



U.S. Department of Health and Human Services

## Administration for Children & Families

Search:

[ACF Home](#) | 
 [Services](#) | 
 [Working with ACF](#) | 
 [Policy/Planning](#) | 
 [About ACF](#) | 
 [ACF News](#) | 
 [HHS Home](#)

[Questions?](#) | 
 [Privacy](#) | 
 [Site Index](#) | 
 [Contact Us](#) | 
 [Download Reader™](#) | 
 [Print](#) •

[Advanced](#)

[Search](#)

CHILDREN'S BUREAU

Safety · Permanency · Well-being

[DOCID: f:publ89.105]

### Public Law 105-89 105th Congress

An Act

To promote the adoption of children in foster care.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**Nov. 19, 1997**

**[H.R. 867]**

**Adoption and Safe Families Act of 1997.**

**42 USC 1305 note.**

**Nov. 19, 1997**

**[H.R. 867]**

**Adoption and  
Safe Families  
Act of 1997.**

**42 USC 1305  
note.**

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.--This Act may be cited as the "Adoption and Safe Families Act of 1997".

(b) Table of Contents.--The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

#### TITLE I -- REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

Sec. 101. Clarification of the reasonable efforts requirement.

Sec. 102. Including safety in case plan and case review system requirements.

Sec. 103. States required to initiate or join proceedings to terminate parental rights for certain children in foster care.

Sec. 104. Notice of reviews and hearings; opportunity to be heard.

Sec. 105. Use of the Federal Parent Locator Service for child welfare services.

Sec. 106. Criminal records checks for prospective foster and adoptive parents.

Sec. 107. Documentation of efforts for adoption or location of a permanent home.

#### TITLE II -- INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

Sec. 201. Adoption incentive payments.

Sec. 202. Adoptions across State and county jurisdictions.

Sec. 203. Performance of States in protecting children.



U.S. Department of Health and Human Services

Administration for Children & Families

Search:

ACF Home | Services | Working with ACF | Policy/Planning | About ACF | ACF News | HHS Home

Questions? | Privacy | Site Index | Contact Us | Download Reader™  | Print  •

[Advanced](#)

[Search](#)

CHILDREN'S BUREAU

Safety · Permanency · Well-being

## TITLE I--REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

### SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) In General.--Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(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);".

(b) Definition of Legal Guardianship.--Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(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."

(c) Conforming Amendment.--Section 472(a)(1) of such Act (42 U.S.C. 672(a)(1)) is amended by inserting "for a child" before "have been made". (d) Rule of Construction.--Part E of title IV of such Act (42 U.S.C. 670-679) is amended by inserting after section 477 the following:

**42 USC 678**

**"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)."

Return to [Back to Index](#)

**SEC. 102. INCLUDING SAFETY IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS.**

Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended--

**42 USC 622.**

(1) in section 422(b)(10)(B) --

(A) in clause (iii)(I), by inserting "safe and" after "where"; and (B) in clause (iv), by inserting "safely" after "remain"; and

**42 USC 675.**

(2) in section 475 --

(A) in paragraph (1)--

(i) in subparagraph (A), by inserting "safety and" after "discussion of the"; and (ii) in subparagraph (B)--

(I) by inserting "safe and" after "child receives"; and (II) by inserting "safe" after

(B) in paragraph (5)--

(i) in subparagraph (A), in the matter preceding clause (i), by inserting "a safe setting that is" after "placement in"; and (ii) in subparagraph (B)--

(I) by inserting "the safety of the child," after "determine"; and (II) by inserting "and safely maintained in" after "returned to".

Return to [Back to Index](#)

**SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.**

(a) Requirement for Proceedings.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended--

(1) by striking "and" at the end of subparagraph (C); (2) by striking the period at the end of subparagraph (D) and inserting "; and"; and (3) by adding at the end the following:

"(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 parents (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."

