under the State plan approved under part E, and under other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families.

(3) provide that the standards and requirements imposed with respect to child day care under title XX shall apply with respect to day care services under this subpart, except insofar as eligibility for such services is involved;

(4) provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of

P.L. 96-272, §103(a), amended §422 in its entirety effective June 17, 1980, except that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, §422(b)(1) shall be deemed to read as follows:

(1) provide that (A) the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 402(a)(15) will be responsible for furnishing such child welfare services;

low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(5) contain a description of the services to be provided and specify the geographic areas where such services will be available;

(6) contain a description of the steps which the State will take to provide child welfare services and to make progress in--

(A) covering additional political subdivisions,

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services, along with a description of the State's child welfare services staff development and training plans;

(7) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State;

(8) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require;

(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed;

(10) provide assurances that the State--

(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined--

(i) the appropriateness of, and necessity for, the foster care placement;

(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

(B) is operating, to the satisfaction of the Secretary--

(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

(ii) a case review system (as defined in section 475(5) for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children--

(I) where [REDACTED] appropriate, return to families from which they have been removed; or

(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate

for a child, in some other planned, permanent living arrangement;
and

(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain [REDACTED] with their families; and

(C)(i) has reviewed (or within 12 months after the date of the enactment of this paragraph will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

(ii) is implementing (or within 24 months after the date of the enactment of this paragraph will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children; and

(11) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

PAYMENT TO STATES

SEC. 423. [42 U.S.C. 623] (a) From the sums appropriated therefor and the allotment under this subpart, subject to the conditions set forth in this section, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 422 an amount equal to 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c)(1) No payment may be made to a State under this part, for any fiscal year beginning after September 30, 1979, with respect to State expenditures made for (A) child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, (B) foster care maintenance payments, and (C) adoption assistance payments, to the extent that the Federal payment with respect to those expenditures would exceed the total amount of the Federal payment under this part for fiscal year 1979.

(2) Expenditures made by a State for any fiscal year which begins after September 30, 1979, for foster care maintenance payments shall be treated for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care maintenance payments constituted child welfare services of a type to which the limitation imposed by paragraph (1) does not apply; except that the amount payable to the State with respect to expenditures made for other child welfare services and for foster care maintenance payments during any such year shall not exceed 100 per centum of the amount of the expenditures made for child welfare services for which payment may be made under the limitation imposed by paragraph (1) as in effect without regard to this paragraph.

(d) No payment may be made to a State under this part in excess of the payment made under this part for fiscal year 1979, for any fiscal year beginning after September 30, 1979, if for the latter fiscal year the total of the State's expenditures for child welfare services under this part (excluding expenditures for activities specified in subsection (c)(1)) is less than the total of the State's expenditures under this part (excluding expenditures for such activities) for fiscal year 1979.

REALLOTMENT

SEC. 424. [42 U.S.C. 624] (a) IN GENERAL.—Subject to subsection (b), the amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 422 shall be available for reallocation from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under section 421 and (2) will be able to use such excess amounts during such fiscal year. Such reallocations shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallocated to a State shall be deemed part of its allotment under section 421.

(b) EXCEPTION RELATING TO FOSTER CHILD PROTECTIONS.—The Secretary shall not reallocate under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 422(b)(10).

DEFINITIONS

SEC. 425. [42 U.S.C. 625] (a)(1) For purposes of this title, the term "child welfare services" means public social services which are directed toward the accomplishment of the following purposes:(A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with section 422(b)(10) or 476(b), and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this title, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this title, see section 475 of this Act.

RESEARCH, TRAINING, OR DEMONSTRATION PROJECTS

SEC. 426. [42 U.S.C. 626] (a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine--

(1) for grants by the Secretary--

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting there- from) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare,

including traineeships described in section 429 with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b)(1) There are authorized to be appropriated \$4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

(2) The demonstration projects conducted under this section may include--

(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to demonstrate methods to recruit, train, and retain foster care families; and

(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 475(1) (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 475(5) (covering each such infant who is not otherwise subject to such a system).

(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

(5) No project may be funded unless the application therefor contains assurances that it will--

(A) provide for adequate evaluation;

(B) provide for coordination with local governments;

(C) provide for community education regarding the inappropriate hospitalization of infants;

(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

(E) meet such other criteria as the Secretary may prescribe.

(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other titles of this Act), and for such other purposes as the Secretary may allow.

(7) The Secretary shall provide training and technical assistance to grantees, as requested.

(c) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

PAYMENTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 428. [42 U.S.C. 628] (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this subpart directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this subpart. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located.

(c) For purposes of this section, the terms "Indian tribe" and "tribal organization" shall have the meanings given such terms by subsections (e) and (l) of section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), respectively.

CHILD WELFARE TRAINEESHIPS

SEC. 429. [42 U.S.C. 628a] The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 426(a)(1)(C) only if the application—

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a "recipient") will enter into an agreement with the institution under which the recipient agrees—

(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with

regulations) after completing the postsecondary education for which the traineeship was awarded;

(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will--

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.

NATIONAL RANDOM SAMPLE STUDY OF CHILD WELFARE

SEC. 429A. [42 U.S.C. 628b] (a) IN GENERAL.--The Secretary shall conduct (directly, or by grant, contract, or interagency agreement) a national study based on random samples of children who are at risk of child abuse or neglect, or are determined by States to have been abused or neglected.

(b) REQUIREMENTS.--The study required by subsection (a) shall--

(1) have a longitudinal component; and

(2) yield data reliable at the State level for as many States as the Secretary determines is feasible.

(c) PREFERRED CONTENTS.--In conducting the study required by subsection (a), the Secretary should--

(1) carefully consider selecting the sample from cases of confirmed abuse or neglect; and

(2) follow each case for several years while obtaining information on, among other things--

(A) the type of abuse or neglect involved;

(B) the frequency of contact with State or local agencies;

(C) whether the child involved has been separated from the family, and, if so, under what circumstances;

(D) the number, type, and characteristics of out-of-home placements of the child; and

(E) the average duration of each placement.

(d) **REPORTS.**—

(1) **IN GENERAL.**—From time to time, the Secretary shall prepare reports summarizing the results of the study required by subsection (a).

(2) **AVAILABILITY.**—The Secretary shall make available to the public any report prepared under paragraph (1), in writing or in the form of an electronic data tape.

(3) **AUTHORITY TO CHARGE FEE.**—The Secretary may charge and collect a fee for the furnishing of reports under paragraph (2).

(e) **APPROPRIATION.**—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for each of fiscal years 1996 through 2002 \$6,000,000 to carry out this section.

~~Subpart 2—Family Preservation and Support Services~~

~~Subpart 2—Promoting Safe and Stable Families~~

**PURPOSES; LIMITATIONS ON AUTHORIZATIONS OF APPROPRIATIONS;
RESERVATION OF CERTAIN AMOUNTS**

SEC. 430. [42 U.S.C. 629] (a) PURPOSES; LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the purpose of encouraging and enabling each State to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services, ~~community-based family support services, time-limited family reunification services, and adoption promotion and support services,~~ there are authorized to be appropriated to the Secretary the amounts described in subsection (b) for the fiscal years specified in subsection (b).

(b) **Description of Amounts.**—The amount described in this subsection is—

- (1) for fiscal year 1994, \$60,000,000;
- (2) for fiscal year 1995, \$150,000,000;
- (3) for fiscal year 1996, \$225,000,000;
- (4) for fiscal year 1997, \$240,000,000; or
- (5) for fiscal year 1998, the greater of—

(A) \$255,000,000; or

(B) the amount described in this subsection for fiscal year 1997, increased by the inflation percentage applicable to fiscal year 1998.

~~(1) for fiscal year 1994, \$60,000,000;~~

~~(2) for fiscal year 1995, \$150,000,000;~~

~~(3) for fiscal year 1996, \$225,000,000;~~

(c) **INFLATION PERCENTAGE.**—For purposes of subsection (b)(5)(B) of this section, the inflation percentage applicable to any fiscal year is the percentage (if any) by which—

(1) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on December 31 of the immediately preceding fiscal year; exceeds

(2) the average of the Consumer Price Index (as so defined) for the 12-month period ending on December 31 of the 2nd preceding fiscal year.

(d) RESERVATION OF CERTAIN AMOUNTS.--

(1) EVALUATION, RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE.--The Secretary shall reserve \$2,000,000 of the amount described in subsection (b) for fiscal year 1994, and \$6,000,000 of the amounts so described for each of fiscal years 1995, 1996, 1997, and 1998 ~~1999, 2000, and 2001~~, for expenditure by the Secretary--

(A) for research, training, and technical assistance related to the program under this subpart; and

(B) for evaluation of State programs funded under this subpart and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart.

(2) STATE COURT ASSESSMENTS.--The Secretary shall reserve \$5,000,000 of the amount described in subsection (b) for fiscal year 1995, and \$10,000,000 of the amounts so described for each of fiscal years 1996, 1997, and 1998 ~~1999, 2000, and 2001~~, for grants under section 13712 of the Omnibus Budget Reconciliation Act of 1993.

(3) Indian tribes.--The Secretary shall reserve 1 percent of the amounts described in subsection (b) for each fiscal year, for allotment to Indian tribes in accordance with section 433(a).

DEFINITIONS

SEC. 431. [42 U.S.C. 629a] (a) IN GENERAL.--As used in this subpart:

(1) FAMILY PRESERVATION SERVICES.--The term "family preservation services" means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including--

(A) service programs designed to help children--

(i) where ~~it is~~ appropriate, return to families from which they have been removed; or

(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be ~~appropriate~~ appropriate for a child, in some other planned, permanent living arrangement;

(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain ~~with~~ with their families;

(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

(2) **FAMILY SUPPORT SERVICES.**—The term "family support services" means community-based services to promote the ~~best~~ well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a ~~stable~~ ~~and~~ ~~stable~~ and supportive family environment, and otherwise to enhance child development.

(3) **State agency.**—The term "State agency" means the State agency responsible for administering the program under subpart 1.

(4) **State.**—The term "State" includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

(5) **Tribal organization.**—The term "tribal organization" means the recognized governing body of any Indian tribe.

(6) **Indian tribe.**—The term "Indian tribe" means any Indian tribe (as defined in 482(i)(5)) and any Alaska Native organization (as defined in 482(i)(7)(A)).

(7) TIME-LIMITED FAMILY REUNIFICATION SERVICES.

(A) IN GENERAL.—The term "time-limited family reunification service" means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution, and its parent or primary caregiver of such a child, in order to assist the reunification of the child with and appropriately within a family, but only during the 18-month period that begins on the date that the child pursuant to section 482(i)(5) is considered to have entered foster care.

(B) SERVICES AND ACTIVITIES DESCRIBED.—The services and activities described in this subparagraph are the following:

(i) Individual, group, and family counseling;

(ii) Inpatient, residential, or outpatient substance abuse treatment services;

(iii) Mental health services;

(iv) Assistance to address domestic violence;

(v) Services designed to provide community, child care and therapeutic services for families, including respite care;

(vi) Transportation to or from the services, devices, and activities described in this subparagraph.

ADoption PROMOTION AND SUPPORT SERVICES. The term "adoption promotion and support services" means the activities of a State agency or other entity that are necessary to carry out the program of children awaiting adoption, including postadoptive services and activities designed to expedite the adoption process for support adoptive families.

(9) NON-FEDERAL FUNDS. The term "non-Federal funds" means State funds, or, at the option of a State, State and local funds.

(b) Other Terms.—For other definitions of other terms used in this subpart, see section 475.

STATE PLANS

SEC. 432. [42 U.S.C. 629b] (a) PLAN REQUIREMENTS.—A State plan meets the requirements of this subsection if the plan—

(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

(C) contains assurances that the State—

(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b)) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services or benefits under other Federal or federally assisted programs serving the same populations;

(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 434 for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation

~~services and community-based family support services~~
~~support services and limited family reunification~~
~~programs and support services~~ with significant portions of such expenditures for each such program;

(5) contains assurances that the State will--

(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services and ~~community-based family support services~~, ~~community-based family support services and limited family reunification services~~, and ~~adoption promotion and support services~~) of--

(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;

(ii) the populations which the programs will serve; and

(iii) the geographic areas in the State in which the services will be available; and

(B) perform the activities described in subparagraph (A)--

(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and

(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A); and

(8) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.²

~~(9) contains assurances that in administering and operating family support programs under the plan, the safety of the children to be served shall be of paramount concern.~~

(b) APPROVAL OF PLANS.--

(1) **IN GENERAL.--**The Secretary shall approve a plan that meets the requirements of subsection (a) only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families

(including family preservation and family support, family support, time-limited family reunification, and adoption promotion and support services).

(2) PLANS OF INDIAN TRIBES.--

(A) EXEMPTION FROM INAPPROPRIATE REQUIREMENTS.--The Secretary may exempt a plan submitted by an Indian tribe from any requirement of this section that the Secretary determines would be inappropriate to apply to the Indian tribe, taking into account the resources, needs, and other circumstances of the Indian tribe.

(B) SPECIAL RULE.--Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe under this subpart to which (but for this subparagraph) an allotment of less than \$10,000 would be made under section 433(a) if allotments were made under section 433(a) to all Indian tribes with plans approved under this subpart with the same or larger numbers of children.

ALLOTMENTS TO STATES

SEC. 433. [42 U.S.C. 629c] (a) INDIAN TRIBES.--From the amount reserved pursuant to section 430(d)(3) for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

(b) TERRITORIES.--From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 421.

(c) OTHER STATES.--

(1) IN GENERAL.--From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

(2) FOOD STAMP PERCENTAGE DEFINED.--

(A) IN GENERAL.--As used in paragraph (1) of this subsection, the term "food stamp percentage" means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 16(c) of the Food Stamp Act of 1977, expressed as a percentage of the

average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(B) **FISCAL YEARS USED IN CALCULATION.**--For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this subsection, for which such data are available to the Secretary.

PAYMENTS TO STATES

SEC. 434. [42 U.S.C. 629d] (a) ENTITLEMENT.--

(1) **GENERAL RULE.**--Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of--

(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under section 433 for the fiscal year.

(2) **SPECIAL RULE.**--Upon submission by a State to the Secretary during fiscal year 1994 of an application in such form and containing such information as the Secretary may require (including, if the State is seeking payment of an amount pursuant to subparagraph (B) of this paragraph, a description of the services to be provided with the amount), the State shall be entitled to payment of an amount equal to the sum of--

(A) such amount, not exceeding \$1,000,000, from the allotment of the State under section 433 for fiscal year 1994, as the State may require to develop and submit a plan for approval under section 432; and

(B) an amount equal to the lesser of--

(i) 75 percent of the expenditures by the State for services to children and families in accordance with the application and the expenditure rules of section 432(a)(4); or

(ii) the allotment of the State under section 433 for fiscal year 1994, reduced by any amount paid to the State pursuant to subparagraph (A) of this paragraph.

(b) PROHIBITIONS.--

(1) **NO USE OF OTHER FEDERAL FUNDS FOR STATE MATCH.**--Each State receiving an amount paid under paragraph (1) or (2)(B) of subsection (a) may not expend any Federal funds to meet the costs of services described in this subpart not covered by the amount so paid.

(2) **AVAILABILITY OF FUNDS.**--A State may not expend any amount paid under subsection (a)(1) for any fiscal year after the end of the immediately succeeding fiscal year.

(c) **DIRECT PAYMENTS TO TRIBAL ORGANIZATIONS OF INDIAN TRIBES.**--The Secretary shall pay any amount to which an Indian tribe is entitled under this section directly to the tribal organization of the Indian tribe.

EVALUATIONS

SEC. 435. [42 U.S.C. 629e] (a) EVALUATIONS.--

(1) **IN GENERAL.**--The Secretary shall evaluate the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, and may evaluate any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

(2) **CRITERIA TO BE USED.**--In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as--

(A) State agencies administering programs under this part and part E;

(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

(b) **COORDINATION OF EVALUATIONS.**--The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.

