

# *Chapter 21 – Overview of Federal and State Child Welfare Legislation*

## **21.1 Adoption Assistance and Child Welfare Act of 1980**

In 1980 Congress signed into law the Adoption Assistance and Child Welfare Act of 1980 (AACWA). This legislation sought to develop for the first time a comprehensive federal scheme to reform the foster care system. The legislation offered funding to states contingent on their revamping their child welfare and foster care programs according to the structure provided by the federal government. If the state undertook the required restructuring, the federal government would pay a portion of the state's child welfare services costs. Generally, the states had to match the funding up to 30%.

AACWA required three major changes in the child welfare system. First, it required that states make “reasonable efforts” to prevent the removal of children from their families by providing the necessary services. Second, it required that the child welfare system make reasonable efforts to reunify the family for 18 months, after which the child could be moved to a permanent alternative. Third, it offered adoption subsidies to families who adopted children with special needs that required additional financial considerations.

## **21.2 Adoption and Safe Families Act**

The Adoption and Safe Families Act (ASFA) was enacted in 1997 to correct the misperceptions generated by AACWA. ASFA maintains the basic formula of AACWA and reaffirms the federal government's commitment to preserving families by maintaining the requirement that state child welfare agencies make reasonable efforts to prevent the removal of children from the home. However, ASFA makes clear that the intention is to put children first; it states: “in determining reasonable efforts to be made with respect to a child . . . the child's health and safety shall be of paramount concern” (42 U.S.C. § 671(a)(15)). Reasonable efforts are excused where necessary to assure the child's safety. If a parent has been convicted for prior acts of child abuse or has had parental rights involuntarily terminated with respect to a sibling of the child, the child welfare agency must initiate termination of parental rights or otherwise provide a permanent out-of-home placement for the child. In addition to these two elements, ASFA allows each state to define a set of “aggravated circumstances” which would excuse reasonable efforts and immediately move for termination of parental rights or permanent placement of the child outside the home.

Unless the court has found that reasonable efforts are not required, the child welfare agency must make reasonable efforts to reunite the family. Even though ASFA does not define reasonable efforts, it makes it clear that every child for which reasonable efforts are being made must have a case plan. A case plan is defined as a written document that includes at least the following (42 U.S.C. § 675(1)):

- A description of the type of home or institution in which a child is to be placed.
- A plan for assuring that the child receives safe and proper care and that services are provided to the parents, child and foster parents.
- The health and education records of the child.
- Where appropriate, for a child age sixteen or over, a written description of the programs and services which will help such child prepare for the transition to independent living.
- 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.

ASFA made other changes to AACWA to more quickly move a child through the child welfare system. The agency's case plan must be judicially reviewed at least every six months to ensure that the plan is being followed and that the case is moving forward. ASFA also requires that a permanency planning hearing be held at least every twelve months that the child is in foster care. If a child has been in foster care for 15 of the most recent 22 months then the agency must petition for the termination of parental rights, unless one of three specified exceptions applies: (1) the child is being cared for by a relative; (2) the agency has documented a compelling reason for determining that terminating parental rights would not be in the best interest of the child; or (3) the agency has not provided, consistent with the time period in the case plan, such services to the family as the agency deems necessary for the safe return of the child (42 U.S.C. § 675(5)). If the court has waived reasonable efforts because the reunification of the family is not in the best interests of the child, the agency does not need to wait fifteen months to terminate parental rights.

In addition, ASFA allows the agency to pursue concurrent planning without financial penalties (42 U.S.C. § 671(15)(F)). Under a concurrent plan, the agency is free to make reasonable efforts to reunify the family while at the same time trying to identify other appropriate permanent placements for the child. That way, if reunification is not achieved, an alternative placement will already be identified. ASFA expands the available permanency options by recognizing permanent legal guardianship as a form of permanency. This allows individuals who do not want to adopt to become permanent guardians of a child. Although not as secure as adoption, it does provide the child with a stable environment and an opportunity to maintain ties to his/her biological parents. In a further effort to move children through the child welfare system, ASFA also encourages adoption by paying a state for every adoption that is achieved over a set baseline.

### **21.3 Child Abuse Prevention and Treatment Act**

The Child Abuse Prevention and Treatment Act (CAPTA) was enacted in 1974 and was most recently amended in 2019 as part of the Victims of Child Abuse Act Reauthorization Act of 2018. CAPTA has three main goals: (1) to provide federal funding in support of states' efforts to prevent child maltreatment and respond to reports of child abuse and neglect; (2) to provide funding for the training of professionals involved in preventing and responding to child abuse and neglect; and (3) to provide a means for

disseminating information on abuse and neglect to the Secretary of the Department of Health and Human Services (DHHS), Congress and the public.

The statute sets forth fourteen specific areas for which funding will be granted through DHHS when states submit a specific plan requesting funds (42 U.S.C. § 5106(a)). CAPTA provides funding for state plans that mandate the reporting of suspected child maltreatment, implement assessment tools to determine which reports are valid and which lack sufficient evidence of abuse and neglect and implement action plans on valid reports of abuse that are appropriate to the level of risk of harm to the child involved. Funding is also available for the training of professionals involved in preventing and responding to child abuse and neglect (42 U.S.C. § 5106(a)(1)). CAPTA requires that a GAL be appointed to every child involved in a judicial proceeding involving child abuse and neglect allegations (42 U.S.C. § 5106a(b)).