(b) Determination of Beginning of Foster Care.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended--

(1) by striking "and" at the end of subparagraph (D); (2) by striking the period at the end of subparagraph (E) and inserting "; and"; and (3) by adding at the end the following:

"(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."

#### **42 USC 675 note.**

(c) Transition Rules.--

(1) New foster children.--In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act--

(A) if the State comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and (B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) Current foster children.--In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall--

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than  $\frac{1}{3}$  of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time; (B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than  $\frac{2}{3}$  of such children as the State shall select; and (C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

(3) Treatment of 2-year legislative sessions.--For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature. (4) Requirements treated as state plan requirements.--For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act.

#### **42 USC 675 note.**

(d) Rule of Construction.--Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.

Return to [Back to Index](#)

### **SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.**

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended--

(1) by striking "and" at the end of subparagraph (E); (2) by striking the period at the end of subparagraph (F) and inserting "; and"; and (3) by adding at the end the following:

"(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."

Return to [Back to Index](#)

## **SEC. 105. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.**

Section 453 of the Social Security Act (42 U.S.C. 653) is amended--

(1) in subsection (a)(2)--

(A) in the matter preceding subparagraph (A), by inserting "or making or enforcing child custody or visitation orders," after "obligations,"; and (B) in subparagraph (A)--

(i) by striking "or" at the end of clause (ii); (ii) by striking the comma at the end of clause (iii) and inserting "; or"; and (iii) by inserting after clause (iii) the following: "(iv) who has or may have parental rights with respect to a child,"; and

(2) in subsection (c)--

(A) by striking the period at the end of paragraph

(3) and inserting "; and"; and

(B) by adding at the end the following:

"(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E."

Return to [Back to Index](#)

## **SEC. 106. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS.**

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended--

(1) by striking "and" at the end of paragraph (18); (2) by striking the period at the end of paragraph (19) and inserting "; and"; and (3) by adding at the end the following: "(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."

Return to [Back to Index](#)

## **SEC. 107. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.**

Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended--

(1) in the last sentence--

(A) by striking "the case plan must also include"; and (B) by redesignating such sentence as subparagraph (D) and indenting appropriately; and

(2) by adding at the end the following: "(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."

Return to [Back to Index](#)

Download [FREE Adobe Acrobat® Reader™](#) to view PDF files located on this site.

[Children's Bureau Home](#) | [About the Children's Bureau](#) | [Programs & Funding](#) | [Child Welfare Monitoring](#) | [Training & Technical Assistance](#) | [Frequently Requested Information](#) | [Laws & Policies](#) | [Statistics & Research](#) | [Federal & State Reporting Systems](#) | [Upcoming Events](#) | [Current Initiatives & Issues](#) | [New on Site](#) | [Children's Bureau Express Online Digest](#) | [Sitemap](#)

[ACF Home](#) | [Questions?](#) | [Site Index](#) | [Contact Us](#) | [Accessibility](#) | [Privacy Policy](#) | [Freedom of Information Act](#) | [Disclaimers](#)  
[Department of Health and Human Services](#) | [USA.gov: The U.S. government's official web portal](#)

Administration for Children and Families • 370 L'Enfant Promenade, S.W. • Washington, D.C. 20447

[Last Updated:](#) February 10, 2006



U.S. Department of Health and Human Services

Administration for Children & Families

Search:

[ACF Home](#) | 
 [Services](#) | 
 [Working with ACF](#) | 
 [Policy/Planning](#) | 
 [About ACF](#) | 
 [ACF News](#) | 
 [HHS Home](#)

[Questions?](#) | 
 [Privacy](#) | 
 [Site Index](#) | 
 [Contact Us](#) | 
 [Download Reader™](#) | 
 [Print](#) •

[Advanced](#)

[Search](#)

CHILDREN'S BUREAU

Safety · Permanency · Well-being

## TITLE II--INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

### SEC. 201. ADOPTION INCENTIVE PAYMENTS.

(a) In General.--Part E of title IV of the Social Security Act (42 U.S.C. 670-679) is amended by inserting after section 473 the following:

#### 42 USC 673b.

#### "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 first 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 or 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."

