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Reasonable efforts? Implementation of the reunification exception provisions of ASFA

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Reasonable Efforts? Implementation of the Reunification Bypass Provision of ASFA

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The Adoption and Safe Families Act (ASFA) of 1997 includes provisions to deny reunification services under specified conditions and gives states latitude to develop any number of additional "aggravated circumstances" in which parents need not be offered services. California legislators have developed a relatively large number of conditions enabling agencies to bypass reunification services. Based upon a case record review involving 1,055 parents, this study attempts to identify the proportion of parents eligible for a reunification bypass, the proportion recommended to the courts, and the proportion of parents who were denied reunification services, and examines the characteristics of parents associated with reunification bypass recommendations. Based upon focus groups and interviews with child welfare and judicial personnel in six counties, the study also examines the implementation of reunification bypass provisions. Implications for public policy and practice are provided.

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When Congress passed the landmark Adoption Assistance and Child Welfare Act of 1980 (AACWA, P.L. 96-272), a key component of reform included the provision of "reasonable efforts" to keep families together prior to a foster care placement, or to reunify families once children were taken into care. The nature and scope of reasonable efforts were never articulated by Congress (Gendell, 2001; Stein, 2003), and by the mid-1990s, some jurisdictions' interpretation of the law had been so vigorous that children were sometimes harmed or even killed by parents who had received services that might be described as "exceptional" (Kim, 1999). In an effort to correct what was seen as an overly ambitious approach to providing reasonable efforts, Congress included revisions in the 1997 Adoption and Safe Families Act (ASFA, P.L. 105-89), allowing states to bypass reunification services to families where more egregious types of abuse had occurred. The federal law includes the following five specific circumstances in which states are not required to make reasonable efforts to preserve or reunify a family: when the parent has (1) committed murder of another child of the parent; (2) committed voluntary manslaughter of another child of the parent; (3) aided or abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent; (4) has his or her parental rights terminated involuntarily with respect to a sibling; or (5) committed a felony assault resulting in serious bodily injury to the child or another child of the parent. In addition, the law states,

> [R]easonable efforts . . . shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that . . . the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited

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to abandonment, torture, chronic abuse, and sexual abuse). (ASFA, Title 1, Section 101).

Although ASFA included a number of provisions for increased accountability (General Accounting Office [GAO], 1999), nothing in the law required states to report on the use of reunification bypass in child welfare practice. This paper examines one state's experience with the policy. For purposes of this paper, we will use the terms *reunification bypass conditions,* or *reunification bypass* to characterize those circumstances that the state has determined qualify a parent for the denial of services, and reunification services either were, or might have been, denied to parents.

Background

We know little about the variation in state policies related to reunification bypass prior to ASFA, but following the 1997 law many states created new policies to comply with federal requirements. Nationwide, states have included the five federal provisions and adopted an average of 5.66 additional "aggravated circumstances" into state laws (Christian, 1999). California did little to address this component of federal law as it already had state law consistent with ASFA (GAO, 1999). Indeed, California currently has 15 conditions that could be applied to deny reunification services to families, the majority of which were adopted prior to ASFA. A list of these conditions and the year they were passed into state law is included in Table 1.

The reunification bypass conditions listed in Table 1 represent an interesting range of family issues, yet they may be problematic in their implementation in several respects. First, while some are based on objective conditions that render reunification services futile, other conditions might be subject to differences in professional opinion. For example, if, after vigorous attempts, a mother or father

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TABLE 1

Aggravated Circumstances in California

AGGRAVATED CIRCUMSTANCE	YEAR PASSED INTO STATE LAW
1. Parents' whereabouts unknown	1988
2. Mental disability rendering parent incapable of making use of services	
3. Child or sibling removed from parent due to physical or sexual abuse and reunified, now being removed again for physical or sexual abuse.	
4. Parent convicted of causing another child's death through abuse or neglect.	
5. Child under five made a dependent due to severe physical or sexual abuse.	
6. Child, sibling, or half-sibling suffered severe sexual or physical abuse.	1992
7. Parent (perpetrator) conceived child by rape.	1994
8. Child has been willfully abandoned and thereby endangered.	1996
9. Sibling or half-sibling did not receive reunification services due to #3, #5, or #6 above.	
10. Permanent plan ordered for sibling or half-sibling and parent has not made reasonable effort to treat problems.	
11. Termination of parental rights ordered for sibling or half-sibling and parent has not made reasonable efforts to treat problems.	2001
12. Parent convicted of a violent felony.	1996
13. Extensive, abusive, chronic history of substance use, and has resisted court-ordered treatment within last three years, or failed case plan compliance for substance abuse treatment twice.	
14. Parent has advised court they want no services nor to have child returned.	1997
15. Parent willfully abducted child, sibling, or half-sibling and refuses to disclose whereabouts or return the child.	1998