CAPTA not only provides money for training GALs but also for the training of professional and paraprofessional personnel in the fields of medicine, law enforcement, judiciary, social work and child protection, education, and other relevant fields, who are engaged in, or intend to work in, the field of prevention, identification, and treatment of child abuse and neglect (42 U.S.C. § 5106(a)(1)(A)).

CAPTA also establishes a National Clearinghouse for Information Relating to Child Abuse (42 U.S.C. § 5104). The function of the Clearinghouse is to maintain, coordinate and disseminate information on all effective programs, including private and community-based programs that show promise of success with respect to the prevention, assessment, identification and treatment of child abuse and neglect and that hold the potential for broad scale implementation and replication.

## **21.4 Every Student Succeeds Act**

The Every Student Succeeds Act (ESSA) (20 U.S.C. § 6301, *et seq.*) was signed into federal law in 2015 replacing No Child Left Behind (2002). ESSA moves from broad oversight at the federal level to more decision-making at the local and state level. It addresses educational content, assessments, accountability and teacher quality among other things. Pertinent to dependency matters, ESSA includes a provision that addresses barriers to educational achievement for foster youth and provides for educational stability. According to ESSA, there is a presumption that foster youth are to remain enrolled in their school of origin unless a judge determines that it is not in the youth's best interest considering factors such as appropriateness of the current school setting and proximity of the school of origin to current placement. If a determination is made that remaining in the school of origin is not in the youth's best interest, the youth must be enrolled in another school immediately regardless of whether educational records have transferred.

## **21.5 Family Finding and Kinship Care (Act 55 of 2013)**

Act 55 of 2013, Family Finding and Kinship Care, (62 P.S. § 1301 *et seq.*) is intended to ensure that family finding occurs on an ongoing basis for all children entering the child welfare system. Active efforts to find, reach and engage family and kin for families known to the child welfare system provides for better outcomes and less trauma for children and their parents. Family finding is to begin once a child/family is accepted for service by the agency based on the “needs and problems of the individual.” Once accepted for service, the agency, its contracted providers and known relatives and kin must search for and identify adult relatives and kin AND engage them in social service planning AND delivery of services. Family finding is an ongoing activity that can only be discontinued when a judge finds that it no longer serves the best interest of the child, is a threat to the child’s safety or the child is in the process of being adopted. Family finding shall be resumed if the court determines such or the agency decides voluntarily to resume family finding. For more information, see Chapter 2: Act 55 of 2013: Family Finding.

## **21.6 Family First Prevention Services Act**

The Family First Prevention Services Act (42 U.S.C. §§ 50701-50772) was signed into federal law on February 9, 2018. It reforms the federal funding streams Title IV-E and Title IV-B of the Social Security Act. The intent of the law was to provide prevention services to families who are at risk of entering the child welfare system by providing federal reimbursement for mental health and substance abuse services and in-home parent training. These services are required to be trauma-informed and should be evidence-based.

Additionally, it attempts to improve the well-being of children in placement by encouraging the most family-like setting by discontinuing federal reimbursement when placement in congregate care is unnecessary. The act requires that qualified residential treatment programs be trauma-informed and provide treatment that addresses the serious emotional and behavioral needs of their clients. It limits federal reimbursement for congregate care facilities that are not qualified residential treatment programs to two weeks.

Judges and hearing officers should be aware that the act require courts to approve or disapprove the placement within sixty days of entering the placement. An assessment must be done within thirty days of placement assessing the need for congregate care or if the child’s needs could be met with a family member, kinship caregiver or foster home. A team of professionals and family members should participate in the assessment and decision-making process (Family First Prevention Services Act of 2018, a summary by FosterClub, accessed electronically on May 14, 2019 at [https://www.familyfirstact.org/sites/default/files/Family%20First%20Act%20Highlights%202018%20FosterClub\\_11.18%20\(1\).pdf](https://www.familyfirstact.org/sites/default/files/Family%20First%20Act%20Highlights%202018%20FosterClub_11.18%20(1).pdf)).

## **21.7 Foster Care Independence Act (Chafee)**

The Foster Care Independence Act (also known as “The Chafee Foster Care Independence Program” or “Chafee Act”) became law in 1999. The overall purpose of the Act is to provide funding to the states that will assist children who are transitioning from foster care to independent living. It is aimed specifically at those children who are likely to remain in foster care until they are eighteen years old. As previously stated, it is well known that adolescents face a number of problems in transitioning from foster care to independent living. Challenges include: homelessness, non-marital childbearing, poverty, delinquent or criminal behavior and criminal victimization.