(b) Discretionary Cap Adjustment for Adoption Incentive Payments.--

**Ante, p. 698.**

(1) Section 251 amendment.--Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)), as amended by section 10203(a)(4) of the Balanced Budget Act of 1997, is amended by adding at the end the following new subparagraph:

"(G) Adoption incentive payments.--Whenever a bill or joint resolution making appropriations for fiscal year 1999, 2000, 2001, 2002, or 2003 is enacted that specifies an amount for adoption incentive payments pursuant to this part for the Department of Health and Human Services--

"(i) the adjustments for new budget authority shall be the amounts of new budget authority provided in that measure for adoption incentive payments, but not to exceed \$20,000,000; and "(ii) the adjustment for outlays shall be the additional outlays flowing from such amount."

**Ante, p. 688.**

(2) Section 314 amendment.--Section 314(b) of the Congressional Budget Act of 1974, as amended by section 10114 (a) of the Balanced Budget Act of 1997, is amended--

(A) by striking "or" at the end of paragraph (4); (B) by striking the period at the end of paragraph (5) and inserting "; or"; and (C) by adding at the end the following: "(6) in the case of an amount for adoption incentive payments (as defined in section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed \$20,000,000."

Return to [Back to Index](#)

**SEC. 202. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.**

(a) State Plan for Child Welfare Services Requirement.--Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended--

(1) in paragraph (10), by striking "and" at the end; (2) in paragraph (11), by striking the period and inserting "; and"; and (3) by adding at the end the following: "(12) contain assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children."

(b) Condition of Assistance.--Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following: "(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."

**42 USC 5111 note.**

(c) Study of Interjurisdictional Adoption Issues.--

(1) In general.--The Comptroller General of the United States shall--

(A) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions; and (B) examine, at a minimum, interjurisdictional adoption issues--

(i) concerning the recruitment of prospective adoptive families from other States and counties; (ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties; (iii) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and (iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

(2) Report to the congress.--Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the appropriate committees of the Congress a report that includes--



U.S. Department of Health and Human Services

Administration for Children & Families

Search:

[ACF Home](#) | 
 [Services](#) | 
 [Working with ACF](#) | 
 [Policy/Planning](#) | 
 [About ACF](#) | 
 [ACF News](#) | 
 [HHS Home](#)

[Questions?](#) | 
 [Privacy](#) | 
 [Site Index](#) | 
 [Contact Us](#) | 
 [Download Reader™](#)  | 
 [Print](#)  •

[Advanced](#)

[Search](#)

CHILDREN'S BUREAU

Safety · Permanency · Well-being

## TITLE IV--MISCELLANEOUS

**42 USC 671 note.**

### SEC. 401. PRESERVATION OF REASONABLE PARENTING.

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

Return to [Back to Index](#)

**42 USC 671 note.**

### SEC. 402. REPORTING REQUIREMENTS.

Any information required to be reported under this Act shall be supplied to the Secretary of Health and Human Services through data meeting the requirements of the Adoption and Foster Care Analysis and Reporting System established pursuant to section 479 of the Social Security Act (42 U.S.C. 679), to the extent such data is available under that system. The Secretary shall make such modifications to regulations issued under section 479 of such Act with respect to the Adoption and Foster Care Analysis and Reporting System as may be necessary to allow States to obtain data that meets the requirements of such system in order to satisfy the reporting requirements of this Act.

Return to [Back to Index](#)

### SEC. 403. SENSE OF CONGRESS REGARDING STANDBY GUARDIANSHIP.

It is the sense of Congress that the States should have in effect 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--

(1) the death of the parent; (2) the mental incapacity of the parent; or (3) the physical debilitation and consent of the parent.

