

CHILD WELFARE FINANCE REFORM POLICY STATEMENT

The Landscape of Child Welfare Finance

Children in state and county foster care may be supported, in part or in whole, by federal funds. Federal support for the dependency system comes primarily through Title IV-E funds (\$6.714 billion in 2009), Title IV-B funds (\$629 million in 2009), and Social Service Block Grants (SSBG) (\$1.7 billion in 2009)¹, in addition to funding provided by state governments and private organizations. As an uncapped source of funding, Title IV-E is the largest federal entitlement provided to support children in foster care.

Title IV-E foster care funding is guaranteed funding for all eligible children in state foster care, paying the costs of keeping the child in foster care, the administrative costs associated with the child in foster care, and some related training costs. It does not provide for services to the child's family before or after the child is placed in foster care. Title IV-E funds cannot be used to pay for any post-reunification services for children and families, nor can they be used to pay for the support of an eligible child not removed from the home but still in agency care. Title IV-E funds cannot be used to support families identified as a permanent placement for a foster child after the child leaves the foster home.

Title IV-E funds cannot be applied to services provided by a child welfare agency that a judge would evaluate to make a determination of reasonable efforts as required under the Adoption and Safe Families Act (ASFA). Under ASFA, judicial officers in dependency cases are required to make findings as to whether a child welfare agency's efforts to

- prevent removal of the child from the home;
- reunify the child with his or her parents; and
- achieve permanency for the child if the child cannot be reunified

Federal Funding* Timeline from the Court Perspective

<i>Prior to report of abuse or neglect</i>	Community-Based Child Abuse Prevention (CBCAP) Program - \$42 M
<i>At time of report and response by agency</i>	Child Abuse Prevention and Treatment Act (CAPTA) State Grant Program - \$26 M
<i>For criminal cases related to child abuse and neglect</i>	Children's Justice Act - \$17 M
<i>Reasonable efforts to prevent removal</i>	Stephanie Tubbs Jones Child Welfare Services Program (Title IV-B) - \$281 M Promoting Safe and Stable Families (PSSF) Program (Title IV-B) - \$348 M

¹ Fiscal Year 2009 national funding amounts from the Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, <http://www.acf.hhs.gov/programs/cb/index.htm>

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are reasonable under the circumstances of the case.² Efforts to achieve these ends are usually made through the provision of services by the agency, for example referral and support of attendance at parenting classes, referral and support of drug and alcohol abuse treatment, etc. If the judicial officer cannot find that the efforts were reasonable, a “no reasonable efforts” finding is required to be made. Because Title IV-E funds for a child in foster care are directly tied to adherence to ASFA, a “no reasonable efforts” finding can potentially lead to Title IV-E funding being denied to an eligible child in foster care.

Supporting less than 60% of all foster children in the United States, Title IV-E funds are only available to those children who are eligible to receive it. Eligibility is set based on Aid to Families with Dependent Children (AFDC) assistance program definitions of poverty (the AFDC program ceased in 1996 and was replaced by the Temporary Assistance for Needy Families (TANF) assistance program), for which the required income level defining poverty has not changed since 1996. Hence, by virtue of cost of living increases alone, eligibility for Title IV-E support has gradually only applied to the poorest of the poor. In addition, as states increase the number of children in foster care, so increases their reliance on Title IV-E funds; as states reduce the number of children in foster care, so too does the funding available to states decrease.

Other federal funding is available to the dependency system, such as that under Title IV-B. Title IV-B is capped funding to be used to prevent removal of a child due to child abuse or neglect; for example, it can be used for family support services, services to prevent abuse and neglect, early intervention services, and some training. States can use the funds to pay for the foster care of children not eligible for Title IV-E funds, for assistance to adoptive families, and for day care when a parent is working or at school. There is no income eligibility limit as there is under Title IV-E. However, Title IV-B funding is severely limited in amount, and states are limited in their ability to pay administrative costs for service provision. States receive \$70,000 per year, supplemented based on the number of children under age 21 and the state’s per capita average income. The state must provide a 25% funding match.

Federal Funding* Timeline from the Court Perspective	
<i>Petition is filed with the court</i>	Foster Care Program (Title IV-E) - \$4.6 B
	Adoption Assistance Program (Title IV-E) - \$2.1 B
	Guardianship Assistant Program - (Title IV-E) - \$14 M
	Chaffee Foster Care Independence Program (CFCIP) - \$45 M

Social Service Block Grants are used for all state social service support, not just for child dependency. Hence, a state will use a SSBG for all its social service needs: elder care services, services to persons with disabilities, health-related services, substance abuse treatment services, employment services, etc., as well as for services for dependent children.