Part E--Federal Payments for Foster Care and Adoption Assistance

PURPOSE: APPROPRIATION

SEC. 470. [42 U.S.C. 670] For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State's plan approved under part A (as such plan was in effect on June 1, 1995) and adoption assistance for

children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--

(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance in accordance with section 473;

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this title shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this title (including activities under part F) or under title I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any

other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a

period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

~~(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;~~

~~(15) provides that—~~

~~(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts the child's health and safety shall be the paramount concern;~~

~~(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—~~

~~(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and~~

~~(ii) to make it possible for a child to safely return to the child's home;~~

~~(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;~~

~~(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—~~

~~(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);~~

~~(ii) the parent has—~~

~~(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;~~

~~(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;~~

~~(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or~~

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or
(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D);

(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child;

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the program funded under part A and plan approved under part D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part;

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; and

(19) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards; and

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance

payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that:

(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State; and

(21) provides for health insurance coverage (including, at State option through the program under the State plan approved under title XIX) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage:

(A) such coverage may be provided through 1 or more State medical assistance programs;

(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX;

(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(b)(10)(A)(i)(I); and

(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program; and

(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.

(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

SEC. 472. [42 U.S.C. 672] (a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 475(4)) under this part with respect to a child who would have met the requirements of section 406(a) or of section 407 (as such sections were in effect on July 16, 1996) but for his removal from the home of a relative (specified in section 406(a) (as so in effect), if--

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) **for a child** have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child--

(A) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 245A(h), 210(f), or 210A(d)(7) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home

were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 473(a)(2)(B)), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.

(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is--

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 475(4)).

(c) For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 422(b)(10).

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) For the purposes of this part and part B of this title, (1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of

the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) In any case where--

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative, the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h)(1) For purposes of titles XIX, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a dependent child as defined in section 406 (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect). For purposes of title XX, any child with respect to whom foster care maintenance payments are made under this section is deemed to be a minor child in a needy family under a State program funded under part A of this title and is deemed to be a recipient of assistance under such part.

(2) For purposes of paragraph (1), a child whose costs in a foster family home or child care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are made under this section.

ADOPTION ASSISTANCE PROGRAM

SEC. 473. [42 U.S.C. 673] (a)(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 475(3)) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State--

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child--

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 (as such sections were in effect on July 16, 1996) or would have met such requirements except for his removal from the home of a relative (specified in section 406(a) (as so in effect)) or, either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403) (as such section was in effect on July 16, 1996) or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits, or

(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 475(4)(B),

(B)(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) (as in effect on July 16, 1996) within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 472(a) shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence. ~~Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been~~

~~terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child~~

~~was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph~~

~~(1)(B)(ii)~~

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of

the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c), to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 474(a)(3)(E).

(b)(1) For purposes of title XIX, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 406 (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect) in the State where such child resides.

(2) For purposes of title XX, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this title and deemed to be a recipient of assistance under such part.

~~(3)~~ A child described in this paragraph is any child--

(A)(i) who is a child described in subsection (a)(2), and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and

local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(B) with respect to whom foster care maintenance payments are being made under section 472.

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.

(c) For purposes of this section, a child shall not be considered a child with special needs unless--

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.

SEC. 473A. ADOPTION INCENTIVE PAYMENTS

(a) **GRANT AUTHORITY.**--Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

(b) **INCENTIVE-ELIGIBLE STATE.**--A State is an incentive-eligible State for a fiscal year if

- (1) the State has a plan approved under this part for the fiscal year;
- (2) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;
- (3) the State is in compliance with subsection (c) for the fiscal year;
- (4) in the case of fiscal years 2001 and 2002, the State provides health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years 1998 through 2002.

(c) DATA REQUIREMENTS.

(1) **IN GENERAL.**—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2).

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such 1st fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) DETERMINATION OF NUMBERS OF ADOPTIONS.

(A) **DETERMINATIONS BASED ON AFCARS DATA.**—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(B) **ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.**—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by November 30, 1997, and approved by the Secretary by March 1, 1998.

(3) **NO WAIVER OF AFCARS REQUIREMENTS.**—This section shall not be construed to alter or affect any requirement of section 479 or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) ADOPTION INCENTIVE PAYMENT.

(1) **IN GENERAL.**—Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of

(A) \$4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; and

(B) \$2,000, multiplied by the amount (if any) by which the number of special needs adoptions in the State during the fiscal year exceeds the base number of special needs adoptions for the State for the fiscal year.

(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS

AVAILABLE.—For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year

(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.—Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year

(f) LIMITATIONS ON USE OF INCENTIVE PAYMENTS.—A State shall not expend an amount paid to the State under this section except to provide to children of families any service (including post-adoption services) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 423, 434, and 474

(g) DEFINITIONS.—As used in this section:

(1) FOSTER CHILD ADOPTION.—The term 'foster child adoption' means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State

(2) SPECIAL NEEDS ADOPTION.—The term 'special needs adoption' means the final adoption of a child for whom an adoption assistance agreement is in effect under section 473

(3) BASE NUMBER OF FOSTER CHILD ADOPTIONS.—The term 'base number of foster child adoptions for a State' means:

(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year

(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term 'base number of special needs adoptions for a State' means:

(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year

(h) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For grants under subsection (a), there are authorized to be appropriated to the Secretary \$20,000,000 for each of fiscal years 1999 through 2003

(2) AVAILABILITY.—Amounts appropriated under paragraph (1) are authorized to remain available until expended, but not after fiscal year 2003.

(i) TECHNICAL ASSISTANCE.

(1) IN GENERAL.--The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

(2) DESCRIPTION OF THE CHARACTER OF THE TECHNICAL ASSISTANCE.--The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system when adoptions promote the best interests of children, and may include the following:

(A) The development of best practice guidelines for expediting termination of parental rights.

(B) Models to encourage the use of concurrent planning.

(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

(3) TARGETING OF TECHNICAL ASSISTANCE TO THE COURTS.--Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

(4) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.--To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed \$10,000,000 for each of fiscal years 1998 through 2000.

PAYMENTS TO STATES; ALLOTMENTS TO STATES

SEC. 474. [42 U.S.C. 674] (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b)) shall be entitled to a payment equal to the sum of--

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 472 for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 473 pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan--

(A) 75 per centum of so much of such expenditures as are for the training (including both short-and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems--

(i) meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the sum of--

(A) so much of the amounts expended by such State to carry out programs under section 477 as do not exceed the basic amount for such State determined under section 477(e)(1); and

(B) the lesser of--

(i) one-half of any additional amounts expended by such State for such programs; or

(ii) the maximum additional amount for such State under such section 477(e)(1).

(b) (1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a), and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection a), the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall--

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)--

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) **AUTOMATED DATA COLLECTION EXPENDITURES.**--The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d)(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1123A, or otherwise, to have violated section 471(a)(18) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1123A(b)(3), the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1123A, to have implemented a corrective action plan with respect to such violation, by--

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

(2) Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3)(A) Any individual who is aggrieved by a violation of section 471(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

(e) Notwithstanding subsection (a), a State shall not be eligible for any payment under this section if the Secretary finds that, after the date of the enactment of this subsection, the State has--

(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

(2) failed to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) of this

~~subsection is denied by the State or not acted upon by the State with reasonable promptness.~~

DEFINITIONS

SEC. 475. [42 U.S.C. 675] As used in this part or part B of this title:

(1) The term "case plan" means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the ~~safety and~~ appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 472(a)(1).

(B) A plan for assuring that the child receives ~~safe and~~ proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own ~~safe~~ home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including--

- (i) the names and addresses of the child's health and educational providers;
- (ii) the child's grade level performance;
- (iii) the child's school record;
- (iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- (v) a record of the child's immunizations;
- (vi) the child's known medical problems;
- (vii) the child's medications; and
- (viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

~~(D) Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.~~

~~(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other~~

permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. 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.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where--

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child, the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term "case review system" means a procedure for assuring that--

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which--

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which

such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine ~~the safety of the child~~ the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to ~~and safely maintained in~~ the home or placed for adoption or legal guardianship,

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a ~~dispositional-permanency~~ hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than ~~eighteen-12~~ months after the ~~original placement date the child is considered to have entered foster care (as determined under subparagraph (F))~~ (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the ~~future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis)~~ ~~permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement~~ and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the

services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care; and

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parent (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless:

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child; and

(F) a child shall be considered to have entered foster care on the earlier of:

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; and

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require

that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(7) The term "legal guardianship" means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term "legal guardian" means the caretaker in such a relationship.

TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

SEC. 476. [42 U.S.C. 676] (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

INDEPENDENT LIVING INITIATIVES

SEC. 477. [42 U.S.C. 677] (a)(1) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children described in paragraph (2) who have attained age 16 in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e).

(2) A program established and carried out under paragraph (1)--

(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part ~~including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed \$5,000, which are otherwise~~

~~regarded as resources for purposes of determining eligibility for benefits under this part,~~

(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State, and

(C) may at the option of the State also include any child who has not attained age 21 to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16; and a written transitional independent living plan of the type described in subsection (d)(6) shall be developed for such child as a part of such program.

(b) The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a). Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private nonprofit organizations) the activities and services required to carry out the program or programs involved.

(c) In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i), and in the case of payments for any succeeding fiscal year such description and assurances must be submitted prior to February 1 of such fiscal year.

(d) In carrying out the purpose described in subsection (a), it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to—

- (1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;
- (2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;
- (3) provide for individual and group counseling;
- (4) integrate and coordinate services otherwise available to participants;
- (5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;
- (6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 475(1); and

(7) provide participants with other services and assistance designed to improve their transition to independent living.

(e)(1)(A) The basic amount to which a State shall be entitled under section 474(a)(4) for fiscal year 1987 and any succeeding fiscal year shall be an amount which bears the same ratio to the basic ceiling for such fiscal year as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

(B) The maximum additional amount to which a State shall be entitled under section 474(a)(4) for fiscal year 1991 and any succeeding fiscal year shall be an amount which bears the same ratio to the additional ceiling for such fiscal year as the basic amount of such State bears to \$45,000,000.

(C) As used in this section:

(i) The term "basic ceiling" means--

(I) for fiscal year 1990, \$50,000,000; and

(II) for each fiscal year other than fiscal year 1990, 45,000,000.

(ii) The term "additional ceiling" means--

(I) for fiscal year 1991, \$15,000,000; and

(II) for any succeeding fiscal year, \$25,000,000.

(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c), the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 474, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved. Amounts payable under this section may not be used for the provision of room or board.

(f) Payments made to a State under this section for any fiscal year--

(1) shall be used only for the specific purposes described in this section;

(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.

(g)(1) Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year with the amounts received under this section. Such report--

(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to

which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a); and

(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

(2)(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

(B) Not later than March 1, 1989, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal years 1987 and 1988, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

(h) Notwithstanding any other provision of this title, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 402 or 471, or for purposes of determining the level of such aid.

(i) The Secretary shall promulgate final regulations for implementing this section within 60 days after the date of the enactment of this section.

SEC. 478. RULE OF CONSTRUCTION. Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D).

COLLECTION OF DATA RELATING TO ADOPTION AND FOSTER CARE

SEC. 479. [42 U.S.C. 679] (a)(1) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the "Advisory Committee") to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall--

(A) identify the types of data necessary to--

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of--

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b)(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that--

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall--

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of--

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Any data collection system developed and implemented under this section shall--

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to--

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of--

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

SEC. 479A. ANNUAL REPORT. The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall--

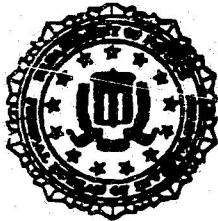
(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to parts B and E to ensure the safety of children;

(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;

(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;

(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part; and

(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved.



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Attn: Lloyd Suhr
Name Room Telephone

From: CJIS
Name of Office

Subject: Volunteers for Children Act

Special Handling Instructions: information from Hal Sklar

Originator's Name: Ruth Franks Telephone: 625-5961

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ATTACHMENT 4

The Volunteers for Children Act (VCA), Sections 221 and 222 of the Crime Identification Technology Act of 1998 (CITA), became Public Law (Pub. L.) 105-251 on October 9, 1998. This Informational Letter is provided as guidance.

Effective December 20, 1993, the National Child Protection Act of 1993 (NCPA), Pub. L. 103-209, encouraged states to adopt legislation meeting the criteria of Pub. L. 92-544, to authorize a national criminal history background check to determine an employee's or volunteer's fitness to care for the safety and well-being of children. On September 13, 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, expanded the scope of the NCPA to include two additional categories of care recipients considered similarly vulnerable, the elderly and individuals with disabilities, by substituting "the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities" for "an individual's fitness to have responsibility for the safety and well-being of children." 42 U.S.C. § 19a(a)(3). By Letter to Contributors No. 95-3, dated July 17, 1995, the FBI advised contributors regarding implementation of the NCPA.

Despite the above-mentioned federal legislative encouragement, numerous jurisdictions did not enact implementing state legislation. A particularly significant area left largely unaffected involved volunteers working with these three categories of populations. For example, by 1998, only six jurisdictions had legislation permitting a national criminal history background check of Boy/Girl Scout volunteer leaders.

In an effort to relieve the states of the necessity to enact legislation consistent with Pub. L. 92-544, the Volunteers for Children Act, H.R. 2488, was introduced in the House of Representatives on September 17, 1997. In its original form, the proposed legislation pertained solely to "youth-serving nonprofit organizations and institutions" which "may contact an authorized agency of the state to request a nationwide background check, including a check of fingerprint records."

In the Senate, the scope of the legislation (1) expanded to include the additional two constituencies (applicants/employees/volunteers working with the elderly and persons with disabilities); (2) removed any reference to "nonprofit organizations and institutions," instead utilizing the more familiar term "qualified entities" found in the NCPA; and (3) removed any language suggesting that a check other than a fingerprint-based background check was authorized, consistent with Pub. L. 92-544. This expanded version, bearing the original and now only partly descriptive title, became law on October 9, 1998.

When integrated with the NCPA, the pertinent provisions of 42 U.S.C. §§5119a through 5119c (with the provisions of the VCA highlighted) read as follows:

§ 5119a. Background checks

(a) In general.

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities:

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3) In the absence of State procedures referred to in paragraph (1), a qualified entity designated under paragraph (1) may contact an authorized agency of the State to request national criminal fingerprint background checks. Qualified entities requesting background checks under this paragraph shall comply with the guidelines set forth in subsection (b) and with procedures for requesting national criminal fingerprint background checks, if any, established by the State.

(b) Guidelines. The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first provides a set of fingerprints....

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) and the results

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thereof shall be handled in accordance with the requirements of Public Law 92-544 , except that this paragraph does not apply to any request by a qualified entity for a national criminal fingerprint background check pursuant to subsection (a)(3). * * *

(e) Fees. In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act [enacted Dec. 20, 1993] conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less, of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

42 U.S.C. § 5119c provides definitions for key terms:

§ 5119c. Definitions

For the purposes of this Act—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this Act; * * *

(5) the term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities; * * *

(9) the term "provider" means—

(A) a person who—

- (i) is employed by or volunteers with a qualified entity;
- (ii) who owns or operates a qualified entity; or
- (iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

- (i) seeks to be employed by or volunteer with a qualified entity;

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(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(10) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services....

The VCA authorizes a "qualified entity" which has been "designated by the State" to "contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well being of children, the elderly, or individuals with disabilities." 42 U.S.C. §5119a(a)(1).¹ The VCA modifies the NCPA in that (1) the 42 U.S.C. §5119a(b)(5) requirement that a state enact a statute acceptable under Public Law (Pub. L.) 92-544 is removed and (2) in contrast to the Pub. L. 92-544 requirement that a background check be required, under the VCA the qualified entity's decision to request a background check is elective.² Other requirements, e.g., that fingerprints be utilized and that criminal history record information not be released to a private entity (other than the subject of the record), are retained.

¹ Although the record is somewhat imprecise, the breadth of the enacted legislation to include all of the categories covered by the NCPA is supported by congressional commentary: Congressman McCollum ("The last provision in this bill is called the Volunteers for Children Act, which would amend the National Child Protection Act of 1993, often called the Oprah Act, to allow child care, elder care and volunteer organizations to request access to FBI criminal fingerprint background checks in the absence of specific State laws or procedures allowing such access"); Congresswoman Jackson-Lee ("The bill also ... allow(s) child care, elder care and volunteer organizations to request access to FBI fingerprint background checks"). October 7, 1998, Congressional Record.