Return to [Back to Index](#)

### SEC. 404. TEMPORARY ADJUSTMENT OF CONTINGENCY FUND FOR STATE WELFARE PROGRAMS.

(a) Reduction of Appropriation.--Section 403(b)(2) of the Social Security Act (42 U.S.C. 603(b)(2)) is amended by inserting ", reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)" before the period. (b) Increase in State Remittances.--Section 403(b)(6) of such Act (42 U.S.C. 603(b)(6)) is amended by adding at the end the following:

"(C) Adjustment of state remittances.--

"(i) In general.--The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of--

"(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year;

or "(II) the unadjusted net payment to the State for the fiscal year.

"(ii) Total adjustment.--As used in clause (i), the term 'total adjustment' means--

"(I) in the case of fiscal year 1998, \$2,000,000; "(II) in the case of fiscal year 1999, \$9,000,000; "(III) in the case of fiscal year 2000, \$16,000,000; and "(IV) in the case of fiscal year 2001, \$13,000,000.

"(iii) Adjustment percentage.--As used in clause (i), the term 'adjustment percentage' means, with respect to a State and a fiscal year--

"(I) the unadjusted net payment to the State for the fiscal year; divided by "(II) the sum of the unadjusted net payments to all States for the fiscal year.

"(iv) Unadjusted net payment.--As used in this subparagraph, the term, 'unadjusted net payment' means with respect to a State and a fiscal year--

"(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus "(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 409(a)(10) to be remitted by the State in respect of the payment."

(c) Recommendations for Improving the Operation of the Contingency Fund.--Not later than March 1, 1998, the Secretary of Health and Human Services shall make recommendations to the Congress for improving the operation of the Contingency Fund for State Welfare Programs.

Return to [Back to Index](#)

#### **Reports. 42 USC 613 note.**

### **SEC. 405. COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES.**

Within 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health of Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.

Return to [Back to Index](#)

#### **42 USC 671 note.**

### **SEC. 406. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.**

(a) In General.--It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act should be American-made. (b) Notice Requirement.--In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

Return to [Back to Index](#)

Download [FREE Adobe Acrobat® Reader™](#) to view PDF files located on this site.

[Children's Bureau Home](#) | [About the Children's Bureau](#) | [Programs & Funding](#) | [Child Welfare Monitoring](#) | [Training & Technical Assistance](#) | [Frequently Requested Information](#) | [Laws & Policies](#) | [Statistics & Research](#) | [Federal & State Reporting Systems](#) | [Upcoming Events](#) | [Current Initiatives & Issues](#) | [New on Site](#) | [Children's Bureau Express Online Digest](#) | [Sitemap](#)

[ACF Home](#) | [Questions?](#) | [Site Index](#) | [Contact Us](#) | [Accessibility](#) | [Privacy Policy](#) | [Freedom of Information Act](#) | [Disclaimers](#)  
[Department of Health and Human Services](#) | [USA.gov: The U.S. government's official web portal](#)

Administration for Children and Families • 370 L'Enfant Promenade, S.W. • Washington, D.C. 20447

[Last Updated:](#) February 10, 2006



U.S. Department of Health and Human Services

Administration for Children & Families

Search:

[ACF Home](#) | [Services](#) | [Working with ACF](#) | [Policy/Planning](#) | [About ACF](#) | [ACF News](#) | [HHS Home](#)

[Questions?](#) | [Privacy](#) | [Site Index](#) | [Contact Us](#) | [Download Reader™](#)  | [Print](#)  •

[Advanced](#)

[Search](#)

CHILDREN'S BUREAU

Safety · Permanency · Well-being

## TITLE V--EFFECTIVE DATE

**42 USC 622 note.**

### SEC. 501. EFFECTIVE DATE.

(a) In General.--Except as otherwise provided in this Act, the amendments made by this Act take effect on the date of enactment of this Act. (b) Delay Permitted if State Legislation Required.--In the case of a State plan under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before 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. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Approved November 19, 1997.