To address these problems the Chafee Act does five primary things:

- (1) Establishes an improved independent living program, known as the John H. Chafee Foster Care Independence Program (42 U.S.C. § 677).
- (2) Increases from \$1,000 to \$10,000 the amount of assets a youth may have and still remain eligible for foster care funded by Title IV-E (42 U.S.C. § 672(a)).
- (3) Requires states to train foster parents.
- (4) Authorizes increased funds for adoption incentive payments to the states to assist in finding permanent placements for children in foster care (42 U.S.C. § 673b).
- (5) Allows youth who are in foster care on their eighteenth birthday to be covered by Medicaid between the ages of eighteen and twenty-one (42 U.S.C. § 396(a)).

## **21.8 Fostering Connections to Success and Increasing Adoptions Act**

The Fostering Connections to Success and Increasing Adoptions Act was enacted in October 2008. The stated purpose of the Act is to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access and improve incentives for adoption. The ultimate goal is to move children out of foster care and into safe, permanent homes. The Act amends parts B and E of Title IV of the Social Security Act to:

- find, approve and support relative caregivers;
- increase efforts to preserve sibling ties;
- mandate coordination and improved oversight of education and health needs;
- encourage adoptions;
- provide federal assistance and protection to Native American and Alaskan native children;
- preserve educational stability and enhance education support; and
- support the training of lawyers and judges.

The Act is intended to move children in foster care into homes with relatives and adoptive parents so they can enjoy the benefits of a safe and secure environment as they grow up. To this end, the Act has specific provisions to assist relatives and adoptive families to connect with children in foster care.

To encourage placement with relatives the Act provides for the following:

- Notice to relatives when children enter care: The Act provides that within thirty days after the removal of a child from parental custody, the agency must exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (42 U.S.C. § 671(a)).
- Subsidized guardianship payments for relatives: The Act also provides states with federal funds for support payments that enable children to leave foster care and live permanently with grandparents and other relatives when they cannot return home or be adopted. Payments usually last until the child reaches age eighteen, but in certain circumstances children may continue to receive guardianship assistance to age twenty-one. The Act also clarifies that children who leave foster care after age sixteen for kinship guardianship are eligible for independent living services and education and training vouchers (42 U.S.C. § 677).
- Licensing standards for relatives: States may waive non-safety related licensing standards for relatives on a case-by-case basis. The Department of Health and Human Services is required to report to Congress on the use of licensing waivers and on recommendations for increasing the percentage of relative foster family homes that are licensed (42 U.S.C. § 671(a)).
- Family Connection grants: The Act increases resources for Kinship Navigator programs and provides grants for Family Group Decision Making, Family Finding and Residential Family-Based Substance Abuse Treatment (42 U.S.C. § 627).
- Support for keeping siblings together: The Act requires states to make reasonable efforts to place brothers and sisters together when they must be removed from their parents' home, provided it is in the children's best interests. In the case of separated siblings, states must make reasonable efforts to provide for frequent visits or other interaction, unless it would be harmful to the children (42 U.S.C. § 671(a)).

To encourage placement with adoptive families the Act provides for the following:

- Incentives for adoption: The Act expands state incentives to find adoptive families for children in foster care, especially older youth and children with special needs, by increasing the payment for each adoption over the baseline. It also extends the incentive program for an additional five years (42 U.S.C. § 673(b)).

- Adoption assistance: The Act also allows children with special needs to receive federally supported adoption assistance without regard to income of the birth family (42 U.S.C. § 673).

To encourage better healthcare, education and opportunities for children in foster care the Act provides for the following:

- Extended foster care for older youth: Federal support is provided to states that extend foster care services for one to three years for young people who turn eighteen without a permanent family. This significantly increases the young person's opportunities to successfully transition to adulthood.
- Educational stability: States are required to make sure children placed in foster care are kept in the same school where possible, or otherwise transferred promptly. The act also provides more federal support for school-related transportation costs (42 U.S.C. § 675).
- Healthcare coordination: State child welfare and Medicaid agencies are required to better coordinate health care; ensure appropriate screenings, assessments and follow-up treatment; share critical information with appropriate providers; and provide oversight of prescription medications (42 U.S.C. § 622(b)(15)).

The Act also expands federal support for training of people who are caring for and working with children in the child welfare system, including relative guardians, staff of private child welfare agencies, court personnel, attorneys, GALs and CASAs (42 U.S.C. § 674(a)(3)(B)).

## **21.9 Interstate Compact on the Placement of Children**

The ICPC is a statutory law that has been passed by all 50 states, Washington D.C. and the U.S. Virgin Islands. It establishes uniform legal and administrative procedures for placing children across state lines. Given that a state's jurisdiction over a child ends at the state line, having a legal framework for placing children in another jurisdiction safeguards the interest of the child and ensures that the child's needs will be met even as the child leaves the jurisdiction. Before a child from one state can be placed in another jurisdiction, each state's Compact Administrator must approve the placement.

The Compact applies to the following kinds of placements:

- (1) Placements with parents, close relatives and non-agency guardians unless a parent, close relative or non-agency guardian makes the placement;
- (2) Adoptive placements;
- (3) Foster home placements;
- (4) Child-caring facilities, including residential treatment, group homes and institutions; or
- (5) Placements of adjudicated delinquents in institutions in other states.