Unintended consequences

The chance of negative unintended consequences under this financing structure is enormous and potentially devastating for children and families. Limiting the lion’s share

² Public Law 105-89, 42 U.S.C. § 671 *et seq.*

Title IV-E foster care funds are available for youth in the juvenile justice system as well, if:

- The youth meets the Title IV-E income level eligibility criteria
- The youth has a dependency issue in addition to the delinquency issue
- The youth is in the care of a state child welfare agency or there is an agreement between the placement and the state agency for Title IV-E funding for the placement
- The finding that the youth remaining at home would be contrary to the youth's welfare must be in the **first** order of the court removing the child from home, along with ASFA reasonable efforts determinations and other ASFA dependency case requirements.

Because the applicability requirements are so strict, many states opt out of providing Title IV-E funding for youth in both the dependency and delinquency systems. The result is a denial of needed services for the youth, and treatment of youth as criminals rather than as children in need of permanency.

See Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases, National Council of Juvenile and Family Court Judges, 2005.

of federal financing available to the dependency system to the support of children in foster care financially encourages placement of children in foster care. Limiting the eligibility of support for children in foster care to those who meet 15-year old poverty level limits financially encourages children from the poorest of the poor families to be placed in foster care. And, as many racial and ethnic minority families live in poverty, the dependency system is financially encouraged to place racial and ethnic minority children in foster care.

With limited funding supporting service provision side by side with extensive funding supporting foster care placement, the reasonableness of efforts to prevent removal and to reunify the child with his or her family may be defined by financial considerations rather than the by the needs of the child and family. Children from families that need minor service intervention may be placed in foster care because there is no funding for the services needed to ensure the child's safety. Judicial officers, reluctant to cause a child welfare agency to lose Title IV-E funding, may find agency efforts have been reason-

able based on lack of services rather than on the unique and specific needs of the case. At the same time, the state is unable to provide monies available to foster parents to the Title IV-E-eligible child's parents if, while under agency authority, it is the best interests of the child to be at home. Studies have demonstrated the negative outcomes associated with placement of children in foster care - the possible scope of unequal treatment perpetrated by a system intended to support children is staggering.

There is a peculiar tension on the other side of the Title IV-E funding coin related to unintended consequences for those children who truly need the safety net that foster care is supposed to be. For children needing an intermediate or intensive level of intervention for the safety of the child, eligibility for Title IV-E funds can be significantly reduced due to the low poverty threshold requirements. This places the burden of the costs of foster care, as well as service provision, on the state which may or may not be able to or choose to fund the need.

Child Welfare Finance Flexibility

There is limited flexibility in the use of Title IV-E funds utilized by approved flexible funding waiver states, and waiver demonstration sites. The U.S. Department of Health and Human Services had waiver authority until March 31, 2006, when the authority expired, as waiver authority was not contained in any continuing resolutions and no new legislation was enacted by Congress. The successful flexible funding waiver applicants (Alameda and Los Angeles Counties, California, Florida, Indiana, Ohio, and Oregon) had to show that the flexible use of the Title IV-E funds were cost neutral – that is, that the cost of the prevention services eliminated foster care costs. The flexible funding is used for staff costs, prevention programs, family finding services, subsidized guardianships, legal fees, clothing, household items, counseling, child care, respite care, among other services.

The Department of Health and Human Services can also approve Title IV-E waiver demonstration projects – these projects are designed to promote creativity, innovation, and more effective dependency system practices. Unlike the flexible funding waivers described above, waiver demonstration projects are limited in scope and duration, narrowly focused on discrete issues such as assisted guardianship, substance abuse services, intensive child welfare staff training, post-adoptive services, etc.

Jurisdictions which were approved for the flexible funding waivers have been key hubs in local, state, and national child welfare reform and have documented successes in reduction of the numbers of children in foster care.³ It is likely not a coincidence that each of the five flexible funding waiver states also has at least one, strong National Council of Juvenile and Family Court Judges (NCJFCJ) Model Court jurisdiction.

To better outcomes for children and families in the dependency system, NCJFCJ Model Courts implement the best practice principles of the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases* and the *ADOPTION AND PERMANENCY GUIDELINES: Improving Court Practice in Child Abuse and Neglect Cases* (collectively “*RESOURCE GUIDELINES*”) to improve practice both on and off the bench. Because a significant number of children in out-of-home care in the U.S. are under the jurisdiction of courts active in this project (34 Model Court jurisdictions in 27 states and the District of Columbia, including the major metropolitan areas of New York City, Los Angeles, and Chicago), the Model Courts project represents a unique and vital tool in local, statewide, and national dependency system improvement efforts. Over the two decades during which the Model Courts project has developed, grown, and evolved, positive outcomes for children and families, including decreases in the number of children in out-of-home placements within Model Court jurisdictions, have resulted after *RESOURCE GUIDELINES* practice implementation and successful collaborations between courts, child welfare agencies, system professionals, and local communities.

³ *Ensuring Safe, Nurturing and Permanent Families for Children: The Need for Federal Finance Reform*, Casey Family Programs, May 2010; *Ensuring Safe, Nurturing and Permanent Families for Children: The Need to Reauthorize and Expand Title IV-E Waivers*, Casey Family Programs, May 2010.