Return to [Back to Index](#)

Download [FREE Adobe Acrobat® Reader™](#) to view PDF files located on this site.

[Children's Bureau Home](#) | [About the Children's Bureau](#) | [Programs & Funding](#) | [Child Welfare Monitoring](#) | [Training & Technical Assistance](#) | [Frequently Requested Information](#) | [Laws & Policies](#) | [Statistics & Research](#) | [Federal & State Reporting Systems](#) | [Upcoming Events](#) | [Current Initiatives & Issues](#) | [New on Site](#) | [Children's Bureau Express Online Digest](#) | [Sitemap](#)

[ACF Home](#) | [Questions?](#) | [Site Index](#) | [Contact Us](#) | [Accessibility](#) | [Privacy Policy](#) | [Freedom of Information Act](#) | [Disclaimers](#)  
[Department of Health and Human Services](#) | [USA.gov: The U.S. government's official web portal](#)

Administration for Children and Families • 370 L'Enfant Promenade, S.W. • Washington, D.C. 20447

[Last Updated:](#) February 10, 2006

(A) the results of the study conducted under paragraph (1); and (B) recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements.

Return to [Back to Index](#)

## **SEC. 203. PERFORMANCE OF STATES IN PROTECTING CHILDREN.**

(a) Annual Report on State Performance.--Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by adding at the end the following:

### **42 USC 679b.**

#### **"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."

### **42 USC 679b note.**

(b) Development of Performance-Based Incentive System.--The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.

Return to [Back to Index](#)

Download [FREE Adobe Acrobat® Reader™](#) to view PDF files located on this site.

[Children's Bureau Home](#) | [About the Children's Bureau](#) | [Programs & Funding](#) | [Child Welfare Monitoring](#) | [Training & Technical Assistance](#) | [Frequently Requested Information](#) | [Laws & Policies](#) | [Statistics & Research](#) | [Federal & State Reporting Systems](#) | [Upcoming Events](#) | [Current Initiatives & Issues](#) | [New on Site](#) | [Children's Bureau Express Online Digest](#) | [Sitemap](#)

[ACF Home](#) | [Questions?](#) | [Site Index](#) | [Contact Us](#) | [Accessibility](#) | [Privacy Policy](#) | [Freedom of Information Act](#) | [Disclaimers](#)  
[Department of Health and Human Services](#) | [USA.gov: The U.S. government's official web portal](#)

Administration for Children and Families • 370 L'Enfant Promenade, S.W. • Washington, D.C. 20447

[Last Updated: February 10, 2006](#)

# TITLE IV-E REQUIREMENTS AT A GLANCE CHART

Order to Take Into Protective Custody	"Contrary to Welfare" Court order must specify for "each" child/ren the reasonable grounds for removal from the home. JCO5b	DHS must have this order to place child/ren in foster care	MCR 3.963 MCL 712A.14
---------------------------------------	---	--	--------------------------

Type of Hearing	Determination	Time Frame for Completion	Legal Authority
Preliminary Hearing	"Contrary to welfare" Court must specify for each child JC11a	Within <b>24 HOURS</b> after child's removal from home	MCR 3.903(C)(3) MCR 3.965(C)(3) 45 CFR 1356.21(C)
Preliminary Hearing or Pretrial Hearing	"Reasonable efforts to prevent removal. . ." Court must specify for each child JC11a, JC11b, JC17, JC49	Within <b>60 DAYS</b> after child's removal from home	45 CFR 1356.21(b)(1)(i) MCR 3.965(D)(1)
Preliminary Hearing, Pretrial, Adjudication, Disposition involving an Original Permanent Custody Petition	If reasonable efforts to prevent removal are <b>not</b> required due to "aggravated circumstances" JC11a, JC11b, JC17, JC19, JC49	PPH must be held <b>28 DAYS</b> after the reasonable efforts determination is made by the court.	MCL 722.638 MCR 3.976(B)(1)(a) 45 CFR 1356.21(b)(3)(i), (ii), (iii)
<b>FIRST</b> Permanency Planning Hearing: DHS must identify and the court must find in its written order a "qualified" permanency plan for each child and specify the reasonable efforts made to finalize the court-approved permanency plan.	<b>FIVE</b> qualified permanency plan options: <b>(1) reunification, (2) adoption, (3) legal guardianship, (4) placement with a fit and willing relative, or (5) another planned permanent living arrangement</b> if the other four options are ruled out and DHS documents and court finds <b>compelling reasons</b> for the alternate plan. JC19, JC76	Within <b>12 MONTHS</b> of the child's removal from home.  <b>NOTE:</b> a PPH may be combined with another hearing to ensure timeliness.	MCR 3.976(A), (B)(2),(4) MCL 712A.19a 45 CFR 1355.20
Subsequent Permanency Planning Hearings	Same as for <b>FIRST</b> permanency planning hearing	Within <b>12 MONTHS</b> of the previous permanency planning hearing	MCR 3.976(B)(3) MCL 712A.19a 45 CFR 1356.21