² The comments of several members of Congress provide guidance regarding the VCA's discretionary background check provision: Congressman McCollum ("This bill in no way requires these organizations to conduct fingerprint checks, nor does it preclude them from using other resources such as State criminal history data to conduct background checks. The bill simply provides organizations with the option of requesting the checks if there is no law in place precluding them"); Congressman Foley ("It does not require any group to seek these background checks, nor does it incur liability if they choose not to"). October 7, 1998, Congressional Record.

D R A F T

Supported by the legislative history,³ the scope of the NCPA, as amended by the VCA, now authorizes national fingerprint-based criminal history background checks of volunteers and employees (including applicants for employment) who provide care for children, the elderly, or individuals with disabilities.

The prerogative of selecting "qualified entities" remains with the states, and the rules for dissemination of records remains unchanged as well. That is to say, if the "qualified entity" is governmental (such as a public school), there is no prohibition against it receiving criminal history record information, as properly determined by the "authorized agency of the State." Conversely, if the "qualified entity" is nongovernmental (such as a private school or Boy Scout Council), receipt of criminal history record information is prohibited, and the "authorized agency of the State" (such as the State Bureau) or the state regulator (such as a board of education) would be the recipient of the information and the appropriate entity to determine caregiver fitness. Inasmuch as the NCPA does not contain standards for disqualifying conduct by applicants, employees, or volunteers, states will have to continue their responsibility of screening the criminal records to identify what they determine to be disqualifying conduct and communicate their determinations to the nongovernmental qualifying entities which are not permitted access to the criminal history record information.

The predicate, "[i]n the absence of State procedures" (Section 5119a(a)(3)), is interpreted in the narrowest sense. Hence, should a state have an approved statute which requires background checks of e.g., teachers, that statute would serve as authority for those background checks. The VCA could serve as the statutory basis to conduct a background check on other school applicants, employees, and volunteers.

³ As Senator Hatch stated in sponsoring the amended bill in the Senate:

This provision amends the NCPA to permit child care, elder care, and volunteer organizations, known as qualified entities, to request background checks through state agencies in the absence of state laws implementing the NCPA. The 1993 NCPA and its 1994 amendments extending its coverage to elder care and disabled care workers conditioned part of [a] state's Byrne grant funding on the establishment of procedures for records checks for child care and elder care workers and volunteers, but many states have not done so. Qualified entities are not permitted to request a background check from states absent state establishment of procedures. This provision is a modest change to current law, and permits qualified entities to request the background checks, but does not override any state laws regarding use or dissemination of records. The provision is based on HR 2488.

July 13, 1998, Congressional Record.

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but would obviously not be necessary for said teachers since they are already covered by the state statute. Additionally, should a state require a criminal history background check of a class of employees only meeting certain criteria (e.g., residing in the state less than eight years), the VCA again could be used for that class of employees falling outside of such criteria.

Regarding the appropriate ORI number, the "authorized agency" is the proper agency to be recorded, and "NCPA/VCA" the appropriate authority to be listed.

The FBI's current charge of \$24 (\$22 for billing states) for processing each fingerprint card submission for an employee of applicant for employment under Pub. L. 92-544 remains unchanged under the VCA. With respect to the user fee for processing the fingerprints of a "volunteer" care provider, 42 U.S.C. §5119a(e) states that the fees collected by authorized state agencies and the FBI may not exceed the lesser of \$18 or the actual cost. The FBI currently charges \$18 (\$16 for billing states) to process the fingerprint cards for volunteer care providers, and this fee also remains unchanged under the VCA. The word "Volunteer" must be added in the "Reason Fingerprinted" block of the fingerprint card to obtain the reduced rate.

Questions regarding implementation of the VCA should be addressed to Attorney-Advisor Hal Sklar at (304) 625-3618.



U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services (CJIS) Division
Identification Services

Letter to All Fingerprint Contributors

July 17, 1995

RE: National Child Protection Act of 1993

Attached to this letter are guidelines for implementing the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act). The guidelines address the child abuse crime reporting requirements of the NCPA. The NCPA also encourages states to effect national background check procedures that will enable employers to learn beforehand an individual applicant's fitness to care for the safety and well-being of children, the elderly, or individuals with disabilities. Information is set forth in the guidelines relating to the implementation of such background checks of care providers.

The Crime Control Act requires the Attorney General to disseminate guidelines for protecting children, the elderly, or individuals with disabilities from abuse to state and local officials and to public and private care providers. The FBI strongly recommends that recipients make copies of the guidelines widely available to any "authorized agency," "qualified entity," or "provider" as those terms are defined near the end of the guidelines. Section III of the guidelines is set apart from other sections so it can be easily reproduced and disseminated to private entities interested in conducting care provider background checks.

C. David Evans
Acting Assistant Director
Criminal Justice Information
Services Division

2. Each provider who is subject to a background check is entitled to:

- a. obtain a copy of any background check report; and
- b. challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made by the authorized agency.

3. An authorized agency shall:

- a. upon receipt of a background check report lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data; and
- b. make a determination whether the provider has been convicted of or is under pending indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities, and convey that determination to the qualified entity.

4. Any nationwide background check and its results shall be handled in accordance with the requirements of Public Law (Pub. L.) 92-544.

C. Public Law 92-544 Requirements

The authority for the FBI to conduct a criminal record check for a noncriminal justice licensing or employment purpose is based upon Pub. L. 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 authorizations have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);

2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the SIB. The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

D. REGULATIONS

Section 3(c) of the NCPA states that the Attorney General may by regulation prescribe measures as may be required to carry out the purposes of the NCPA, including measures relating to the security, confidentiality, accuracy, use, misuse and dissemination of information, and audits and recordkeeping. Since NCPA background checks are to be handled in accordance with the requirements of Pub. L. 92-544, which was enacted in 1972, the FBI is of the view that the regulations implemented pursuant to Pub. L. 92-544 give adequate guidance. The standards used to approve state statutes for access to criminal history record information (CHRI) under Pub. L. 92-544 and the regulations set out below demonstrate a concern for the proper use, security, confidentiality, etc. of such information. Both Pub. L. 92-544 and Title 28, Code of Federal Regulations (CFR), Section 20.33 provide that dissemination of FBI CHRI outside the receiving governmental department or related agency is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made. Regulations found at Section 50.12 of Title 28 contain additional requirements regarding the use and dissemination of CHRI. Section 50.12 provides, among other things, that:

The CHRI may be used only for the purpose requested. Officials authorized to submit fingerprints and receive CHRI must notify the individual fingerprinted that the fingerprints will be used to check the criminal history records maintained by the FBI. Officials making the determination of suitability for employment or licensing must provide the applicant the opportunity to

**TESTIMONY BEFORE THE
HUMAN RESOURCES DIVISION OF THE
HOUSE APPROPRIATIONS COMMITTEE
REGARDING ENGROSSED SENATE BILL NO. 2171
WITH HOUSE ENGROSSMENTS
March 22, 1999**

Chairman Svedjan and members of the Human Resources Division of the House Appropriations Committee, my name is Blaine Nordwall. I appear on behalf of the North Dakota Department of Human Services. I am here to provide an overview of Senate Bill 2171. This bill was introduced at the request of the department to implement the requirements of the federal law, the Adoption and Safe Families Act of 1997 (ASFA). Attached to my testimony is a matrix identifying, by bill section, the North Dakota law affected, the source of any federal requirement implemented, and brief comments about that section.

ASFA was effective on November 19, 1997, but a delay was permitted if state legislation was required for its implementation. Section 501 of ASFA requires states to comply as of "the first day of the first calendar quarter beginning after the close of the first regular session of the state legislature that begins after the date of enactment of this Act." In North Dakota, that day is July 1, 1999, assuming this Legislative Assembly does not adjourn sine die before April 1. That built-in delay provided an opportunity to review the efforts of other states that have already implemented ASFA. It has also allowed consideration of proposed implementing regulations issued by the United States Department of Health and Human Services on September 18, 1998.

Virtually all of the changes required by ASFA are sound policy. They are focused on avoiding long-term foster care placements and assuring safety for children. The federal law facilitates adoptions and guardianships or other planned permanent living arrangements for those children whose adoption is not a viable option.

While the federal law obliges states to initiate terminations of parental rights in some cases, we have been able to describe standards that will assure that inappropriate terminations will not be sought.

There are six general areas covered in the bill. They are:

- 1. Increasing the pace of providing services to children (Sections 6, 8, and 16);**
- 2. Altering termination of parental rights process (Sections 10 and 11);**
- 3. Facilitating adoption (Sections 14, 18, 24, 25, and 26);**
- 4. Facilitating guardianship for children (Sections 4, 7, 8, 13, 14, 15, and 24);**
- 5. Expanding criminal records investigation (Sections 1, 2, 21, 22, 23, and 24);
and**
- 6. Supporting program administration (Sections 5, 9, 12, 17, 18, 19, and 20).**

Increasing the pace of providing services to children is accomplished in several ways. Most importantly, the bill provides for "concurrent planning" for children in foster care. Under the former federal law, many thought it legally impossible to begin any other permanency plans for a child until all reasonable efforts to reunify the family had been exhausted. Under concurrent planning, agencies can both work to reunite a family, while, at the same time, preparing for the possibility that reunification efforts might fail.

Termination of parental rights is affected by the federal law that requires states to seek termination if a child has been in foster care for 15 out of the most recent 22 months. However, a state is allowed to define "compelling reasons" for not

seeking termination of parental rights. This bill sets forth a way of establishing compelling reasons that would prevent any inappropriate termination.

Of the several provisions for facilitating adoption, the most significant is authorizing North Dakota to join the Interstate Compact on Adoption and Medical Assistance. The federal law requires each state to provide for health coverage for all adopted "special needs" children. Virtually all states are choosing to do this by joining the Interstate Compact on Adoption and Medical Assistance. This assures that the families of special needs children adopted in North Dakota are able to secure services under the Medicaid programs of other states, as well as under North Dakota's program.

Guardianships for children would be facilitated primarily by amendments to the Uniform Juvenile Court Act. The juvenile court would be given concurrent jurisdiction with the district court in guardianship matters. Guardianships would be self-sustaining until terminated by court order or by the child reaching adulthood. While adoption is always the first choice, there are cases in which a termination of parental rights is inappropriate, but in which the child cannot reasonably be returned home. Guardianship could be used as a way to build a family for such a child.

Criminal records investigation would be expanded to include foster care providers, adoptive parents, and guardians. The bill provides for in-state criminal records investigations for those individuals who are long-term North Dakota residents. For individuals who have lived out of state, the bill provides for fingerprinting and use of FBI records checks. Existing family foster care homes are exempt so long as they remain licensed.

The final area of the bill operates to support program administration. Section 5 of the bill appears in the First Engrossment With House Amendments. However,

inclusion of that section is perhaps inadvertent as the House Human Services Committee recommended amendments that would eliminate Section 5.

We respectfully request this committee consider leaving Section 5 intact. This section would require the state's attorney to prepare petitions and present evidence in juvenile court matters without a specific request from the court.

The remaining provisions for supporting program administration specify the responsibilities of legal custodians, state's attorneys, the Department of Human Services, and county social service offices. Those provisions either clarify or codify existing practices.

If the committee has any questions about the content of this bill, I'd be happy to try and answer them.

Prepared by:

**Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services**

Prepared by the North Dakota
Department of Human Services
1/22/99

PROPOSED AMENDMENTS TO SENATE BILL NO. 2171

Page 1, line 2, replace "four" with "five"

Page 2, line 21, after "Abandons" insert "tortures, chronically abuses, or sexually abuses"

Page 13, remove line 13

Page 13, line 14, replace "3" with "2" and replace "4" with "3"

Page 14, line 1, replace "4" with "3"

Page 14, line 14, replace "5" with "4" and replace "3" with "2"

Page 14, line 29, replace "6" with "5" and replace "3" with "2"

Page 15, line 12, replace "7" with "6" and replace "3" with "2"

Page 15, line 19, replace "8" with "7"

Page 20, line 10, replace "Four" with "Five"

Page 20, after line 24, insert:

"Make training available to states attorneys and assistant states attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights."

Page 21, line 26, overstrike "the National Child"

Page 21, overstrike line 27

Page 21, line 28, overstrike "as amended," and insert immediately thereafter "federal law"

Page 22, line 24, after "1." insert "a."

Page 22, line 26, remove "has resided continuously in"

Page 22, replace line 27 with "is described in subdivision b."

Page 22, after line 29, insert:

"b. Fingerprints need not be taken and a nationwide background check need not be made, if an individual:

(1) Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

(2) Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or

(3) Is excused from providing fingerprints under rules adopted by the department."

Page 23, after line 12, insert:

"6. Rules may be adopted as emergency rules under this section without the finding otherwise required under section 28-32-02."

Page 23, line 29, remove "the National Child Protection Act of 1993 [Pub. L.]"

Page 23, line 30, replace "103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.], as amended" with "federal law"

Page 24, replace lines 17 through 19 with:

"6. Fingerprints need not be taken, and a nationwide background check need not be made, if an individual:

a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or

c. Is excused from providing fingerprints under rules adopted by the department of human services."

Page 24, after line 23, insert:

"8. Rules may be adopted as emergency rules under this section without the finding otherwise required under section 28-32-02."

Page 26, line 2, remove "the"

Page 26, remove line 3

Page 26, line 4, replace "5119, et seq.], as amended," with "federal law"

Page 26, replace lines 22 through 25 with:

"6. Fingerprints need not be taken, and a nationwide background check need not be made, if a prospective adoptive parent:

a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or

c. Is excused from providing fingerprints under rules adopted by the department of human services."

Page 26, after line 29, insert:

"8. Rules may be adopted as emergency rules under this section without the finding otherwise required under section 28-32-02."

Renumber accordingly

SB 2171

Senate Human Services Committee

January 25, 1999

Good morning Chairman Thane and members of the Senate Human Services Committee. My name is Julie Hoffman and I serve as the Administrator of Adoption Services for the Children and Family Services Division of the Department of Human Services. I am here to provide testimony in support of Senate Bill Number 2171, North Dakota's enabling legislation for the Adoption and Safe Families Act of 1997. I will speak specifically to those issues which relate to adoptions.

Adoption is the process whereby a child becomes a permanent member of a family other than the family of his birth parents. For many children in the care of the public welfare system, this permanency option is the best chance they may have at a safe, secure, and consistent environment in which they may grow to their full potential. The family which accepts this responsibility may be the child's foster parents, a relative care giver, or in some circumstances, a family who had not previously been known to the child. I believe that as we fully implement the provisions of the Adoption and Safe Families Act (ASFA) of 1997, we will see children come to this permanency option in a more timely fashion when their birth families are unable to provide such an environment for them. Early permanency for children who cannot return to their birth families is good for children, good for the families who adopt them, makes good casework sense and is fiscally responsible.

In North Dakota, the Department contracts with three private licensed child placing agencies to provide adoption services for children from the public welfare system. This public/ private collaborative, the AASK(Adults Adopt

Adoptive
Services

Special Kids) Program, recruits and assesses potential adoptive families, prepares children for adoptive placement, provides placement and post placement follow up, and assists families in applying for adoption subsidy and in finalizing the adoption of the child placed with them. AASK staff work cooperatively with county and regional staff to train potential foster and adoptive parents. They may meet with birth families struggling to make the decision regarding whether to voluntarily relinquish their parental rights when they are unable to care for their children. They may work with birth and adoptive families toward an openness which allows birth families to receive updated information about their children over the course of their childhood.

We believe that the many families who step forward to provide an adoptive home for the children in our public welfare system, most of whom have one, if not several, special needs, must be given the support of our communities and the state. One provision of this bill, found in section 26, would allow North Dakota to become one of the growing number of states who have passed enabling legislation to provide for joinder in the Interstate Compact on Adoption and Medical Assistance. In short, joinder in the ICAMA provides that a child receiving an adoption assistance payment and accompanying medical assistance coverage (whether funded by state or federal funds), would continue to receive medical coverage even if his/her family were to move to another member state. Additionally, such children coming to North Dakota from other states would also be able to receive consistent medical coverage. Although the families private medical insurance is always the first payor in medical claims, the additional medical coverage provided through Medicaid is sometimes a decisive factor in whether a family can meet the medical needs of a child with physical, mental, or emotional disabilities over the course of his/ her childhood and therefore offer their family as a permanent placement option.