The safeguards provided by the Compact include the following:

- (1) Provides for home studies and an evaluation of each interstate placement before the placement is made;
- (2) Allows the prospective receiving state to ensure all its applicable child placement laws and policies are followed before it approves an interstate placement;
- (3) Gives the prospective receiving state the opportunity to consent to or deny a placement before it is made;
- (4) Provides for continual supervision and regular reports on each interstate placement;
- (5) Guarantees the child's legal and financial protection by fixing these responsibilities with the sending agency or individual; and
- (6) Ensures that the sending agency or individual does not lose legal jurisdiction over the child once the child is moved to the receiving state.

Under the Compact, legal and financial responsibility for the child remains with the sender until the placement is terminated. The receiving state does not have to pay for placement; financially and legally it is as if the child remained with the sending state. A placement is terminated when a child reaches majority, is adopted or returns to the sending state. The sending state may also terminate the placement with the concurrence of the receiving state.

More information is available in Chapter 4: Jurisdiction, Section 4.4.2: Interstate Transfers and Chapter 15: Termination of Court Supervision, Section 15.4.4: Transfer of Court Jurisdiction. Information can also be found on the website of the Association of Administrators of the Interstate Compact on the Placement of Children at <https://aphsa.org/AAICPC/AAICPC/ICPC.aspx>.

## **21.10 Indian Child Welfare Act**

The Indian Child Welfare Act (ICWA) was enacted in 1978 in response to the historical discrimination experienced by Native American families and tribes when their children were unnecessarily removed from the home to assimilate them into the dominant culture. With ICWA, Congress determined that retaining an Indian child in his or her culture or placing an Indian child in a culturally appropriate placement best serves the needs of that Indian Child. (25 U.S.C. 1902).

ICWA applies to any child protective proceeding where the right to custody of an Indian child is at issue. A child custody proceeding as defined by ICWA includes foster care placement, termination of parental rights, pre-adoptive placement and adoptive placement proceedings. ICWA also applies when an Indian parent wants to voluntarily place the child in foster care or for adoption. ICWA defines an "Indian child" as a child



who is a member of a federally recognized Indian tribe or is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe. Each tribe has the exclusive right to set its own requirements for membership.

If it is believed that a child could have ties to a federally recognized American Indian tribe or if someone alludes to the child having ties, it is the child welfare agency's responsibility to make efforts to determine the ties and to contact the tribe or tribes. While Pennsylvania does not have any federally recognized Indian tribes, the ICWA legislation remains applicable to children coming before Pennsylvania courts. In all cases involving the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe have a right to intervene at any point in the proceedings.

ICWA gives the Indian tribe exclusive jurisdiction over child protection proceedings involving children domiciled on its reservation. However, a state court may enter emergency orders to protect an Indian child who is domiciled on the reservation but found off the reservation "in order to prevent imminent physical damage or harm to the child" (25 U.S.C. § 1922). State courts should allow participation for family members and tribes by telephone, videoconferencing or other methods if it possesses the capability. ICWA also mandates that the court appoint counsel for an indigent parent or Indian custodian in a removal, placement or termination proceeding.

The tribe then has the right to request that the case be transferred from the state court to the tribal court. The state court must grant the transfer unless there is "good cause" or the parent objects (25 U.S.C. § 1911(b)). Even if the tribe opts not to request that the case be transferred, the tribe retains the right to intervene at any point in the proceeding.

Where the court knows or has reason to know that an Indian child is involved in a child custody proceeding, notice of the proceeding and the right to intervene must be given to the child's parents or Indian custodian and the Indian child's tribe. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice must be given to the Secretary of the Interior. No foster care placement or termination of parental rights proceeding can be held until at least ten days after receipt of notice by the parents or Indian custodian and the tribe or the Secretary of Interior. Any of these may request an additional twenty days.

Notice to the parents, Indian custodians and the tribe is critical, and cases (even adoptions) have been overturned due to a lack of notice to the tribe. Therefore, the agency and counsel should document their efforts to provide notice with the court. Notice must be provided by registered mail, return receipt requested (25 U.S.C. § 1912(a)).

ICWA requires a higher standard of evidence for both foster care placements and termination of the parental rights. For foster care placement, the court must make a determination, supported by clear and convincing evidence, including testimony of

qualified expert witnesses that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For termination of parental rights proceedings, the court must make a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child (25 U.S.C. § 1912(e)-(f)).

Any party seeking foster care placement or termination of parental rights of an Indian child shall satisfy the court that “active efforts” have been made, from the moment the possibility of placement arises, to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these active efforts have been unsuccessful. While they appear similar, there are some differences between active efforts and reasonable efforts. For a discussion of active efforts, see the National Indian Law Library at <https://www.narf.org/nill/documents/icwa/faq/active.html>.