**ADDITIONAL NOTES:**

- Ideally, the contrary to the welfare and reasonable efforts findings will be made in the emergency removal order -- JC05b.
- A review hearing must be scheduled within 182 DAYS of entry into foster care. This may result in a review hearing being scheduled before adjudication is completed.
- To receive Title IV-E funding, all court orders must state that the child is placed with DHS for Care and Supervision. The court should not order a specific placement **unless** the parties are given the opportunity to present evidence and arguments (testimony) concerning the placement. Ideally, the court should only "recommend" a specific placement.
- Review all court orders to ensure accuracy and that the order contains the required findings. Abbreviations should not be used.
- A **nunc pro tunc** order cannot be used to retroactively establish compliance with Title IV-E. See, Children's Foster Care Manual, CFF 902-2 [Title IV-E Eligibility Requirements, last updated 3-1-08]. Also see, 45 CFR 1356.21(2).

Prepared by First Assistant Larry Lewis, Assistant Attorney General, CYS Division, Department of Attorney General, 3/07/05

Updated by Rebekah Mason Visconti, CYS Division Chief, 05/05/08

## COURT ORDERS AND TITLE IV-E ELIGIBILITY REQUIREMENTS

COURT ORDER FINDINGS	DECISION	CORRECTABLE	REMARKS
REASONABLE EFFORT TO PREVENT REMOVAL	IF REMOVAL AFTER 10/1/00, REASONABLE EFFORT MUST BE FOUND AT A HEARING WITHIN 60 DAYS OF THE CHILD'S REMOVAL AND THIS DECISION MUST BE INCLUDED ON THE COURT ORDER FOR THAT HEARING. IF THE DECISION IS NOT ON THE ORDER, IT CAN BE INCLUDED ON ANY COURT ORDER FOR A HEARING THAT IS HELD WITHIN 60 DAYS OF THE CHILD'S REMOVAL.	NO	IF NOT IN COURT ORDER FROM A HEARING BEFORE 60 DAYS, IT CANNOT BE CORRECTED. AN AMENDED COURT ORDER WILL NOT CHANGE THE FUNDING DETERMINATION FOR THIS EPISODE.
REASONABLE EFFORTS TO FINALIZE PERMANENCY PLAN	AT A COURT HEARING WITHIN 12 MONTHS OF THE REMOVAL AND AT COURT HEARINGS WITHIN 12 MONTHS AFTER THE LAST FINDING	YES	MAYBE INCLUDED IN AN ORDER ISSUED AS A RESULT OF A SUBSEQUENT HEARING. THE CHANGE TAKES EFFECT THE 1 ST DAY OF THE MONTH THAT FIA RECEIVES THAT COURT ORDER
JUDICIAL DETERMINATION CONCERNING THE CHILD'S WELFARE	MUST BE IN AN EMERGENCY OR PRELIMINARY HEARING ORDER WHICHEVER IS FIRST. IT MUST BE A SPECIFIC STATEMENT.	NO	NO ELIGIBILITY FOR THIS EPISODE. AMENDING THE ORDER WILL NOT CORRECT THE FUNDING SOURCE.
COURT ORDER SPECIFYING PLACEMENT OR TYPE OF PLACEMENT	CAN NOT INCLUDE ANY LANGUAGE THAT WOULD INDICATE PLACEMENT DECISION.	YES	CAN AMEND. THE CHANGE TAKES EFFECT THE 1 ST DAY OF THE MONTH THAT FIA RECEIVES THE COURT ORDER.