I believe that joinder in the Interstate Compact on Adoption and Medical Assistance, as well as the passage of SB 2032 (provides that the administration of the adoption subsidy program be brought into the central office of the Department) which I spoke with you about a couple of weeks ago, would provide us an incentive as we recruit the resource families required to meet the increased need for permanent placements.

Criminal background checks are an important tool in screening an adoptive family. Used along with other tools such as child abuse and neglect clearances, reference statements, psychological testing, and the assessment itself, the criminal background check can provide a minimal assurance of the adoptive parents appropriateness to provide a permanent placement. In practice, criminal background checks are already being done on any family being assessed through the special needs adoption program. Currently we are doing state criminal background checks through the Bureau of Criminal Investigations. It is anticipated that perhaps less than 25% of the families being studied would require a criminal background check through the Federal Bureau of Investigation, based on the carefully crafted exceptions found in the Bill and the Amendment offered by Mr. Nordwall. By policy, many of the licensed child placing agencies doing other types of adoption are also using state wide criminal background checks. Families planning to facilitate an adoption of a foreign born child are required by the Immigration and Naturalization Service to submit to a finger print based, FBI check. I do not see that the requirement in the bill for criminal background checks for adoptive parents would impose any significant difficulties, since by policy, this is being done in most of the agencies already.

A key provision of ASFA is a penalty which a state might incur if it were to "delay or deny the placement of a child for adoption when an approved

family is available outside the jurisdiction responsible for handling the child's case". This penalty, named by some "the nuclear penalty", could be the loss of the states IV-E funding. SB 2171 (section 18) attempts to deal with the real concerns of a child being placed with a family for whom there has not been adequate assessment or preparation, by defining "approved family" who resides outside the jurisdiction of the state of North Dakota as one *approved by the Department*. In this way we will be able to continue to match the placement resource to the specific needs of the child.

I would encourage your support in the passage of SB 2171. Thank you for the opportunity to provide information to your committee regarding this important matter. I am available to answer your questions at this time.

SB 2171

House Human Services Committee

March 9, 1999

Good morning Chairman Price and members of the House Human Services Committee. My name is Julie Hoffman and I serve as the Administrator of Adoption Services for the Children and Family Services Division of the Department of Human Services. I am here to provide testimony in support of Senate Bill Number 2171, North Dakota's enabling legislation for the Adoption and Safe Families Act of 1997. I will speak specifically to those issues which relate to adoptions.

Adoption is the process whereby a child becomes a permanent member of a family other than the family of his birth parents. For many children in the care of the public child welfare system, this permanency option is the best chance they may have at a safe, secure, and consistent environment in which they may grow to their full potential. The family which accepts this responsibility may be the child's foster parents, a relative care giver, or in some circumstances, a family who had not previously been known to the child. I believe that as we fully implement the provisions of the Adoption and Safe Families Act (ASFA) of 1997, we will see children come to this permanency option in a more timely fashion when their birth families are unable to provide such an environment for them. Early permanency for children who cannot return to their birth families is good for children, good for the families who adopt them, makes good casework sense and is fiscally responsible.

In North Dakota, the Department contracts with three private licensed child placing agencies to provide adoption services for children from the public welfare system. This public/ private collaborative, the AASK(Adults Adopt

Special Kids) Program, recruits and assesses potential adoptive families, prepares children for adoptive placement, provides placement and post placement follow up, and assists families in applying for adoption subsidy and in finalizing the adoption of the child placed with them. AASK staff work cooperatively with county and regional staff to train potential foster and adoptive parents. They may meet with birth families struggling to make the decision regarding whether to voluntarily relinquish their parental rights when they are unable to care for their children. They may work with birth and adoptive families toward an openness which allows birth families to receive updated information about their children over the course of their childhood. From 1993 through the end of 1998, the AASK program has placed 194 children with special needs for adoption. Only a handful of those adoptions have disrupted, with the need to subsequently replace the children. AASK regional adoption specialists are located in the four quadrants of the state, with an affiliate worker on one tribal reservation and an overall program director located in Fargo.

Who are these children? They have generally been in the custody of County Social Services or a Tribe prior to termination of parental rights. They may be older children, children placed along with a sibling for adoption, children with a mental, physical or emotional disability, or children of minority race which makes them difficult to place. They may have diagnosis of Down's Syndrome, Reactive Attachment Disorder, Attention Deficit Hyperactivity Disorder, Fetal Alcohol Syndrome, or Fetal Alcohol Effects, Bipolar Disorder, learning disabilities, developmental disorders, behavioral disorders or other serious medical diagnosis. They may have multiple foster care placements. Their birth parents may have a genetic, psychological or addiction disorder which predisposes them to difficulties which may not currently be manifested. Many are determined to be "special needs" having met several of these criteria. When placed

for adoption, most children with special needs qualify for adoption assistance payments and medical coverage, secondary to their families private health insurance.

We believe that the many families who step forward to provide an adoptive home for the children in our public child welfare system, some of whom have several adoptive children with special needs, must be given the support of our communities and the state. One provision of this bill, found in section 26, would allow North Dakota to become one of the growing number of states who have passed enabling legislation to provide for joinder in the Interstate Compact on Adoption and Medical Assistance (ICAMA). In short, joinder in the ICAMA provides that a child receiving an adoption assistance payment and accompanying medical assistance coverage (whether funded by state or federal funds), would continue to receive medical coverage even if his/her family were to move to another member state. Additionally, such children coming to North Dakota from other states would also be able to receive consistent medical coverage in our state, no matter what the funding source for their adoption subsidy. Although the families private medical insurance is always the first payor in medical claims, the additional medical coverage provided through Medicaid is sometimes a decisive factor in whether a family can meet the medical needs of a child with physical, mental, or emotional disabilities over the course of his/ her childhood and therefore offer their family as a permanent placement option. I believe that joinder in the Interstate Compact on Adoption and Medical Assistance would provide us an incentive as we recruit the resource families required to meet the increased need for permanent adoptive placements.

Criminal background checks are an important tool in screening an adoptive family. Criminal background checks used along with other tools (such as

child abuse and neglect clearances, reference statements, psychological testing, and the assessment itself) minimally assure the adoptive family's appropriateness to provide a permanent adoptive home. In practice, criminal background checks are already being done on any family being assessed through the special needs adoption program. Currently we are doing state criminal background checks through the Bureau of Criminal Investigations. It is anticipated that perhaps less than 25% of the families being studied would require a criminal background check through the Federal Bureau of Investigation, based on the carefully crafted exceptions found in the Engrossed Bill. By policy, many of the licensed child placing agencies doing other types of adoption are also using state wide criminal background checks. Families planning to facilitate an adoption of a foreign born child are required by the Immigration and Naturalization Service to submit to a finger print based, FBI check. I do not see that the requirement in the bill for criminal background checks for adoptive parents would impose any significant difficulties, since by policy, this is being done in most of the agencies already.

A key provision of ASFA is a penalty which a state might incur if it were to "delay or deny the placement of a child for adoption when an approved family is available outside the jurisdiction responsible for handling the child's case". This penalty, named by some "the nuclear penalty", could be the loss of the states IV-E funding. SB 2171 (section 18) attempts to deal with the real concerns of a child being placed with a family for whom there has not been adequate assessment or preparation, by defining "approved family" who resides outside the jurisdiction of the state of North Dakota as one *approved by the Department*. In this way we will be able to continue to fit the parenting ability of the adoptive placement resource to the specific needs of the child.

I encourage your support in the passage of SB 2171. Thank you for the opportunity to provide information to your committee regarding this important matter. I am available to answer your questions at this time.

Submitted
by Julie Hoffman SB 2171
House Human Services Committee

March 9, 1999

Chairman Price and members of the Senate Human Services Committee, I am Julie Hoffman, Administrator of Adoption Services for the Department of Human Services. At this time I am submitting the testimony of individuals who could not be here today, in support of Senate Bill 2171.

Gene and Sherry Harmon of Grand Forks are the adoptive parents of five children with special needs, the birth parent of another child and continue to be foster parents, currently for two children. The children in their family range in age from six to thirteen. Gene is an active duty Air Force member. They will speak of their experiences, and those of their children, in their attached written testimony. Gene and Sherry and their family were chosen by adoption professionals in the state as the North Dakota Special Needs Adoptive Family of the year in 1998. Subsequent to that award, the Harmon's were recognized by the Air Force for their efforts, and their story will soon be publicized in an Air Force periodical. They are truly a specially gifted and blessed family, who we would like to recognize and thank today. They have given of themselves for the benefit of North Dakota's children time and time again. They speak eloquently advocating for earlier permanence for children in the foster care system. I'd invite you to read their attached testimony. For obvious reasons, their life is very busy and they were not able to be here today. They do send their greetings.

Leanne Johnson is the Director of the AASK program, North Dakota's collaborative for special needs adoption and also was not able to be here today due to previous commitments. She has submitted written testimony for today's hearing which is attached.

SB 2171

Senate Human Services Committee

January 26, 1999

Chairman Thane and members of the Human Services Committee. We are Gene and Sherry Harmon of Grand Forks. We are the adoptive parents of five children placed through the A.A.S.K. Program. We are providing written testimony in support of Senate Bill 2171.

We would like to share with you a few of our experiences of foster care and adoption. We moved to North Dakota in August of 1989 from South Dakota. We were foster parents there and decided to continue to do foster care here also. It was in October 1989 we got our first placement. Two little boys. Jeremy who was three years old and Wayne who was sixteen months old. They stayed with us for nine months and then were returned to their biological mother and a new baby brother, Adam. In September, three months later, we had two beautiful three year old twin girls placed with us. This was their second placement in foster care. Jennifer and Elizabeth stayed with us for several years while the state worked with the legal system and eventually went for TPR. It wasn't until six years after their initial placement with us that TPR was finally attained. In November of 1996, we adopted both girls. In the meantime, back in the summer of 1993, Wayne, whom we had previously had, was placed back into foster care. He was placed in another home but it was not working, so arrangements were made for him to come and stay with us. His brother Jeremy and also younger brothers Adam and Kyle were placed in other homes. In 1995, the state went for TPR. We decided then that we needed to try and get the boys together if at all possible. The way it worked was Adam moved in with us and Jeremy and Kyle were placed together in another home with adoption being a possibility. We were able to finalize on their adoption in December of 1995. Now once again we find ourselves going through the adoption process. In June of 1998, we had a five year old boy placed in our care that we have known since he had been placed in

foster care with a friend of ours two years earlier. I might add that was his third placement. The state had TPR but due to his needs and the circumstances of his foster home, adoption was not an option for him there. He was placed here as a foster/adopt child. We now have a court date in February of 1999 to finalize this adoption.

We are very excited about each one of these adoptions that have taken place. There are numerous other families that have done this and numerous kids waiting to find that permanent home. Each one of the five children we have adopted have special needs of one thing or another. All five have been in therapy and three still are. There have been physical needs, academic, medical, and emotional needs. The financial assistance through the subsidized adoption and the continued support from medical assistance have made these adoptions possible. We look forward to the years ahead and learning to grow with each one of these children and are just so thankful for the opportunity to have them as part of our family.

SB 2171

House Human Services Committee

March 9, 1999

Chairman Price and members of the House Human Services Committee. We are Gene and Sherry Harmon of Grand Forks. We are the adoptive parents of five children placed through the A.A.S.K. Program. We are providing written testimony in support of Senate Bill 2171. We are sorry to not be able to be with you today.

We would like to share with you a few of our experiences of foster care and adoption. We moved to North Dakota in August of 1989 from South Dakota. We were foster parents there and decided to continue to do foster care here also. It was in October 1989 we got our first placement. Two little boys. Jeremy who was three years old and Wayne who was sixteen months old. They stayed with us for nine months and then were returned to their biological mother and a new baby brother, Adam. In September, three months later, we had two beautiful three year old twin girls placed with us. This was their second placement in foster care. Jennifer and Elizabeth stayed with us for several years while the state worked with the legal system and eventually went for TPR. It wasn't until six years after their initial placement with us that TPR was finally attained. In November of 1996, we adopted both girls. In the meantime, back in the summer of 1993, Wayne, whom we had previously had, was placed back into foster care. He was placed in another home but it was not working, so arrangements were made for him to come and stay with us. His brother Jeremy and also younger brothers Adam and Kyle were placed in other homes. In 1995, the state went for TPR. We decided then that we needed to try and get the boys together if at all possible. The way it worked was Adam moved in with us and Jeremy and Kyle were placed together in another home with adoption being a possibility. We were able to finalize on their adoption in December of 1995. Now once again we find ourselves going through the adoption process. In June of 1998, we had a five year old boy placed in our care that we have known since he had been placed in

foster care with a friend of ours two years earlier. I might add that was his third placement. The state had TPR but due to his needs and the circumstances of his foster home, adoption was not an option for him there. He was placed here as a foster/adopt child. We finalized Tyler's adoption in February of 1999.

There are numerous other families that have done this and numerous kids waiting to find that permanent home. One just happens to be living with us now. He has been with us for almost a year and a half and he is going to be 13 years old next month. He has spent the last 10 years in and out of foster care. He has had excess of over 16 placements. He has been reunited with his family several times just to be returned to the system. The state finally got TPR this month. It has been an emotional year for this child. To not know what the next month would hold for him. School has been difficult. He can't talk about the future because he doesn't know what the future will be. He doesn't make plans because they have been changed so many times. To listen to him cry at night and tell you "All I want is a permanent family to live with". Even now with TPR, the wait isn't over for him. There is going to be the time of finding a family willing to take a 13 year old boy. Not to mention the time of legal issues being settled. I can only guess at where he might be if TPR had taken place even five years ago. How would school be different. What about his peer relationships that have been so hard for him. I'm convinced that part of his peer problems is he is in the seventh grade and has never gone to one school for the entire grade. If he is with us until June this year, it will be his first.

We are very excited about each one of our adoptions. There are numerous other families that have done this and numerous kids waiting to find that permanent home. Each one of the five children we have adopted have special needs of one thing or another. All five have been in therapy and three still are. There have been physical needs, academic, medical, and emotional needs. The financial assistance through the subsidized adoption and the continued support from medical assistance have made these adoptions possible. We look forward to the

years ahead and learning to grow with each one of these children and are just so thankful for the opportunity to have them as part of our family.

SB 2171

Senate Human Services Committee

January 26, 1999

Good morning Chairman Thane and members of the Senate Human Services Committee. My name is Leanne Johnson and I am employed by Lutheran Social Services/ND and serve as the Adoption Director for A.A.S.K. (Adults Adopting Special Kids). I am here today to provide informational testimony for Senate Bill Number 2171.

The A.A.S.K. program is a collaborative effort between Lutheran Social Services/ND, Catholic Family Services, The Village Family Services Center, the North Dakota Department of Human Services and affiliated with the Turtle Mountain Band of Chippewa Indians. Currently, the A.A.S.K. program has four adoption specialists statewide and a Tribal Adoption Specialist located in Belcourt. Each adoption specialist is responsible for two human service center regions. A map of the regions is attached to my testimony.

A.A.S.K. is responsible for the adoption of special needs children in North Dakota. These children have generally been in the custody of County Social Services or a Tribe prior to the termination of parental rights. Many times they have had multiple placements outside of their birth home. They may be older children, children placed along with a sibling for adoption, children with a mental, physical, emotional disability, or children of minority race which make them difficult to place. Often, many children meet several of these criteria. Parents adopting these children come from a variety of resources, such as family members, foster parents or grandparents. In addition, parents wishing to start, add to, or complete their family open their hearts and homes to adopt these challenging children.

From 1993 until 1998, A.A.S.K. has placed a total of 194 children and completed a total of 179 adoptive family assessment. Approximately 11 of those families

have had updates to their assessment in order to expand their family by adopting another child. We are currently working with over 55 children throughout the state who are awaiting a permanent home through adoption. Our adoption specialists are also aware of over 75 more North Dakota children whose referrals are pending. The number of families either recruited into or referred to the A.A.S.K. program continues to increase. We are currently working with over 40 families who are in different phases of the adoption process.