ICWA also specifies placement preferences for both foster care placements and adoptive placements. As with any foster care placement, the placement must be the least restrictive possible, must be in as family-like a setting as possible and must meet the child’s special needs. In addition, unless there is good cause to the contrary, the priority for foster care or pre-adoptive placement of an Indian child should be:

- (i) a member of the Indian child's extended family;
- (ii) a foster home licensed, approved or specified by the Indian child's tribe;
- (iii) an Indian foster home licensed or approved by the state’s licensing authority;
- (iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs; or
- (v) other licensed foster homes.

Unless there is good cause to the contrary, the priority for adoptive placement of an Indian child should be:

- (i) a member of the child's extended family;
- (ii) other members of the Indian child's tribe; or
- (iii) other Indian families.

The Native American Rights Fund has prepared *A Practical Guide to the Indian Child Welfare Act* which is available at <http://www.narf.org/icwa/index.htm>.

## **21.11 The Multi-Ethnic Placement Act**

The Multi-Ethnic Placement Act of 1994 (MEPA), as amended by the Interethnic Provisions of 1996 (IEPA), is intended to remove barriers to permanency for minority children. MEPA prohibits state agencies and other entities that receive federal funding from delaying or denying a child's foster care or adoptive placement on account of the prospective parent's race, color or national origin, or denying anyone the opportunity to become a foster or adoptive parent on account of race, color or national origin (42 U.S.C. § 671(a)(18)). MEPA also requires that states recruit foster and adoptive parents who reflect the racial and ethnic diversity of the state's foster care population (42 U.S.C. § 622(b)(8)).

MEPA does not apply to placements involving Indian children subject to the ICWA (42 U.S.C. § 674(d)(4)).

Practices prohibited by MEPA include setting a specific time period during which the agency only searches for a racially or ethnically matching placement; establishing a list of placement preferences based on racial or ethnic factors; and requiring special justifications for trans-racial placements (Hollingeri, 2007, p. 1).

## **21.12 The Pennsylvania Adoption Act**

The Pennsylvania Adoption Act, 23 Pa.C.S. § 2301 *et seq.*, governs the voluntary relinquishment and involuntary termination of parental rights. The Adoption Act has not been amended to incorporate the requirements of parental rights termination under ASFA. Those provisions have been adopted in the Juvenile Act. Except in Philadelphia, where proceedings of this nature come under the jurisdiction of the Family Court division, the Orphans' Court divisions of the Courts of Common Pleas have jurisdiction over relinquishment and termination proceedings, regardless of whether they are brought under the Juvenile Act or the Adoption Act (23 Pa.C.S. § 2301). In counties other than Philadelphia, the judge who adjudicated the child dependent or conducted permanency or other dependency court hearings in the matter may be assigned by the President Judge to preside in Orphans' Court over these separate proceedings (42 Pa.C.S. § 6351(i)).

Venue is flexible, in that termination or relinquishment proceedings may take place where the biological parents of the child reside or where the adopting parents reside. If termination or relinquishment of parental rights is in the county where the biological parent or parents live, nothing in the law prevents the adoption from taking place where the adopting parents reside, even if their residence is in a different county. Venue is also appropriate in the county where the adoption agency or child welfare agency that placed or has custody of the child is located (23 Pa.C.S. §§ 2302-2303).

### **21.12.1 Voluntary Relinquishment of Parental Rights**

Essentially, the Adoption Act provides that a parent or parents may relinquish parental rights over a child (1) to an agency that will place that child for adoption or (2) directly to an adult or an adult couple intending to adopt the child. Any person may be adopted, regardless of age, and any individual may adopt (23 Pa.C.S. §§ 2311-2312). For an adult child to be adopted, the biological parents' consent is not necessary, nor is it necessary for the biological parents to relinquish their parental rights. For the adoption of a minor child, relinquishment or termination of the parental rights is necessary to make way for the adopting parent or parents.

A petition to voluntarily relinquish parental rights can be filed by the parent or parents of a child who has been in the custody of an agency for at least three days or by a parent or parents who have executed and delivered written notice of a present intent to transfer custody of the child to the agency. A parent can also petition to relinquish parental rights to an adult who has filed a report of intention to adopt if the child has been in that adult's exclusive care for at least three days. The court must schedule a hearing for a date not less than ten days after the petition is filed. At least ten days' notice of the hearing must be given to the petitioner, and a copy of the notice shall be given to the other parent, to the putative father whose parental rights could be terminated if he fails to respond, and to the parents or guardian of a petitioner who has not reached eighteen years of age (23 Pa.C.S. § 2503).

Section 2503 requires that, prior to entering a decree of termination of parental rights pursuant to voluntary relinquishment, the court must ask any parent who is both in court and named in the decree "whether he or she has received counseling concerning the termination and the alternatives thereto" (23 Pa.C.S. § 2505(c)). If the parent has not received counseling from a qualified agency or individual, the court may refer the parent for counseling with that parent's consent. A referral may not delay the completion of the hearing on the petition for more than fifteen days.

### **21.12.2 Involuntary Termination of Parental Rights**

A brief summary of the statute on involuntary termination of parental rights is provided here; for a more detailed discussion, see Chapter 17: Termination of Parental Rights.