The five flexible waiver states are home to the following Model Courts in their largest jurisdictions: the Los Angeles Model Court; the Miami Senior Model Court; the Indianapolis Model Court; the Cincinnati Senior Model Court; and the Portland Model Court. Successful implementation of flexible funding initiatives in these states could not have taken place without the buy-in and support of the dependency courts serving the largest number of their citizens. The flexible waiver state Model Courts, like their child welfare agency partners, refuse to do business as usual, seek innovation, emphasize cross-stakeholder collaboration, and engage in ongoing education and training. Courts actively engaged in best practice implementation are an integral part of successful local, state, and national dependency system reform in general, and child welfare finance reform in specific.

Child Welfare Finance Reform from the Judicial Perspective

The NCJFCJ is the nation's oldest judicial membership organization. The vision of the NCJFCJ is for a society in which every family and child has access to fair, equal, effective, and timely justice. To achieve this vision, the NCJFCJ strives to provide all judges, courts, and related agencies involved with juvenile, family, and domestic violence cases with the knowledge and skills to improve the lives of the families and children who seek justice. In seeking child welfare finance reform, to improve outcomes for children and families in the dependency system, the NCJFCJ makes the following recommendations from the judicial perspective related to child welfare finance reform:

- *Judges must be invited to be at the table.* Child welfare finance reform has primarily focused on feedback from and interaction with state Executive Branches, which generally oversee child welfare agencies. As courts and judges are key partners in the dependency system, Judicial Branch input is crucial to ensure full and complete examination of all issues related to child welfare financing, the need for flexibility, and the need for reform in general.
- *Model Courts must be established in each state.* It is not enough to have judges at the table in the development of child welfare finance reform, there are also needs to be a state and local commitment to court-based dependency system improvement on an ongoing basis; that is, judge-led, long-term systems change efforts utilizing the practice recommendations in the *RESOURCE GUIDELINES*. Model Courts receive intensive, state and locally focused targeted technical assistance and training. The NCJFCJ Model Courts project is primarily funded through grants from the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice. Model Courts are also funded through contract by individual states, frequently using state Court Improvement Project funding. Increased funding is needed to expand Model Courts into every state. The NCJFCJ would like to continue dialogue with the Children's Bureau about the importance of establishing Model Courts in each state through the Court Improvement Projects.

- *Judges must make “no reasonable efforts” findings when needed services are not available.* When every stakeholder in a case agrees that a child could remain home but-for a needed service for which there is no funding, the system utterly fails children and families. Judges must evaluate not only the specific needs and circumstances of each child, but also the long-term, system-wide ramifications of finding reasonable efforts have been made when needed services are unavailable. When needed services are provided before a petition is filed, courts benefit from reduced numbers of dependency cases, states benefit from reduced foster care costs, and most importantly, families and children benefit from improved outcomes.
- *Judges must speak out on behalf of children and families in times of budget crisis.* In addition to making “no reasonable efforts” findings in individual cases, judges must provide information as appropriate at the federal, state, and local level to help Executive and Legislative Branch officials making budgetary decisions understand both the profound need for appropriate services for children and families in our juvenile courts, and the long-term costs and consequences of reducing or eliminating those services.
- *Title IV-E funds must be made available to support court functions.* Since the enactment of ASFA and over the last decade, court oversight of child welfare cases has grown exponentially. While Congress has recognized the importance of rigorous court oversight, federal funds available to courts to implement that rigorous oversight have not been made available. Current policy prohibits Title IV-E matching funds for court functions. Court functions, most specifically permanency hearings required by ASFA, should be an allowable IV-E administrative cost. This revision would then allow states to draw additional IV-E funds, not currently claimed, that could be figured in to the base calculation of any flexible funding scheme.
- *Title IV-E funds must be made available to support court-based front-loading.* Many courts have instituted programs such as pre-petition mediation and pre-hearing conferences to ensure children are not placed needlessly in foster care or languish there too long once they are placed. Similar to the court functions mentioned above, because these front-loaded services are court-based, it is unclear whether they are eligible Title IV-E costs.
- *Long-term flexible use of Title IV-E funds must be available in all states.* Having courts oriented towards improved practice and long-term systems change is an excellent first step. The ability of the child welfare agency to apply Title IV-E funding in a way that best meets the needs for the children and families it serves will benefit children, improve outcomes, and allow for efficient use of resources. Flexible funding waivers are imperative for every state. Only when the child welfare agency truly partner with the court to develop innovative approaches to dependency system reform which fully meet the needs of children and families.

- *Opting in for use Title IV-E funds for youth in juvenile delinquency placement by states must be promoted by the federal government.* Only when the federal government promotes and champions states opting to utilize Title IV-E funds for eligible youth in the juvenile justice system will all children receive needed services, and treatment of youth as criminals rather than as children in need of permanency will cease.