2/3 foster adopt families

The A.A.S.K. staff and the agencies they represent have remained interested and informed regarding the passage of the Adoptions and Safe Families Act of 1997 at the federal level. In addition, we have remained informed regarding the proposed legislation found in Senate Bill 2171. The guidelines and safeguards for reasonable, yet safe, permanency for children this piece of legislation addresses is believed to be a necessary and supportive component to strong, healthy families.

There are two areas in this piece of legislation that will directly impact the adoption process for families in North Dakota and I would like to speak to those areas. First, this legislation will require a criminal background check for all adoptive families and contains a fingerprinting component for many families. We already conduct criminal background checks for all families studied. The additional step of fingerprints for some families will serve as an additional check and is not seen as problematic. We will implement procedures designed to obtain these checks early in the process.

Second, this legislation will ensure that all North Dakota children receiving a state-funded adoption or medical assistance subsidy will continue to receive the subsidy, no matter what state their parents may subsequently move to. States throughout this nation are joining together through the Interstate Compact on Adoption and Medical Assistance to ensure that a child is not penalized for a family's need to relocate. The A.A.S.K. workers and the supporting agencies

agree that this is a vital need to the children in North Dakota.

The United States Congress acknowledged that children nationwide deserve safe, permanent families when they passed the Adoption and Safe Families Act of 1997. Significant guidelines and safeguards clearly lay the groundwork. However, it is up to North Dakota to decide if and how those guidelines shall be executed in this state. There is no question that North Dakota stands to lose a great deal of federal support should the legislation outlined in Senate bill 2171 fail. To me, though, the greater question and consequence is what the children and families of North Dakota stand to gain should Senate bill 2171 become law. Positive things can happen for North Dakota as a result of supporting and building strong, healthy families, whether we give birth to our children or adopt them!

I hope this information has been helpful. Thank you for the opportunity to provide information to your committee regarding this important matter. I am available to answer any questions at this time.

AASK Regional Staff

Village Family
Service Center



Catholic Family
Service



Catholic Family
Service



Village Family
Service Center

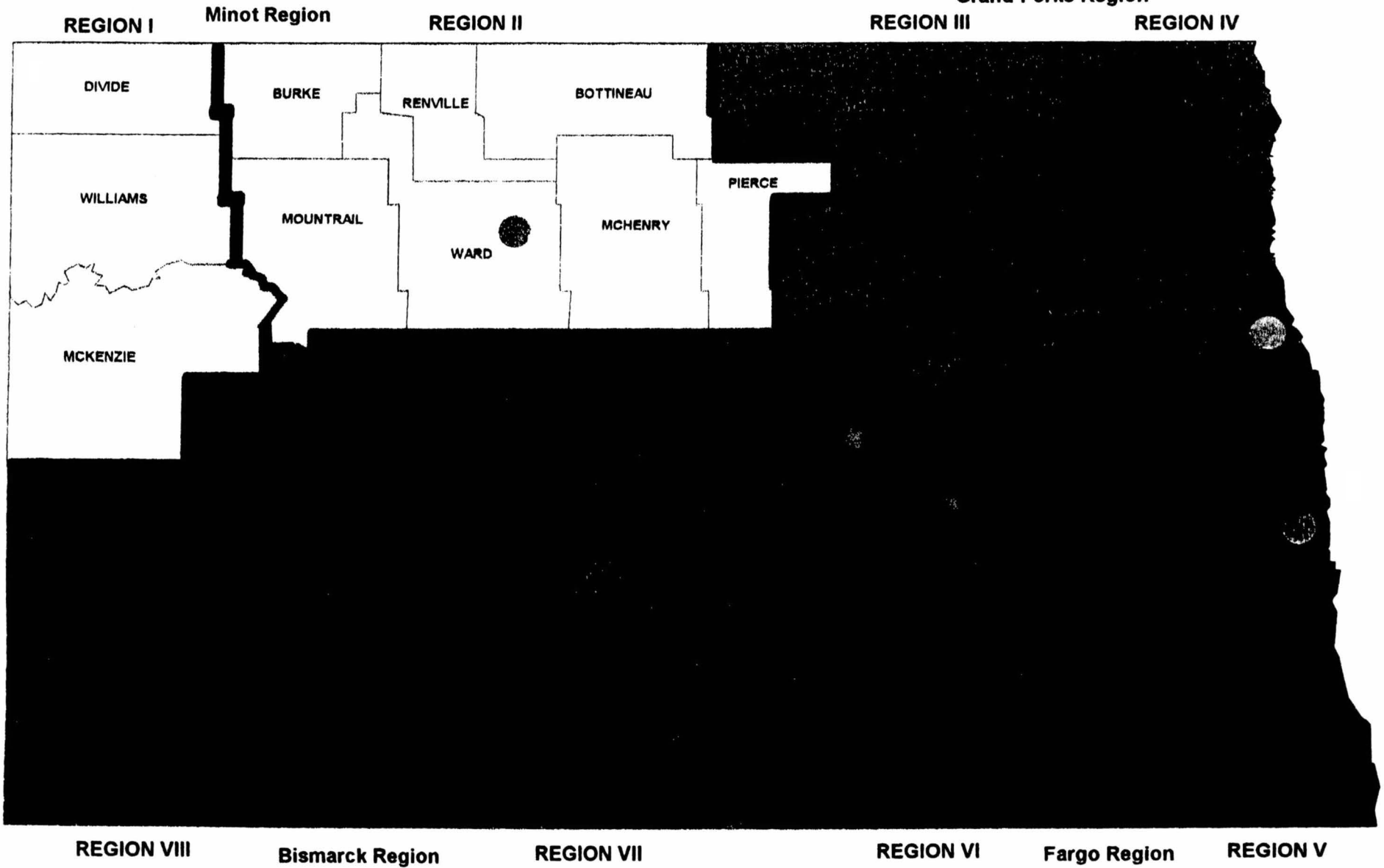


Regional Staff



Coordination
Lutheran Social Services

Grand Forks Region



SB 2171
House Human Services Committee
March 9, 1999

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The AASK program is a collaborative effort between Lutheran Social Services/ ND, Catholic Family Services, The Village Family Services Center, the North Dakota Department of Human Services and affiliated with the Turtle Mountain Band of Chippewa Indians. Currently, the AASK program has four adoption specialists statewide and a Tribal Adoption Specialist located in Belcourt. Each adoption specialist is responsible for two human service center regions.

AASK is responsible for the adoption of special needs children in North Dakota. These children have generally been in the custody of County Social Services or the Tribe prior to the termination of parental rights. Many times they have had multiple placements outside of their birth home. They may be older children, children placed along with a sibling for adoption, children with a mental, physical, emotional disability, or children of minority race which make them difficult to place. Often, many children meet several of these criteria. Parents adopting these children can be family members, grandparents or foster parents. In addition , parents wishing to start, add to, or complete their family open their hearts and homes to adopt these challenging children.

From 1993 until 1998, AASK has placed a total of 194 children and completed a total of 179 adoptive family assessments. Approximately 11 of those families have had updates to their assessment in order to expand their family by adopting another child. We are currently working with over 55 children throughout the state who are

awaiting a permanent home through adoption. Our adoption specialists are also aware of over 75 more North Dakota children whose referrals are pending. The number of families either recruited into or referred to the AASK program continues to increase. We are currently working with over 40 families who are in different phases of the adoption process.

The AASK staff and the agencies they represent have remained interested and information regarding the passage of the Adoptions and Safe Families Act of 1997 at the federal level. In addition, we have remained information regarding the proposed legislation found in Senate Bill 21761. The guidelines and safeguards for reasonable, yet safe, permanency for children this piece of legislation addresses is believed to be a necessary and supportive component to strong, healthy families.

There are two areas in this piece of legislation that will directly impact the adoption process for families in North Dakota and I would like to speak to these areas. First, this legislation will require a criminal background check for all adoptive families and contains a fingerprinting component for many families. We already conduct criminal background checks for all families studied. The additional step of fingerprints for some families will serve as an additional check and is not seen as problematic. We will implements procedures designed to obtain these checks early in the process.

Second, this legislation will ensure that all North Dakota children receiving a state funded adoption or medical assistance subsidy will continue to receive the subsidy, no matter what state their parents may subsequently move to States throughout this nation are joining together through the Interstate Compact on Adoption and Medical Assistance to ensure that a child is not penalized for a family's need to relocate. The AASK workers and the supporting agencies agree that this is a vital need to the children in North Dakota.

The United States Congress acknowledged that children nationwide deserve safe, permanent families when they passed the Adoption and Safe Families Act of 1997.

Significant guidelines and safeguards clearly lay the groundwork. However, it is up to North Dakota to decide if and how those guidelines shall be executed in this state. There is no question that North Dakota stands to lose a great deal of federal support should the legislation outlined in Senate Bill 2171 fail. To me, though, the greater question and consequence is what the children and families of North Dakota stand to gain should Senate Bill 2171 become law. Likely positive outcomes for North Dakota are created as a result of supporting and building strong, healthy families, whether we give birth to our children or adopt them!

I encourage your support in the passage of SB 2171. Thank you for the opportunity to provide information to your committee regarding this important matter.

SB 2171
House Human Services Committee
March 9, 1999

Foster
Care
Program

Chairman Price and members of the Human Services Committee. I am Jean Doll, Administrator of the foster care program, Children and Family Services Division of the North Dakota Department of Human Services. I am here in support of SB 2171, which is North Dakota's response to The Adoption & Safe Families Act of 1997 (ASFA).

Foster care is temporary substitute care in a family home or residential setting. Children enter foster care from situations of abuse or neglect, or from the population served by the Division of Juvenile Services. North Dakota has a single foster care system. During state FY 1998 we had an unduplicated number of 1728 children in foster care, or a monthly average of 945 children. Of those children, 326 were adjudicated delinquent, 307 were adjudicated unruly and 1,095 were deprived. Family reunification is the usual goal.

Nearly 20 years ago, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (P. L. 96-272). This legislation significantly and positively impacted child welfare in the United States. It required permanency planning, a disposition hearing within 18 months, findings related to whether reasonable efforts had been made to prevent removal of the child from the home, whether reasonable efforts must be made to reunify the family, and shortened time in foster care. (Statewide average months in foster care: FY 1980 - 26, FY 1998 - 15.5.). Over the years, various changes were made to the law, such as adding the child's health and education information to the child's case plan, and incorporating an independent living program.

The Adoption and Safe Families Act of 1997 (ASFA) (P. L. 105-89) builds on the foundation of the Adoption Assistance and Child Welfare Act, and stresses the health, safety and well being of children. It requires a disposition (permanency) hearing within twelve months. It clarifies issues related to when reasonable efforts to reunify a family are required, and when they are not. ASFA requires states to file a petition to terminate parental rights if a child has been in foster care for 15 of the most recent 22 months. Senate Bill 2171 responds to the requirements of The Adoption and Safe Families Act.

ASFA transition rules require that states review children who were in care prior to the ASFA law and those who came into care subsequent to its enactment, to determine if a petition to terminate parental rights is appropriate, or if the situation is an exception to the requirement. An example of an exception could be a relative placement. States have certain time frames for reviewing all children in care, with the goal of providing permanency for the child.

ASFA requires background checks for prospective foster or adoptive families. The careful family assessment and the background check help to ensure a safe environment for the child. ASFA also requires that foster parents and preadoptive parents or relatives providing care must be provided notice of and have an opportunity to be heard in any review or hearing with respect to the child.

Pursuant to ASFA, states must develop and implement standards to ensure that children in foster care are provided **quality** services that protect their health and safety. A set of outcome measures, including length of stay in foster care, number of foster care placements and number of adoptions will be used to assess state child welfare programs and rate state performance. The assessment will be based on data submitted on AFCARS (Adoption and Foster Care Analysis and Reporting System).

We believe that when fully implemented, ASFA will result in a shorter, more intense foster care experience. The child and family must be provided needed services from day one, to facilitate reunification. When concurrent planning is used, all parties need to be aware of the dual plan, the urgency, and the implications if the reunification plan fails.

In most situations, the child and family are reunited. However, if that is not possible, permanency alternatives such as relative care, adoption or legal guardianship for the child must be available.

I will respond to your questions. Thank you.

Mr. Zentner 2/7/99

200 of poverty / 50% Utilization Medicaid Program

			Governor's Budget		
Cost at 50% enrollment			Biennial Cost	Start 10-1-99	
1999	3506 @	\$1,325	4,645,450	3,484,088	&
2000	3506 @	\$1,365	4,784,814	4,784,814	
Subtotal			9,430,264	8,268,901	
Co-payment & Deductibles					
Number of Prescriptions @ \$2			0	0	0 *
Number of Emergency Room Visits @ \$5			0	0	0 *
Number of Inpatient Hospital Stays @ \$5			0	0	0 *
Subtotal				0	0
Total			9,430,264	8,268,901	
Administration @ 10%			943,026	826,890	
Total			10,373,290	9,095,791	
Federal			8,190,749	7,182,037	
General Fund			2,182,540	1,913,754	
			10,373,289	9,095,791	

& 3/4 of yearly total.
 * 7/8 of biennial cost total.



200 of poverty / 50% Utilization - New numbers

				Governor's Budget	
Cost at 50% enrollment				Biennial Cost	Start 10-1-99
1999	3506 @	\$1,000		3,506,000	2,629,500 &
2000	3506 @	\$1,050		3,681,300	3,681,300
Subtotal				7,187,300	6,310,800
Co-payment & Deductibles					
Number of Prescriptions @ \$2		24542		(49,084)	(42,949)*
Number of Emergency Room Visits @ \$5		1928.3		(9,642)	(8,436)*
Number of Inpatient Hospital Stays @ \$5		841.44		(42,072)	(36,813)*
Subtotal				(100,798)	(88,198)
Total				7,086,503	6,222,602
Administration @ 10%				708,650	622,260
Total				7,795,153	6,844,862
Federal				6,155,052	5,404,703
General Fund				1,640,100	1,440,159
				7,795,152	6,844,862

& 3/4 of yearly total.

* 7/8 of biennial cost total.

175 of poverty / 50% Utilization New Numbers

			Governor's Budget	
Cost at 50% enrollment			Biennial Cost	Start 10-1-99
1999	2710 @	\$1,000	2,710,000	2,032,500 &
2000	2710 @	\$1,050	2,845,500	2,845,500
Subtotal			5,555,500	4,878,000
Co-payment & Deductibles				
Number of Prescriptions @ \$2		18970	(37,940)	(33,198)*
Number of Emergency Room Visits @ \$5		1490.5	(7,453)	(6,521)*
Number of Inpatient Hospital Stays @ \$5		650.4	(32,520)	(28,455)*
Subtotal			(77,913)	(68,173)
Total			5,477,588	4,809,827
Administration @ 10%			547,759	480,983
Total			6,025,347	5,290,810
Federal			4,757,614	4,177,623
General Fund			1,267,733	1,113,186
			6,025,347	5,290,809

& 3/4 of yearly total.

* 7/8 of biennial cost total.

Senate Human Services Committee
January 26, 1999

SB 2171

Carrol E. Burchinal
1412 N. 21
Bismarck ND
255-3768

Mr. Chairman and members of the Committee. I am Carrol Burchinal, foster parent. My wife, Darlene, and I have cared for more than 160 children during the past 25 years. We have had placements from counties, BIA and Tribal Social Services, and private agencies. The length of time for individual placements has ranged from one hour to several years.

Foster parents are always interested in the safety, permanency, and the well-being of children, which are the key components of this Bill. It promotes permanency by requiring concurrent planning. Children can best be helped by being provided support and assistance through a team effort, including social service professionals, the court system, family foster providers--public and private--and others.

There is an increasing perception that it is not good for a child to grow up in foster care. With some exceptions, this is true, especially if it means a child placed at a very young age remains until adulthood. Children in these situations many times have difficulty bonding and feeling secure. This is compounded if the child or youth has been placed in several different foster homes for various reasons. However, there have been "long term" placements that were necessary and successful.