Section 2511 of the Adoption Act applies to situations in which a parent or parents refuses to give up parental rights, despite what the petitioner believes to be just cause. In this situation the petitioner may be the child protective services agency; a natural parent seeking to end the rights of the other natural parent; an attorney representing a child; a GAL representing a child who has been adjudicated dependent; or an individual who has custody or stands *in loco parentis* and who has filed a Report of Intention to Adopt. In evaluating the petition and the positions of the parties, including testimonial evidence from the hearing, the court must examine whether a parent's conduct meets the statutory requirements for involuntary termination by clear and convincing evidence, and then, if

the evidence proves the petitioner's claim, the court must consider the effect of the proposed termination on the subject child or children and what is in their best interests.

Grounds for involuntary termination under 23 Pa.C.S. § 2511(a) are listed and discussed in Chapter 17: Termination of Parental Rights. However, even if grounds to terminate exist under Section 2511(a), the court cannot terminate parental rights unless it is in the child's best interest. Part (b) of Section 2511 requires the court to "give primary consideration to the developmental, physical and emotional needs and welfare of the child." Part (b) also seeks to assure that parental rights are not terminated solely on the basis of environmental factors that are beyond the parent's control, such as "inadequate housing, furnishings, income, clothing and medical care" due to poverty.

As part of an evaluation of the needs and welfare of the child, the court must consider the existence of a bond between the parent and child. Section 2511(b) does not require a formal bonding evaluation but where even a minimal bond is found to exist, the court must consider the effect termination of that bond would have on the child.

### **21.12.3 Relinquishment of Parental Rights under the Alternative Procedure**

The "alternative procedure" process under 23 Pa.C.S. § 2504 is essentially a hybrid of voluntary relinquishment and involuntary termination, in that it is chosen by the parent or parents (as in voluntary relinquishment) yet does not require their appearance at the court hearing (as in involuntary termination). For further details on this option, see Chapter 17: Termination of Parental Rights.

## **21.13 The Pennsylvania Child Protective Services Law**

The Child Protective Services Law (CPSL), 23 Pa.C.S. § 6301 *et seq.*, is primarily a reporting statute that was enacted in 1975 to encourage the reporting of incidents of child abuse. The CPSL was amended in 2006 and, after recommendations submitted to the Governor by the PA Task Force on Child Protection, in 2013 and 2014. These changes broaden its scope by imposing mandatory reporting requirements on more individuals and broadening the definition of abuse and perpetrator of child abuse, among other things. Act 115 of 2016 further amended the CPSL with the addition of engaging a child in a severe form of trafficking in persons or sex trafficking as a definition of child abuse.

The purposes of the statute are enumerated in Section 6302:

- Encourage complete reporting of suspected child abuse.
- Involve law enforcement agencies in responding to child abuse.
- Establish in each county a child protective service capable of investigating reports swiftly and competently.
- Provide children with protection from further abuse.
- Provide rehabilitative services to the parents and child.

- Preserve and stabilize family life whenever appropriate and provide children with an alternative permanent family when family unity cannot be maintained.
- Ensure that each county agency establishes a program of protective services to assess the risk of harm to a child, respond adequately, and prioritize services to children most at risk.

Because both the Juvenile Act and the CPSL were enacted to protect the safety and well-being of children, there is some overlap between the two laws. However, there are significant differences as well. First, the CPSL sets forth an extensive list of individuals who must report child abuse “when the person has reasonable cause to suspect” that a child is a victim of child abuse (23 Pa.C.S. § 6311). Pennsylvania has established a statewide hotline for the purpose of receiving reports of child abuse. Any mandated reporter suspecting an instance of child abuse is required to report the incident. The Juvenile Act does not require that reporters call the child abuse hotline to report non-abuse concerns, such as those concerning an ungovernable child. Similarly, even if a court finds what may be a “founded” instance of child abuse under the CPSL, the court does not have to enter an adjudication of dependency. For example, although an isolated incident of abuse has occurred, its isolated nature may lead a court to find that a child nevertheless has adequate parental care. In practice, however, many courts will adjudicate as dependent the victim of even a single incident of abuse, even if they allow the birth parents to maintain physical or legal custody of the child.

Like the Juvenile Act, the CPSL allows for the removal of a child from the home in cases where the safety and well-being of the child is at risk. The CPSL allows a medical professional to take custody of a child if protective custody is “immediately necessary” to protect the child (23 Pa.C.S. § 6315). A child may also be taken into custody under the provisions of Section 6324 of the Juvenile Act. Within twenty-four hours of taking the child into custody the county agency must be notified and the county agency must seek a court order permitting the child to be held for a longer period of time if continued placement is needed. Additionally, within seventy-two hours of taking a child into custody, a shelter care hearing must be conducted (23 Pa.C.S. § 6315(d)). If the child is alleged to be without proper parental care or control or dependent, the county agency must file a dependency petition under the Juvenile Act within forty-eight hours of the hearing. Filing a petition of dependency invokes the procedures of the Juvenile Act.