# Quick Reference Guide for Court Related Time frames required for IV-E eligibility

## A “contrary to the welfare” finding.

The court must find that continuance in the home is contrary to the welfare of the child. 42 USC § 672(a)(1). This finding must be made by the court and documented in the first court order following removal. 45 CFR § 1356.21(c); CFF 902-2, pp 12-14.

## A “reasonable efforts” finding.

The court must find that reasonable efforts have been made to prevent removal from the home, or that, because of certain extenuating factors, no reasonable efforts need be made. 42 USC § 671(a)(15). This reasonable efforts finding must be made within 60 days from the date of removal. 45 CFR § 1355.20(a); 45 CFR § 1356.21(b); 45 CFR § 1356.21(d); CFF 902-2, pp 14-15.

## Other “reasonable efforts” findings.

The court must find that reasonable efforts are made to reunify the child with the family or finalize alternate permanent placement for the child. These findings are to be made within 12 months following removal at a required “permanency planning” hearing. 42 USC § 671(a)(15), (16); 42 USC § 675(5)(B), (C); 45 CFR § 1356.21(b)(2); 45 CFR § 1356.21(d); 45 CFR § 1355.34(c)(2)(ii); CFF 902-2, pp 15-17.

**SUGGESTED  
Communication Strategies  
for IV-E Issues between DHS & the Court regarding Orders**

DHS has specifically trained Funding Specialists in every county who, with their supervisors should be contacting the court appointed liaison with DHS regarding court order issues.

The Child Welfare Funding Specialist (CWFS) Supervisor may receive and review issues arising from court orders from the following workers:

- Foster Care (FC) Workers;
- Child Protective Services (CPS) Worker; and
- Child Welfare (CWFS) Funding Specialists.

When follow up is needed, the CWFS Supervisor sends an email reporting the issue to the:

- Court Liaison;
- Copy (CC) the FC worker and his/her supervisor;
- CC the CW Funding Specialist; and
- CC the Program Manager

The email needs to contain the following information:

- Child's name;
- Child's date of birth (DOB);
- Court file number;
- Date of hearing;
- Type of hearing;
- Description of the problem, including why it affects IV-E eligibility;
- Identify if the issue can be corrected before the judge signs the order.

The Court Liaison reviews the email to determine the appropriate court contact person to manage the request. If the reason for the request is a missing order, the Court Liaison directs the request to the court support staff to locate the order who will then forward it to the Child Welfare Funding Specialist Supervisor. If it is a legal issue, the Court Liaison will refer the matter to the Referee for review.

The court has named a specific lead person for reviewing orders. If the issue can be repaired the referee who entered the order makes the correction before the judge signs the order. The referee should notify the Child Welfare Funding Specialist Supervisor by email if the order is being corrected and how long it will take to be completed.

## **Additional Recommended References**

The Social Security Act - 42 USC 670-679(b)

Federal Regulations - 45 CFR 1355.10 – 1357.40

The Administrative Code – online at:

[http://www.michigan.gov/dleg/0,1607,7-154-10576\\_35738---,00.html/](http://www.michigan.gov/dleg/0,1607,7-154-10576_35738---,00.html/)

Administrative Procedures Act – MCL 24.201 – 24.328

DHS manuals online at:

<http://www.mfia.state.mi.us/olmweb/ex/html/>