Permanency is very important for a younger child. Children require an attachment because it forms the basis for future relationships. Hopefully,

letters

the permanency would be a successful reunification with the family. In some of the situations we have worked with one of the other options being provided in SB2171 might have been better for the children.

SB 2171 provides the options of adoption, kinship care, and guardian ship. The concept of foster parents becoming guardians is very important and will very likely create a great deal of interest. This may be a viable option to adoption for foster parents who have a placement who has become eligible for a permanent placement.

At this point I would be remiss if I did not point out that the additional emphasis on adoption and guardian ship may cause some emotional and financial concerns for foster parents. Adequate financial assistance for extra expenses for many of the children and youth adopted or placed in guardian ship must be addressed and provided.

SB 2171 is very comprehensive and complex. It is difficult to determine the impact its implementation will have on foster parents. It appears at this time that most of the legislation does not adversely affect foster parents.

I urge favorable consideration of SB 2171. I will respond to any questions you may have.

House Appropriations Committee

Human Resources Division

March 22, 1999

Senate Bill 2171

Carrol E. Burchinal

1412 N 21

Bismarck ND

255-3768

Mr. Chairman and members of the Committee, I am Carrol Burchinal, foster parent. My wife, Darlene, and I have cared for more than 160 children during the past 25 years. We have had placements from counties, BIA and Tribal Human Services, and private agencies. The length of time for individual placements has ranged from a few hours to several years.

SB 2171 is very comprehensive and complex. It is difficult to determine the impact it will have on foster parents. It appears at this time that most of the legislation does not adversely affect foster parents.

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Permanency is very important for a younger child. Children require and attachment because it forms the basis for future relationships. Hopefully, the permanency would be a successful re unification with the family. In some of the situations we have worked

with some of the other options being provided in SB 2171 might have been better for the child.

SB 2171 provides the options of adoption, kinship care, and guardian ship. The concept of foster parents becoming guardians is very important and will very likely create a great deal of interest. This may be a viable option to adoption for foster parents who have a placement who has become eligible for a permanent placement.

At this point I would be remiss if I did not point out that the additional emphasis on adoption and guardian ship may cause some emotional and financial concerns for foster parents. Adequate financial assistance for extra expenses for many of the children and youth adopted or placed in guardian ship must be addressed and provided.

I urge your favorable consideration for full funding for SB 2171. I will respond to any questions you may have.

Senate Human Services Committee
Senate Bill 2171
January 25/26, 1999 9:00 am
Red River Room

Page 5, Line 8. Insert: a. The child's other parent in an intact marriage or noncustodial parent in the case of divorce. Renumber the rest.

DANIEL BIESHEUER
R-KIDS

BISMARCK
Abused Adult Resource Center
222-8370
BOTTINEAU
Family Crisis Center
228-2028
DEER LAKE
Services for
Abused Families
1-800-662-7378
DICKINSON
Domestic Violence and
Rape Crisis Center
225-4506
ELLEDALE
Kedish House
349-4729
FARGO
Rape and Abuse Crisis Center
800-344-7273
FORT BERTHOLD RESERVATION
Coalition Against
Domestic Violence
627-4171
FORT YATES
Tender Heart Against
Domestic Violence
854-3402
GRAFTON
Tri-County Crisis
Intervention Center
352-4242
GRAND FORKS
Community Violence
Intervention Center
755-5555
JACKSON
S.A.S.S. Shelter
888-353-7233
MCLEAN COUNTY
McLean Family
Resource Center
800-657-8643
MERCER COUNTY
Women's Action and
Resource Center
873-2274
MINOT
Domestic Violence Crisis
Center
852-2258
RANSOM COUNTY
Abuse Resource Network
683-5061
STANLEY
Domestic Violence Program,
NW, ND
628-3233
VALLEY CITY
Abused Persons Outreach
Center
845-0078
WASHBURN
Abused Persons Crisis Center
845-0078
WILLIAMS
Family Crisis Shelter
572-0757

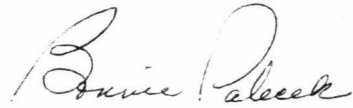
Senator Thane
Chair, Senate Human Services Committee
Re: SB2171
January 27, 1999

Senator Thane and Members of the Committee:

Thank you for listening to our concerns regarding some of the language in SB2171. After a conversation with Blaine Nordwall, I am comfortable that we have resolved the issue. He shared with me the letter which he had drafted to the committee which details the language change he proposes to clarify the intent. We are completely satisfied with the outcome.

SB2171 is clearly an extremely significant piece of legislation for North Dakota's families and children. Thank you for giving it such thoughtful attention.

Sincerely,



Bonnie Palecek,
Executive Director
NDCAWS/CASAND



Domestic Violence and ASFA: Preventing the Double Victimization of Abused Mothers

The link between child abuse and domestic violence is well established. Studies show that between 11% and 45% of abused or neglected children have a mother who is being abused by a spouse or partner, and 37-63 percent of abused women have children who are also being abused or neglected.¹ Children in families in which there is domestic violence may be abused or neglected by one or both parents although they are at far greater risk of maltreatment by the father or father surrogate. A study of family violence in which women had been battered by a partner found that 63% of their battering partners had been abusive to their children and that men were almost six times more likely than women to be abusive to their children.²

Under the Adoption and Safe Families Act (ASFA), child welfare agencies are required to initiate termination of parental rights (TPR) proceedings against parents whose children have been in out-of-home care for 15 of the past 22 months. Permanency hearings are required for children in out-of-home care for 12 consecutive months. Given these expedited time frames, it is critical that child welfare decision makers make decisions grounded in knowledge based on research and practice with survivors of domestic violence who are involved in the child protective services (CPS) system. Without an understanding of the issue of domestic violence, there is the potential that battered mothers will be doubly victimized through expedited TPR timeframes.

Studies reveal that there are pervasive myths regarding an abused parent's ability to care for and protect their children once out of an abusive relationship.³ These myths can color evaluations by mental health and social workers unfamiliar with the issue of domestic violence and, more importantly, TPR decisions made by judges. Given the stringent requirements of ASFA, it is essential to address some of those myths and inform child welfare decision makers about issues to contemplate in cases involving domestic violence.

Much is known about the cycle of violence that colors adult battering relationships, however, common misperceptions remain regarding the women who endure such relationships. *First, battered women generally do not fail to leave their abusers due to masochistic tendencies.* More often, they remain with the abuser due to economic dependence or fear. Battered women are frequently financially dependent on their partners; a situation exacerbated if they have dependent children. Facts show that battered women's fear of leaving is often justified. Most battered women who are killed by their abusers are killed *after* they file for divorce or leave the home.⁴

Second, failure to protect a child from an abusive partner does not mean a mother will never protect her child. Reasons why a woman may not protect her children from an abuser include fear of retaliation, fear of provocation of further attacks, a desensitization to violence, denial of abuse or its severity, or acceptance that violence is a "part of normal family interaction."⁵ However, as Phillips "It is extremely difficult for those who have never personally experienced domestic violence to appreciate the economic, social, and psychological factors that

influence the decisions of a battered woman."⁶ Unfortunately, social workers, judges, and mental health experts unfamiliar with the cycle of domestic abuse may interpret a battered woman's lack of effort to protect her children from the batterer as negligent without considering the rationale for the woman's behavior. It is therefore crucial that mental health professionals appointed by the court to evaluate a battered woman for a TPR proceeding be well trained in the dynamics of domestic abuse.⁷ However, "without special training, abuse victims risk misdiagnosis and stand a greater chance of losing their children because of a perceived instability or poor mental health prognosis."⁸

Third, appropriate treatment and support can lead to good outcomes and battered women are not generally doomed to repeatedly endure violent relationships. It is important that child welfare decision makers ensure that appropriate services by knowledgeable providers are offered to abused mothers prior to rendering judgment on their rights to retain guardianship of their children. Speculation that an abused woman will only enter other abusive relationships should not be grounds for TPR. Studies show that as many as 90 percent of battered women do *not* experience subsequent abusive relationships once they leave or divorce their abuser.⁹

In short, social workers, judges, and court appointed mental health specialists should keep in mind that violent relationships can be ended. However, successful escape from the batterer and the cycle of violence relies on the ability of the woman to "secure adequate employment and beneficial counseling so she does not feel compelled to return to her abuser."¹⁰ Further, the passivity, depression, anxiety that characterize many battered women generally recede once a battered woman has left her abuser and entered therapy.¹¹ Studies show that symptoms alleviate and scores on psychometric tests improve once an abused mother leaves an abusive relationship.¹² Unfortunately, given the myths that abound and the expedited permanency time frames, these improvements may come too late for abused mothers to retain or regain custody of their children unless child welfare decision makers consider the facts, not myths, about abused mothers.¹³

Endnotes

- 1 Aron, L., & Olson, K. (1997, Summer). Efforts by child welfare agencies to address domestic violence. *Public Welfare*, 4-13.
- 2 Ibid., citation omitted.
- 3 Phillips, J. (1992). Comment: Re-victimized battered women: Termination of parental rights for failure to protect children from child abuse. *The Wayne Law Review*, 38, 1549-1578, 1550.
- 4 Faludi, S. (1991). *Backlash: The undeclared war against American women*. New York, NY: Crown Publishers.
- 5 Phillips, J. (1992). p.1552-1553.
- 6 Ibid., p.1554.
- 7 Ibid.
- 8 Ibid., p.1561.
- 9 Ibid., Citation omitted.
- 10 Ibid., p.1564.
- 11 Ibid.
- 12 Ibid.
- 13 Ibid.

North Dakota Conference of Social Welfare, Incorporated



March 9, 1999

Chairman Price, Vice Chairman Weisz, Members of the House Human Services Committee:

My name is Connie M. Hildebrand, current Legislative Chair of the North Dakota Conference of Social Welfare, and a Bismarck resident. I speak on behalf of the Conference in support of SB 2171, introduced at the request of the Department of Human Services to specifically address the Federal Adoption and Safe Families Act which was passed in late 1997.

Since 1920 the NDCSW has been an advocate for health and social programs for North Dakota residents. Please review the last page of my testimony which lists statewide private agencies, professional associations and advocacy groups which are a part our Conference Legislative Committee.

Many of these organizations or professional groups are involved in various ways in the process of assessing families or in the provision of treatment or child care. The groups have reviewed the legislation within their various roles and agree with the Department of Human Services; this is solid legislation. The legislation is based on sound practice principles you will see outlined in the yellow Fact Sheet DHS has distributed. Under "Key Provisions of ASFA," for example, please note the *child's* health, safety, and well-being are the primary consideration in any plan for permanent placement.

Where practice questions arise, such as when federal law requires the state to file for termination of parental rights, "when a child has spent 15 of the most recent 22 months in foster care," North Dakota has wisely designed an exception known as the *compelling reason document*, which specifies why filing such a petition would *not* be in the child's best interests.

This is but one example of how the Department of Human Services and its ASFA Work Group "tackled and massaged" the federal ASFA legislation so it might fit with what we know to be good child welfare practice.

Does this mean we have a perfect piece of legislation in SB 2171? Probably not, for we are all simply human and can see only with *current* eyesight. But the "Feds" and DHS have done a good job on this piece of legislation, and we know it.

We urge a Do Pass for SB 2171 to access Child Welfare Title IV-E and IV-B funding, as well as DHS spending authority to implement North Dakota's Adoption and Safe Families by our deadline date, July 1, 1999.

Submitted,

A handwritten signature in cursive script that reads "Connie M. Hildebrand". The signature is written in black ink and is positioned below the word "Submitted,".

Connie M. Hildebrand
Chair, Research Planning and Legislative Committee
North Dakota Conference of Social Welfare

North Dakota Conference of Social Welfare, Incorporated



Research Planning and Legislative Committee

Association/Organization	Membership/Size
American Association of Retired Persons ND-AARP	70,000 Members
Catholic Family Service CFS	36 Employees
Children's Caucus CC	100 Members
Dakota CIL	10 Providers
Family Voices	Mailing List of 500
Lutheran Social Services LSS	500 Employees
Mental Health Association in ND MHA	Mailing List of 3000
National Association of Social Workers ND-NASW	315 Members
ND Addiction Treatment Providers Coalition NDATPC	35 Members
ND Association of Community Facilities NDACF	26 Providers
ND Association of Non-Profit Organizations NDANO	130 Members
ND Catholic Conference NDCC	Mailing List of 4000
ND Chemical Health Partnership NDCHP	Mailing List of 500
ND Conference of Social Welfare NDCSW	500 Members
ND Council on Abused Women's Services CAWS	20 Statewide Programs
ND Nurses Association NDNA	700 Members
Professional Association of Treatment Homes ND-PATH	9 Offices 32 Employees
Putting the Pieces Together PPT	Mailing List of 500
St Alexius Medical Center - Mental Health Division	60 Employees
The Village Family Service Center	180 Employees

Resource Entities

ND Department of Health	Administration
ND Department of Human Services	Administration
ND Indian Affairs Commission	Administration
ND Department of Human Services	Child & Family
ND Department of Human Services	Aging
Childrens Services Coordinating Committee	Region VII
Burleigh County Social Service	County
Emmons/McIntosh County Social Service	County
Hettinger County Social Service	County
Ward County Social Service	County

Date: Friday, March 12, 1999 11:28:49 PM
From: steve.christian@ncsl.org
Subj: Fw: S.B. 2171
To: billmargie@aol.com

Dear Rep. Devlin: I am sending another copy of my comments to your home e-mail address.

Steve Christian

-----Original Message-----

From: Steve Christian <steve.christian@ncsl.org>

To: wdevlin@state.nd.us <wdevlin@state.nd.us>

Date: Friday, March 12, 1999 3:25 PM

Subject: S.B. 2171

NC SL ?

>Representative Devlin:

>

>Here are my section-by-section comments on S.B. 2171:

>

>Sec. 1: The Adoption and Safe Families Act (ASFA) does require states to

>conduct criminal background checks on prospective adoptive parents.

>However, states may opt out of this requirement, either through legislation

>or a letter from the governor.

>

>Sec. 2: See comments on section 1.

>

>Sec. 3: States must enact "aggravated circumstances" under which reasonable

>efforts to preserve or reunify families are not required. ASFA provides

>four examples, abandonment, torture, chronic abuse and sexual abuse.