The filing of a dependency petition alleging child abuse triggers the question of whether aggravated circumstances exist which would allow the court to relax the reasonable efforts requirement of the Juvenile Act and hold a permanency hearing within thirty days (See discussion at section 20.2 in Chapter 20: General Issues). The allegations of abuse reported under the CPSL may or may not constitute “aggravated circumstances” as defined in the Juvenile Act. The first factor to examine is the perpetrator. Aggravated circumstances under the Juvenile Act must be committed by a parent. Under the CPSL, the reported abuse may be by a perpetrator other than the parent. The CPSL defines a perpetrator as “a person who has committed child abuse and is a parent of a child, spouse/paramour or former spouse/paramour of a child’s parent, a person fourteen years of age or older responsible for the welfare of a child, an

individual fourteen years of age or older residing in the same home as a child or an individual eighteen years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child” (23 Pa.C.S. § 6303). Therefore, if the parent is not the perpetrator, aggravated circumstances do not exist even if the child is a victim of child abuse.

If the parent is the perpetrator, the second factor to consider is the harm done to the child. Through recent legislative changes to the CPSL the definition of abuse has been broadened in scope. “Serious bodily injury” has been changed to “bodily injury” along with many other additions. For a full definition of the term “child abuse” see 23 Pa.C.S. § 6303 (b.1). However, the Juvenile Act continues to use the term “serious bodily injury” as part of the definition of aggravated circumstances. These will be only a subset of the physical abuse cases reported under the CPSL; therefore not every abuse case under the CPSL is an aggravated circumstance.

Aggravated circumstances include incidents of “sexual violence” by the parent to the child or the child’s sibling. The definition of “sexual violence” included in the Juvenile Act is very similar to the definition of “sexual abuse or exploitation” in the CPSL, with a few exceptions. The major difference is that the definition of “sexual abuse or exploitation” in the CPSL includes rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, incest, indecent exposure, prostitution, sexual abuse and sexual exploitation (23 Pa.C.S. § 6303). The definition of sexual violence in the Juvenile Act includes rape, indecent contact, or incest (42 Pa.C.S. § 6302). With these exceptions, it seems that any other indicated or founded case of sexual abuse by a parent would constitute aggravated circumstances under the Juvenile Act.

Aggravated circumstances also include incidents of “aggravated physical neglect” by the parent to the child or the child’s sibling. The Juvenile Act defines aggravated physical neglect as “any omission in the care of a child which results in a life-threatening condition or seriously impairs the child’s functioning” (42 Pa.C.S. § 6302). The CPSL states that serious physical neglect requires a “repeated, prolonged or unconscionable egregious failure to supervise a child in a manner that is appropriate considering the child’s developmental age and abilities or the failure to provide a child with adequate essentials of life, including food, shelter or medical care” (23 Pa.C.S. § 6303). A comparison of these two definitions reveals that the definition of “aggravated physical neglect” included in the Juvenile Act encompasses only the most serious of those child abuse cases that involve “serious physical neglect” under the CPSL. For example, an infant diagnosed with failure to thrive might qualify as a victim of “serious physical neglect” under the CPSL, because the diagnosis necessarily includes an impairment to the child’s development. However, the failure to thrive diagnosis might not support a finding of aggravated circumstances under the Juvenile Act, because the effects on the child may not rise to the level of serious functional impairment. Thus, courts and agencies should take care to avoid assuming that every neglect case under the CPSL will become an aggravated circumstances case under the Juvenile Act (Shah and Darcus, 2007, p.10).

Just as the Juvenile Act relaxes the rules of evidence for certain purposes in dependency cases, evidence that would normally be excluded may be considered under the CPSL in three situations (23 Pa.C.S. § 6381):

- Whenever a person required to report abuse under CPSL is unavailable due to death or removal from the jurisdiction of the court, the written report of that person is admissible in evidence in any noncriminal proceeding arising out of child abuse. Any hearsay contained in the reports may be given such weight as the court finds appropriate, but shall not by itself support an adjudication based on abuse.
- Privileged communications (except those between a lawyer and client or between a minister and penitent) may be considered as evidence in any proceeding regarding child abuse or the cause of child abuse.
- Evidence of child abuse of a kind that would ordinarily not occur except due to acts or omissions of a parent or other person responsible for a child constitutes *prima facie* evidence of child abuse on the part of that parent or responsible person.
- Any consideration afforded to a child victim or witness pursuant to 42 Pa.C.S. § Chapter 59 Subchapter D in any prosecution or adjudication shall be afforded to a child in child abuse proceedings in court.

## **21.14 The Pennsylvania Juvenile Act**

Child abuse and neglect cases in Pennsylvania are governed primarily by the Juvenile Act, the Child Protection Services Law (CPSL) and the Adoption Act. The Juvenile Act governs both dependency and delinquency, while the CPSL deals solely with child protection and the Adoption Act provides for terminations of parental rights and adoptions.

Pennsylvania's Juvenile Act was originally enacted in 1972 and was amended in 1998 to come into compliance with ASFA. The Juvenile Act has the following declared purposes (42 Pa.C.S. § 6301):

- To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.
- To provide for the care, protection, safety, and wholesome mental and physical development of children coming within the provisions of the Juvenile Act.
- To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health, or in the interests of public safety.



- To provide means through which the provisions of the Juvenile Act are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced.

The Juvenile Act is the major vehicle for state intervention in the life of a family when the safety and well-being of a child is at stake. It provides the statutory framework for providing a safe, permanent and stable home for every child.

The Juvenile Act sets out ten specific categories for finding a child dependent and in need of state intervention (For a listing, see Chapter 4: Jurisdiction). Most commonly, a child is found dependent under the first category which states a child is dependent if the child “is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals” (42 Pa.C.S. § 6302).

The Juvenile Act allows the state to remove a child from his home if circumstances warrant, but the court can only hold a child for seventy-two hours before commencing a shelter care hearing. The shelter care hearing is an informal hearing to determine (a) whether shelter care is necessary; (b) whether allowing the child to remain in the home would be contrary to the welfare of the child; (c) whether reasonable efforts were made to prevent such placement; or (d) if, in case of emergency where services were not offered, whether lack of efforts were reasonable. The shelter care hearing is *not* a substitute for the adjudicatory hearing (for more information, see Chapter 6: Entering the Child Welfare System/Shelter Care Hearing).

The adjudication hearing determines whether the allegations of abuse or neglect for dependency jurisdiction are sustained by clear and convincing evidence and support state intervention (see Chapter 7: Adjudication). In determining if the child is dependent, the court considers whether the child is without proper parental care and control and, if so, whether state intervention is required to provide such care and control. If the child has been removed from the home, the adjudication hearing must be held within ten days of the child’s removal.

In many jurisdictions in Pennsylvania a disposition hearing is held immediately following the adjudication hearing. However, the court has twenty days from the date of the adjudication hearing to commence the disposition hearing (see Chapter 10: Disposition). Although the adjudication hearing and the disposition hearing may be held on the same day, they are separate proceedings held to determine separate issues. The disposition hearing determines who will have custody and control of the child once the child is found dependent at the adjudication hearing, as well as any services to be provided to the child and parents.

The Juvenile Act requires that a permanency hearing be held no later than six months from the date that the child is removed from the home and every six months thereafter (42 Pa.C.S. § 6351(e)(3)) (also see Chapter 13: Permanency Hearing). Note the Pennsylvania Juvenile Procedural Rules and the *Mission & Guiding Principles for*

*Pennsylvania's Dependency System* strongly recommend frequent judicial review and oversight including a minimum of three month reviews for all dependent youth. The purpose of the permanency hearing is to determine or review the permanency plan of the child, the date by which the goal of permanency for the child might be achieved, and whether placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

## **21.15 Preventing Sex Trafficking and Strengthening Families Act**

The federal Preventing Sex Trafficking and Strengthening Families Act was enacted in 2014 (P.L. 113-183). The purpose of the Act is to protect and prevent foster youth from becoming victims of sex trafficking. Additionally, it provides changes to child welfare that will enable better outcomes for youth in care. Pennsylvania addressed the federal law by enacting Act 94 of 2015 which includes the addition of Chapter 57: Sex Trafficking and Missing and Abducted Children to Title 23 and Act 75: Activities and Experiences in Out-of-Home Placement Act of 2015.

In regards to Sex Trafficking, the law defines sex trafficking victims and sex trafficking. It defines a victim of severe sex trafficking as anyone forced, coerced or induced by fraud, or is under the age of eighteen, to perform a commercial sex act. Forms of sex trafficking are not limited to prostitution but can include other activities such as pornography, stripping and exchanging sex acts for necessities such as food and shelter. The Act further requires child welfare agencies to immediately, and no later than twenty-four hours after receiving information, report to law enforcement any youth that they have reasonable cause to believe is a victim of sex trafficking. For youth who are missing, abducted or have run away, the Act requires that the child welfare agency, immediately and no later than twenty-four hours, make a report to law enforcement and the National Center for Missing and Exploited Children.

A second part of the federal law is Supporting Normalcy for Children in Foster Care. This section defines a reasonable and prudent parenting standard and requires states to establish this standard for foster parents. Foster parents and kinship caregivers are to exercise sensible decision making to maintain the health, safety and best interest of the child in their care. The law allows for children in foster care to be involved in age and developmentally appropriate activities and permits foster parents to give permission for extracurricular, enrichment, cultural and social activities.

Improvements to the permanency goal "Another Planned Permanent Living Arrangement" (APPLA) were made with the elimination of the APPLA as a permanency goal for children under the age of sixteen. For children age sixteen and older, APPLA may only be considered once all of the other permanency options have been ruled out. For further information about APPLA, including procedures that must be followed once a goal of APPLA is established, see Chapter 12: Permanency Options, Section 12.6: Another Planned Permanent Living Arrangement.

To support youth who are in foster care in making successful transitions into adulthood, the Act requires that foster children age fourteen or older be directly involved in their own case planning and permits them to choose up to two members of the case planning team. It also requires that they be provided independent living services. For foster children leaving foster care at age eighteen or older, the child welfare agency must ensure that they have, or provide them with, a birth certificate, social security card, health insurance information, a copy of medical records and a driver's license or state-issued ID card.