>However, states may choose to enact other or different aggravated

>circumstances. S.B. 2171 adopts the four ASFA examples (as well as others)

>in 3.a. "Torture" and "chronic abuse", however, are not defined and I would
>suggest that these terms be defined in state law to facilitate court
>decisionmaking.
>
>The aggravated circumstance in 3.b. is not linked to the welfare of the
>child. Other states have been explicit that, for example, the mental
>illness must be severe enough that it precludes the parent from caring
for
>the child.
>
>In addition to aggravated circumstances, ASFA defines a set of
mandatory
>cases in which reasonable efforts are not required. These are murder
or
>manslaughter of another child of the parent; attempting, aiding,
abetting,
>conspiring or soliciting to commit such murder or manslaughter;
felony
>assault with serious bodily injury to the child or another child of the
>parent; and termination of parental rights (TPR) to the child's sibling.
I
>assume that the Code citations in subsection 3.c, d and e. refer to the
>criminal offenses listed in ASFA. The language regarding TPR to a
sibling
>has been included in section 6 of the bill. S.B. 2171 refers to all of
the
>required cases as "aggravated circumstances," which is fine.
>
>The definition of "fit and willing relative or other appropriate
individual"
>in subsection 9 is not required by ASFA, even though ASFA uses the
term
"fit
>and willing relative."
>
>The permanency hearing provision in subsection 11 differs somewhat
from

>ASFA. Under ASFA, placement in "another planned permanent living
>arrangement" is allowed only upon a showing of compelling reasons
why
return
>home, adoption, guardianship or placement with a fit and willing
relative
is
>not in the child's best interest. The "compelling reasons" standard
does
>not appear to be in S.B. 2171.
>
>ASFA does not require the state to define "relative," although it is
>probably wise to do so. The definition in subsection 13, however, is
quite
>broad in that it includes non-relatives.
>
>Sec. 4: The added language is not required by ASFA.
>
>Sec. 5: The added language is not required by ASFA.
>
>Sec. 6: Subsections 1 through 5 track ASFA pretty closely. Subsection
6
is
>not required by ASFA.
>
>Sec. 7: This section includes language that seems more appropriate
for
>permanency hearings than for dispositional hearings. Again, "another
>planned permanent living arrangement" other than return home,
adoption,
>guardianship or relative placement requires a showing of compelling
reasons.
>
>Sec. 8: ASFA does require a permanency hearing within 12 months
after a
>child is considered to have entered foster care. Under pre-ASFA law,
the
>hearing must be conducted by a court or an administrative body

appointed or
>approved by the court. All other changes in this section are not
required
>by ASFA.
>
>ASFA also requires a permanency hearing within 30 days of a court
>determination that reasonable efforts are not required. I do not see
this
>requirement in S.B. 2171.
>
>Sec. 9: The added language is not required by ASFA.
>
>Sec. 10: This section adds new grounds for TPR. These are not
required by
>ASFA, but they correspond to the cases in which a TPR petition must
be
filed
>under ASFA.
>
>Sec. 11: ASFA requires a TPR filing when a child is abandoned (as
defined
>in state law), when the child has been in foster care for 15 of the
most
>recent 22 months, or when the parent has committed one or more
criminal
>offenses, which are the same as the ones defined in the reasonable
efforts
>provision. ASFA also identifies 3 optional exceptions to the filing
>requirement. The language in this section appears to track ASFA. You
may,
>however, want to consider whether the language in subsection 3,
regarding
>exceptions, would preclude a court from ordering the filing of a TPR
>petition in those cases where the state agency has decided that an
exception
>exists. ASFA does not require a court determination that an exception
>exists. However, it did not intend to modify the court's traditional
>oversight role over the child welfare agency. You may want to clarify

that
>a court could still order a TPR filing in cases where the agency has decided
>to do otherwise.
>
>Subsection 4 does not appear to comply with ASFA in how it defines the date
>that the child is considered to have entered foster care. ASFA defines it
>as the earlier of the first judicial finding of abuse or neglect or 60 days
>after the child is removed from home. Under ASFA, the latest date that can
>possibly be used is 60 days after removal. Under S.B. 2171, it appears that
>the latest date might be more than 60 days after removal. This point should
>be clarified with the Department of Human Services. This definition is
>important because it determines when a permanency hearing must be held and
>when a petition for TPR must be filed.
>
>ASFA does not require a definition of when a child leaves foster care.
>
>Subsection 6 is not required by ASFA but is based on proposed rules that
>have not yet been finalized. Subsection 7a is not required by ASFA.
>Subsection 7b is not required by ASFA.
>
>Sec. 12: The deletion is not required by ASFA.
>
>Sec. 13: The added language is not required by ASFA.
>
>Sec. 14: The added language is consistent with ASFA, but not technically
>required by it.
>

- >Sec. 15: The added language is not required by ASFA.
- >
- >Sec. 16: Added language not required by ASFA.
- >
- >Sec. 17: Added language not required by ASFA.
- >
- >Sec. 18: Added language not required by ASFA.
- >
- >Sec. 19: Added language not required by ASFA.
- >
- >Sec. 20: Added language not required by ASFA.
- >
- >Secs. 21-25: ASFA requires that states conduct "criminal records checks"
- >on prospective adoptive and foster parents. It further provides that states
- >must not approve any foster or adoptive parent who will receive federal
- >foster care maintenance or adoption assistance payments if the records
- check
- >reveals a conviction at any time of a felony involving child abuse, spousal
- >abuse, crime against children (including child pornography), or certain
- >violent acts. It also requires disqualification of persons convicted within
- >the preceding 5 years of a felony involving assault, battery, or a
- >drug-related offense. The state may opt out of this provision through
- >legislation or a letter from the governor. ASFA does not require
- >fingerprinting, nor does it specify procedures for conducting the criminal
- >history checks or whether the checks must be national in scope.
- >
- >Sec. 26: ASFA requires that states develop plans for the effective use of
- >cross-jurisdictional resources to facilitate adoptions of children out of
- >foster care. This means that states and counties must look beyond

their
>borders in their efforts to secure adoptive placements. This section
would
>appear to authorize joining the Interstate Compact on Adoption and
Medical
>Assistance (ICAMA), which facilitates interstate placement and
ensures that
>adoptees with medical assistance benefits in one state do not lose
such
>benefits if they move to another state.
>
>I hope this helps. Please call if you need any additional information or
if
>I can be of any further assistance. For your information, we do have
grant
>funds to provide on-site technical assistance regarding ASFA
implementation.
>
>
>

----- Headers -----

Return-Path: <steve.christian@ncsl.org>

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by rly-yc05.mail.aol.com (8.8.8/8.8.5/AOL-4.0.0)

with ESMTP id RAA29995 for <billmargie@aol.com>;

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Fri, 12 Mar 1999 15:28:59 -0700

Message-ID: <007201be6cd7\$f79729c0\$83ec83cc@hd7085.ncsl.org>

From: "Steve Christian" <steve.christian@ncsl.org>

To: <billmargie@aol.com>

Subject: Fw: S.B. 2171

Date: Fri, 12 Mar 1999 15:30:43 -0700

SB 2171
Senate Human Services Committee
January 25, 1999

Good Morning Chairman Thane and members of the Human Services Committee. My name is Kathy Neideffer and I serve as the Administrator for Family Preservation Services with the Children and Family Services Division of the North Dakota Department of Human Services. I am here today to provide testimony in support of Senate Bill 2171.

Family preservation services are designed to help families, including adoptive and extended families, alleviate crises that might lead to maltreatment of children and/or placement of children out of their homes. These services focus on family strengths and competencies rather than deficiencies; they are intense and time limited. Families are valued and respected and upon completion of services are encouraged to practice new skills they have learned.

The outcomes for families include the following: children are maintained safely in their own homes; families receive support in preparing to reunify with a child who has been placed; and they receive assistance in connecting with other community services and supports necessary to address their needs in a culturally sensitive manner.

Currently, North Dakota provides a variety of family preservation services which are available through County Social Service Agencies and private providers. Attached to my testimony is a more detailed description of these family preservation services and State Fiscal Year '97 data.

The Adoption and Safe Families Act of 1997 (ASFA) requires states to provide services to families to assist them in achieving safety, well being and permanence for their children. The family preservation services currently in place provide families the assistance they need. However, the time frame allowed by ASFA to move families through the Child Welfare System will make it necessary to expand these services. The



Children and Family Services Division anticipates expanding Parent Aide Services and Family Focused Services in the next biennium.

I want to thank you for the opportunity to provide you information about family preservation services. I am available if there are any questions.

FAMILY PRESERVATION SERVICES:

North Dakota provides the following family preservation services:

Parent Aide Services

This services is designed to improve parenting skills by reinforcing parents' confidence in their strengths and helping them to identify where improvement is needed and to obtain assistance in improving those skills. This service uses the relationship between the parent and the parent aide as a tool to encourage, teach, and assist parents. During FY 97, 498 families with 1,244 children received parent aide services in 46 counties. Ninety-seven (97) children were placed in foster care during services and out of that 97, 72 were reunited with their families.

Intensive In-Home Services

This service provides families, who have one or more children at risk of out-of-home placement, with intense crisis intervention services. Therapists work with families in their homes. During the 1995-97 biennium, 648 families with 981 children considered at risk, received this service. Sixty-four (64) children were placed in foster care during service and two (2) children were placed in adoptive homes. Placements were prevented in 93% of the families served.

Prime Time Child Care Services

This service provides temporary child care to children of families where maltreatment has occurred or is at risk of occurring. Parents are able to attend counseling, addiction treatment, or other needed services while their children are in care. In FY 97 approximately 153 families with 295 children received this service in 36 Counties. Thirteen (13) children were placed in foster care during service and out of that 13 nine (9) were reunited.

Respite Care Services

This service provides temporary child care for families with disabled children, including chronically or terminally ill children, children with serious behavioral or emotional difficulties, and drug-affected children. This service is intended to provide periods of temporary relief, to care givers, from the pressures of caring for these children. In FY 97 163 families received this service.

Family Focused Services

This service is the model currently being used by 18 counties to provide Child Welfare Family Social Work. The family is involved in assessing their strengths and needs and as a result determine their own goals for change. During FY 97, 98 families with 238 children received this service. Seventeen (17) children were in placement at the time of referral to services. Fifteen (15) children were placed during service. Twenty (20) of these children were reunited with their families during service. Six (6) of these children were placed for adoption. Each family developed on the average 4 goals and completed 3 of them. The average length of service was 9 months.

Testimony Senate Bill No. 2171
January 26, 1999
Pat Podoll

Good morning Chairman Thane and committee members. My name is Pat Podoll and I am here in support of SB 2171. I supervise Family Focused Services, one of the Family Preservation programs provided at Cass County Social Services. In addition I provide clinical supervision in 7 rural counties. I am a board member on the Court Improvement Project and a member of the Partnerships Advisory Committee in Region V.

From my early work in foster care in the mid 70's, I developed strong beliefs and values about the importance of keeping children safe and in their own homes wherever possible, and in finding permanency for children in a responsible and timely manner. Let me give you an example of how this philosophy has been put into practice in Family Focused Services.

A diabetic, mentally ill mother did not follow the diet and medical treatment needed to ensure safety for her newborn son. Two to three times a week the ambulance was called in response to her insulin reactions. The father was lower functioning and not consistently in the home to protect the child. Foster care placement resulted when the mother had an insulin reaction and fell on top of her son. The Family Focused assessment indicated many risks to the child, limited parenting skills and family supports. The treatment plan that was developed with the family included medical and psychological treatment for the mother, individualized parenting skill training for both parents and 8 hours of visitation a week where they could maintain a bond with their son and practice the parenting skills learned. All efforts to assist the parents were exhausted, which was demonstrated through excellent documentation and a directed treatment plan. Permanency was established through termination of parental rights and adoption within approximately 12 months.

Family Focused Services provides a framework for intensive case management after a child protection assessment has been completed. Self and other agency referrals are accepted in the rural areas. Our primary goal is to reduce the risk of harm to children or reduce the risk of a foster care placement. With children in foster care our role is to establish permanency, preferably with their own family, as quickly as possible. A 90 day treatment plan is mutually developed with the family utilizing existing community resources and/or other family preservation services through the county. The plan is behaviorally specific, time limited and written to measure outcomes not compliance.

In fiscal year 1997, 28 families were served by two Family Focused staff in Cass County. Six out of 56 children were placed in foster care at the time of referral. An additional 5 children were placed during services. Of these 11 children placed in foster care, 7 were reunited with their families. Guardianship with a relative was accomplished for 1 child; 6 other children had parental rights terminated and were adopted. This number includes children for whom permanency was initiated in 1996.

Family Focused Services is very consistent with the Adoption and Safe Families Act in that quality case management is provided to families to promote safety, well being and permanency for children. Supervision is a critical component of this process to ensure consistency between the assessment and services provided, timely service delivery where closure is planned for at the onset of services, and workers are supported and challenged in their thinking process.

The Court Improvement Project is working in conjunction with SB 2171 to develop consistency between the court and child welfare systems. This is being done through shorter court orders, more judicial oversight of the permanency planning process, better trained guardians ad litem for children and check lists for judges to ensure reasonable efforts have been made to prevent a placement or to reunify a child with their family.

Family Focused Services has demonstrated that the needs of families can be met in a timely manner through quality case management. Without being adequately funded the Adoption and Safe Families Act won't work. Therefore I support the Department's plan to expand this service.

Thank you for your consideration of this bill. I am willing to answer any questions you may have regarding Family Focused Services.

Testimony of Constance L. Cleveland

RE: SB 2171

Presented to : Humans Services Committee, N.D. Senate

January 26, 1999

Chairman Thane, Members of the Humans Service Committee:

My name is Connie Cleveland, and I am an Assistant State's Attorney in Cass County. I have been assigned since April of 1997 solely to the Social Services Department in that county, and as such am the attorney designated to work with child protection issues. I participated in the Committee to draft legislation to adopt the requirements of the Adoption and Safe Families Act of 1997.

I have been a prosecutor in North Dakota for ten years, working in Burleigh County for a year and a half and Cass County since 1991. During this time period, I have had the opportunity to work with children who were deprived, neglected and abused, and to observe how our system worked to protect those children and provide long term solutions. While I believe the ability to protect children has been good, in my experience, the long term objectives for children in foster care have not been clear.

With the passage of the Adoption and Safe Families Act in November of 1997, the objective became very clear - that the safety of children is paramount, and the earlier children can be in a permanent placement, the better. The federal law contains timelines and concepts that represent a significant change in the way we do business. SB 2171 is the vehicle that this body has to incorporate those changes into state law.

The practical results of this bill will be shorter court orders, heightened scrutiny of foster care placement for children, greater accountability of all players, and earlier permanence - through earlier return to the parental home, placement with relatives, or termination of parental rights.

I need to stress that this will be a significant change in the amount of legal work in this area. Shorter Court Orders and more Court involvement will directly affect the State's Attorneys in each county, who have performed these duties up to this point without the statutory obligation now found in SB2171. This will increase courtroom time as well as legal work consulting in preparation for trials. The States Attorneys' Association has reviewed the legislation, and while there was overwhelming support for the concepts of earlier permanence for children and making the safety of children the primary goal, there is significant concern about the unfunded mandates contained in this legislation, and the stripping of the discretion of the prosecutor.

Testimony of Constance L. Cleveland

RE: SB 2171

Page Two

I personally am not so concerned about the control issue, as that will resolve itself. But I am very concerned about the resources available to the people responsible for putting this into practice. For the State's Attorneys, training and manpower needs will be great. The cost of witnesses is also an area of concern. At this point those costs would fall to the Counties.

While criminal prosecution and civil representation to the Commission are accepted duties for all State's Attorneys, few have much background or expertise in terminations. Every State's Attorney I have talked to stresses that termination cases are complex, time intensive and emotionally draining. I agree - they are. They are also necessary and we will see more of them as a result of this legislation.

I have an attachment to this testimony today which sets out the circumstances of the cases of termination in 1998 in Cass County - and while it seems so clear what should have happened to help these children, in each case we needed to establish the history, the treatment and services made available to the family, and had to convince ourselves and the Court that the situation was not going to change. These trials involved, among others, doctors, teachers, psychologists and psychiatrists, police officers, social workers, in-home service providers, chemical dependency counselors and experts in Native American culture. While these are thumbnail sketches, each case involved weeks of preparation in anticipation of several days of trial.

I urge you to favorably consider SB 2171, but also to commit to fund the changes that will result.

Thank you. If you have any questions, I would be happy to address them.

Constance L. Cleveland
Assistant State's Attorney
P.O. Box 3106
Fargo, North Dakota 58108-3106
PH: (701) 239-6797

1998 TERMINATIONS - CASS

- A. J.S./M.S./K.S.: Three siblings, ages 15,14 & 11. Sent (with one-way tickets only) unaccompanied to Fargo 12/97 on Greyhound by Mother. Mother in Montana, mentally ill and homeless, living with man who was charged with abusing Mother and one of the children. Father in Fargo, convicted of sexually molesting two of the children, under no contact order with children until 2002. No relatives able to take. Previous services provided to family while in Fargo, little/no improvement.
- B. K.A./D.A.: Two siblings aged: 4 & 5. Had been placed in foster care due to condition of the home, animal feces, rotting food. Mother's mental health unaddressed. Mother initially engaged in services, then upon return of the children, left them with neighbor for nearly a month, having no contact with children. Children again removed, mother would not engage in services.
- C. A.H./B.H./M.H.: Three siblings removed from parents home 1994. Mother has significant mental health issues, which cause her to be violent. Parents were unwilling/unable to engage in treatment. Father unable to recognize mother's limitations and to protect children.
- D. J.N./G.N./C.N.: Three children 13, 10, 7. (1 mother, 3 fathers): Mother moved to N.D. from east coast to be with boyfriend. Violence in home, resulting in criminal charges, but mother unable to sever relationship. Mother had chronic history of chemical abuse dating back over 10 years, unsuccessful treatment several times. Children injured in domestic violence. At time taken, needed glasses, dental work, clothing, mental health problems for kids - had been prescribed medication, but had not been given to child. Mother could not maintain sobriety or treatment, and engaged in criminal acts throughout placement. Continued relationship with boyfriend, and could not obtain stability in employment or housing.
- E. R.M./R.M./G.M./I.M.: Four siblings. In placement since 1994. Father in pen since shortly after placement, and did not engage in any communication with children nor chemical addiction programs available at facility. Mother did not maintain contact with children, in and out of jail, would not engage in any communication with agency. Mother rumored to have cancer - would not engage in medical treatment for same. Two children suffered from Fetal Alcohol Syndrome. Children had significant mental health issues, parents would not participate in treatment for these issues.
- F. B.P.: Infant. Mother had two prior terminations of parental rights due to Developmental Disabilities. Little/no prenatal care as mother unaware of pregnancy. Previous services to ascertain ability to improve skills to enable mother to parent, with little/no improvement.
- G. J.A.: Child removed from mother's care due to criminal abuse (broke arm of child

by slamming in oven door when child ** months old). Mother mentally ill, and unable to parent. Father located after several months of misidentification by mother. Attempted to place with biological father, who later voluntarily terminated rights.

- H. L.S./V.S.: new born twins. Placed in care due to mother being in ½ way house for chemical dependency. Two other children in foster care in Richland County. Mother left ½ way house prior to completion of treatment, returned to drinking, unable to secure housing or stable job. Decided to use resources to pursue relationship with boyfriend met in treatment.
- I. N.B/L.B./F.B.: Three siblings in care over 5 years. Mother had no contact. Father had no contact. Chemical dependency and violence in home main issues. No treatment engaged in.
- J. A.S.: Child placed in care at birth in Barnes County due to Developmental Disabilities of both parents. Returned to home at 8 months. Removed at age ** due to severe neglect. Parents did not maintain contact, and unable to improve with significant services due to disabilities. Child suffered significant delays due to environment.
- K. T.G.: In placement since 1992. Mother whereabouts unknown (abandon child and father). Father did not want her.
- L. C.B. :child placed in custody at 6 months. Parents homeless. Mother arrested on federal probation violation, father in pen for attacking mother with hammer. Upon release, mother to obtain housing and maintain sobriety, 3 months to accomplish. Did not do, and did not maintain contact with child.
- M. P.L.: child in placement since 1995. Chronic chemical abuse and neglect of child. No contact since child in placement. Unwilling to engage in visits or chemical addiction treatment.
- N. S.W.: Both parents had children involuntarily terminated. Mother diabetic - but unwilling to maintain insulin maintenance. Would have reactions and become unable to care for infant. Mom and Dad's relationship on and off. Mother violent toward dad. When taken, no food in home, child had not been fed. After child placed into protective custody, parents left for Nashville to pursue singing careers. Did not maintain any contact with child. Living in homeless shelter in TN.

Testimony in support of 2171
by Kathy Hogan
March 9, 1999

Madam Chair and Members of the Committee, my name is Kathy Hogan. I am the Director of Cass County Social Services and I am here today representing Cass County.

The Adoption and Safe Families Act is one of the most significant changes in the child welfare system that we have seen in the last twenty years. It clearly compares to the massive changes in the public assistance or welfare reform which we have been implementing over the last two years. There is however very little public concern or discussion over these very significant public policy changes.

I am concerned about the financial implications of implementation of the new federal and state Adoption and Safe Families Act. This act will require substantial efforts from county social service staff, county state's attorneys, public defenders and the juvenile court system. In addition, the Department of Human Services will need to assure that comprehensive training, monitoring and support services are available.

Because this new law is still emerging, it is very challenging if not impossible to project the actual costs across all of the impacted public agencies. We do know

that there will be financial impacts and this legislation could become a significant unfunded mandate to local governments. Let me briefly give you some examples of new costs:

1. Social work services:

To assure that the various services are secured, family plans are developed, Cass County has hired one additional staff in 1999 and it is anticipating at least one additional new staff in 2000.

2. Legal services to prepare cases:

This is currently the responsibility of the county state's attorney. Cass County budgeted for one full time state's attorney to provide this service in 1997. It is anticipated that we will need at least an additional .5 FTE.

3. Public Defense Attorney/Guardian Ad litem costs:

The majority of the cases that will have petitions for termination of parental rights filed require or use the public defenders. These costs will likely increase.

4. Expert witnesses:

If we are to process serious child welfare situations in much more stringent time frames it will be critical that comprehensive services are available to complete all necessary evaluations, such as parental

capacity assessments. In a recent Cass County case, the expert witness cost was over \$1,500/day.

5. Court costs:

This new legislation has and will directly impact the services and capacity of the juvenile court system. The court system will need to respond to all of the requests for legal action.

6. Adoption costs:

If there is an increase in the numbers of children who are available for adoption, there will be a need for increased adoption related services, particularly for subsidized adoptions.

I am aware that many of these new costs were not anticipated in the ND Department of Human Services budget because we were and in some ways still are unaware of the actual implications. I believe that the legislature should carefully considered a study resolution to monitor both the programmatic and financial implications of the Adoption and Safe Families Act.

Thank you for the opportunity to provide testimony. I am willing to answer any questions.

Testimony Senate Bill No. 2171
by Pat Podoll
March 9, 1999

Good afternoon Madam Chair and Committee Members. My name is Pat Podoll and I am here in support of SB 2171. I supervise Family Focused Services, one of the Family Preservation programs provided at Cass County Social Services. In addition I provide clinical supervision in 7 rural counties and am a board member on the Court Improvement Project.

Family Focused Services provides a strengths based model for intensive case management after a child protection assessment has been completed. Our primary goal is to reduce the risk of harm to children or reduce the risk of a foster care placement. With children in foster care our role is to establish permanency, preferably with their own family, as quickly as possible. A 90 day treatment plan is mutually developed with the family utilizing existing community resources and/or other family preservation services through the county. The plan is behaviorally specific, time limited and written to measure outcomes not compliance. The family's progress is measured through goal attainment and the overall safety of the child.

In fiscal year 1997, 28 families were served by 2 Family Focused staff in Cass County. Eleven out of 56 children were placed in foster care either at the time of referral or during services. Permanency was established for 8 of these 11 children either through reunification or guardianship with a relative. Six other children had parental rights terminated and were

adopted. This number also includes children for whom permanency was initiated in 1996. Since November 1993 a total of 163 families have received Family Focused Services in Cass County.

Family Focused Services is very consistent with the Adoption and Safe Families Act in that quality case management is provided to families to promote safety, well being and permanency for children. Supervision is a critical component of this process to ensure consistency between the assessment and services provided, timely service delivery where closure is planned for at the onset of services, and workers are supported and challenged in their thinking process.

The Court Improvement Project is working in conjunction with SB 2171 to develop consistency between the court and child welfare systems. This is being done through shorter court orders, more judicial oversight of the permanency planning process, better trained guardians ad litem for children and checklists for judges to ensure reasonable efforts have been made to prevent a placement or to reunify a child with their family.

Family Focused Services have demonstrated that the needs of families can be met in a timely manner through quality case management. Without being adequately funded the Adoption and Safe Families Act won't work. Therefore I support the Department's plan to expand this service.

Thank you for your consideration of this bill. I am willing to answer any questions you may have regarding Family Focused Services.

CASE STUDY

A diabetic, mentally ill mother did not follow the diet and medical treatment needed to ensure safety for her newborn son. Two to three times a week the ambulance was called in response to her insulin reactions. The father was lower functioning and not consistently in the home to protect the child. Foster care placement resulted when the mother had an insulin reaction and fell on top of her son. The Family Focused assessment indicated many risks to the child, limited parenting skills and family supports. The treatment plan that was developed with the family included medical and psychological treatment for the mother, individualized parenting skill training for both parents and 8 hours of visitation a week where they could maintain a bond with their son and practice the parenting skills learned. All efforts to assist the parents were exhausted, which was demonstrated through excellent documentation and a directed treatment plan. Permanency was established through termination of parental rights and adoption within approximately 12 months.

TESTIMONY BEFORE THE
SENATE HUMAN SERVICES COMMITTEE
SENATE BILL 2171
THE ADOPTION AND SAFE FAMILIES ACT
JANUARY 26, 1999

Good Morning Chairman Thane and Members of the Senate Human Services Committee.

For the record, my name is Betty Keegan. I am employed as Director of Rolette County Social Services. Today I appear before you to present information regarding the role and practice at the County level as we implement the Adoption and Safe Families Act.

The North Dakota County Social Services Director's Association went on record on January 14, 1999, as lending it's support to this important legislation.

Let me begin by saying that in my estimation the two key words in this title are SAFETY and FAMILIES. The language throughout the Act focuses upon the Safety of the Child(ren) at all times, while it continues to promote safe and stable families for children. These are the values today held of great importance in the field of Child Welfare and Family Service Work.

Rolette
County
Social
Services

The provisions of this legislation are designed to assure services availability to all families, to help the families through Family Preservation and Support Services. And during the course of such services provision, the safety of the children to be served will be of paramount concern.

This legislation will not require that we "start from scratch" to provide services of safety and stability. Rather, as a Human Services Agency we already have in place an excellent array of services which address safety of children and family support services:

- .Child Protection Services
- .Foster Care Services
- .Parent Aide Services
- .Respite Care Services
- .Wrap Around Services
- .Crossroads Program
- .Family Focused Services
- .Family Social Work Services
- .In Home Family Services
- .Therapeutic Foster Care
- .Parenting Programs

Services which are provided through the Human Services Centers and which can be accessed by and for families are

- .Mental Health Services-Community Based
- .Substance Abuse Services
- .Vocational Rehabilitation Services

The new legislation directs that we will provide every assurance that every effort has been made to preserve and reunify families without jeopardizing the safety of the children.

If after all reasonable efforts have been made to assure safety of the child and preserve the family and all efforts fail the Court will determine if it is in the best interest of the child(ren) to continue this pursuit. Parents will be kept informed throughout this process of how the participation or failure to participate will affect outcomes. Parents will be assisted in arriving at informed decisions.

The legislation will open new doors for the adolescent who is unable to reunite with his/her family, after having been in foster care. A new approach, Legal Guardianship, will be available to the Courts and the practice which will help these older children to achieve a form of permanence with significant adult(s) in their lives. This approach will not necessitate a termination of parental rights.

And for the younger children who cannot, for whatever reason, achieve permanence within their own birth family, than we will work with the Courts to assure that permanence can be provided the child through promoting adoption and adoption subsidy.

I have supervised Child Welfare Staff in Rolette County for a number of years now. One question raised a number of years ago by one young boy in our legal care and custody, living in foster care still haunts me today:

"Will I always be a foster" (child)?

That question pretty much sums up why we need to pass an Adoption and Safe Families Act, so that kids "will not always have to be fosters" but to assure that every child will be a member of a permanent family----preferably his/her own birth family, but if that is not possible than another permanent family made available to him or her through adoption or guardianship.

Thank you for allowing me to present this information. If you have questions, I will be happy to discuss those with you.

TESTIMONY BEFORE THE
HOUSE HUMAN SERVICES COMMITTEE
SENATE BILL 2171
THE ADOPTION AND SAFE FAMILIES ACT

Chairperson Price and Members of the House Human Services Committee.

For the record, my name is Betty Keegan. I am employed as Director of Rolette County Social Services. Today I appear before you to present information regarding the role and practice at the County level as we implement the Adoption and Safe Families Act.

The North Dakota County Social Services Director's Association went on record on January 14, 1999, as lending it's support to this important legislation.

Let me begin by saying that in my estimation the two key words in this title are SAFETY and FAMILIES. The language throughout the Act focuses upon the Safety of the Child(ren) at all times, while it continues to promote safe and stable families for children. These are the values which today are held of paramount importance in the field of Child Welfare and Family Service Work.

The provisions of this legislation are designed to assure services availability to all families, to help the families through Family Preservation and Support Services. And during the course of such services provision, the safety of the children to be served will be of paramount concern.

This legislation will not require that we "start from scratch" to provide services of safety and stability. Rather, as a Human Services Agency we already have in place an excellent array of services which address safety of children and family support services and in some categories we will work to extend those services across the state:

- .Child Protection Services
- .Foster Care Services
- .Parent Aide Services
- .Respite Care Services
- .Wrap Around Services
- .Crossroads Program
- .Family Focused Services
- .Family Social Work Services
- .In Home Family Services
- .Therapeutic Foster Care
- .Parenting Programs

Services which are provided through the Human Services Centers and which can be accessed by and for families are

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- .Vocational Rehabilitation Services

The new legislation directs that we will provide every assurance that every effort has been made to preserve and reunify families without jeopardizing the safety of the children.

If after all reasonable efforts have been made to assure safety of the child and preserve the family and all efforts fail the Court will determine if it is in the best interest of the child(ren) to continue this pursuit. Parents will be kept informed throughout this process of how their participation or failure to participate will affect outcomes. Parents will be assisted in arriving at informed decisions.

This legislation encourages Concurrent Planning, a two track planning approach toward a form of permanence for children.

This legislation also encourages frequent judicial review hearings to review progress being made by all parties toward attainment of goals of permanence.

This legislation will open new doors for the adolescent who is unable to reunite with his/her family, after having been in foster care. A new approach, Legal Guardianship, will be available to the Courts and the practice which will help these older children to achieve a form of permanence with significant adult(s) in their lives. This approach will not necessarily necessitate a termination of parental rights.

And for the younger children who cannot, for whatever reason, achieve permanence within their own birth family, than we will work with the Courts to assure that permanency can be provided the child through promoting adoption and adoption subsidy.

At this time counties are beginning to question the additional work demands this legislation will place upon the social work staff as well as the States Attorneys across the state, all due to the shortened time-frames addressed in the Adoption Safe Families Act. We can assume this legislation will place a major demand upon the Courts also.

I have supervised Child Welfare Staff in Rolette County for a number of years now. One question raised a number of years ago by one nine year old boy placed into our legal care and custody, and living in foster care still haunts me today:

"Will I always be a foster" (child)?

That question pretty much sums up why we need to pass an Adoption and Safe Families Act, so that kids "will not always have to be fosters" but to assure that every child will be a member of a permanent family-----preferably his/her own birth family, but if that is not possible than another permanent family made available to him or her through adoption or guardianship.

Thank you for allowing me to present this information. If you have questions, I will be happy to discuss those with you.

Testimony
Senate Bill 2171
January 26, 1999

Chairman Thane, Human Service Committee Members:

My name is Linda Gertz, Regional Director of The Village Family Service Center, Minot office. The Village has provided services for children and families since 1891. I am here today to voice my support for Senate Bill 2171. Trained as a marriage and family therapist, I have had the opportunity to work with children and families that will be positively impacted by the passage of SB 2171.

Safety for North Dakota children should always be our first priority. We all hear "stories" of children who are physically or sexually abused and even murdered at the hands of their parent(s) or caregivers. SB 2171 includes clear language defining the severe inappropriate end of the continuum of behavior of parents.

Children are also impacted by chronic issues of neglect, mental health and addiction concerns, as well as family member involvement the corrections system. These issues often bring families into Child Protection Services and on into Foster Care Services (including residential and even out-of-state placements) with a result of children separated from families.

The North Dakota Department of Human Services has, for over 12 years, utilized Family Preservation Services as a resource to prevent out-of-home placements, reduce the length of necessary placements, prevent dissolution of adoptive placement, prepare pre-adoptive families for child placement, prevent and reduce adjudication, and prevent child abuse and neglect. Overall, these efforts have also reduced related costs. Family Preservation Services are based on the premise that the best place to resolve family problems is within the context of the family's home and community. It is my professional belief that Family

Preservation Services also significantly reduce the long term emotional/psychological cost to children and families created by these chronic unresolved issues. These costs, left unchecked, can result in significant financial burden to the community and state over the person's lifetime.

Key points of SB 2171:

- balances child safely with permanence
- addresses the child's developmental needs for permanence, the value and need for "family" in every child's life
- reduces time child spends "waiting" for adults to make decisions regarding the child's life
- parents are to be responsible to participate in development and implementation of plans for permanence
- defines "relative" in a manner that addresses varied cultural/community standards and expands appropriate options across jurisdictions
- clarifies adoption as a desirable option for permanency for children

I ask that the committee recommend the passage of this bill.

I am available to answer questions.