cannot be located, the need for reunification services would be moot and it would seem reasonable to expedite permanency for the child. In other circumstances, however, such as bypass condition #2: "mental disability rendering parent incapable of making use of services as established by testimony of two professional doctors," presence of the condition might be difficult to establish. Second, some conditions suggest a good deal about legislators' intolerance of particular social problems, yet they are not based on research evidence regarding a parent's capacity to care for a child. For instance, while no one would condone a violent felony (referring to condition #12), no evidence in the child welfare literature suggests people who have committed a violent felony are unable to parent a child. Indeed, some studies suggest that parental criminal involvement may be high both prior to child welfare involvement and even during the time children are in out-of-home care (Smith & Young, 2003); many of these parents reunify with their children when offered reunification services (Frame, Berrick, & Brodowski, 2000). Third, the conditions may be overly broad, inappropriately ensnaring a large proportion of child welfare clients who could benefit from services. Evidence from a number of studies suggests, for example, that substance abuse has become the predominant problem among many parents involved in child welfare (Maluccio & Ainsworth, 2003; O'Flynn, 1999). Of all substance-involved parents in child welfare, however, we know little about how many have "chronic" problems (condition #13), how many have "resisted" treatment previously, or how many have "failed" treatment required by their case plans (Smith, 2003). Further, while the statute indicates that previous substance abuse treatment must have been "court-ordered," it does not specify *child welfare court*, thus affecting the lives of some parents who may have had no previous child welfare involvement. Fourth, the federal law places no restrictions on the number or type of aggravated circumstances legislators can impose in state law. As demonstrated here, California policymakers have been quick to adopt numerous statutes potentially restricting services for parents. With a rapidly expanding

list of "aggravated circumstances" for which parents might be disqualified for services, it is possible that fewer and fewer parents will have an opportunity to reunify with their children. Finally, state reporting requirements included in ASFA in other areas were relatively onerous. The Child and Family Service Reviews have placed new burdens on states to collect, organize, and report data in several domains (Courtney, Needell, & Wulczyn, 2004; GAO, 2004). Yet nothing in federal law requires states to report on the number or type of bypass conditions utilized, or the number of parents for whom services are bypassed. If some states or local jurisdictions were particularly aggressive in implementing the reunification bypass, no one at the state or federal levels would be aware of these inequities across jurisdictions.

While the process of identifying families eligible for a bypass may vary by state, in California families are identified first by the county child welfare worker. She then recommends one or both parents for a bypass to her supervisor. High-level administrators are sometimes involved in the recommendation process through a case consultation including county counsel; once parties have agreed to a bypass, the recommendation is made to the court. At the jurisdictional hearing, the judge determines whether or not a reunification bypass shall be ordered.

With a significant number of aggravated circumstances available for use by public child welfare agencies and the courts, opportunities for parents to reunify with their children have narrowed. How many families might qualify for a reunification bypass, and whether these state laws are applied broadly to eligible families in the child welfare system is unknown. The current study attempts to shed light on these questions by focusing on public child welfare and judicial practice in one state.

Methods

The study employed quantitative and qualitative methods to examine the utilization of reunification bypass in six California counties. Following a survey distributed to the 58 California county

child welfare administrators in 2000, we selected six counties that were self-described as relatively well along in implementing some of the provisions of ASFA. The six counties included those with large (greater than 2,000) and small (less than 400) child welfare caseloads, from northern and southern California, and from urban and semirural areas of the state. Using administrative data contained in the California Children's Services Archive (see http://cssr.berkeley.edu/CWSCMSreports/), a random sample of case files were selected in each county among those children who entered care from 1993 to 1994 (Cohort I) and 1998 to 2000 (Cohort II). Children under the age of 10 entering and staying in care five days or longer were included in the sample; siblings were excluded. (For more information on sampling, see D'Andrade, 2004). Only cases selected from Cohort II were included in analyses for this paper as a number of the aggravated circumstances had not yet been codified in state law as of 1993 to 1994, and we were particularly interested in an examination of child welfare practice in the post–ASFA era. The final sample included 1,055 parents.*

A case record review was conducted to extract data relevant to reunification bypass and other ASFA-related reforms. Research staff collected data at each of the county sites utilizing an instrument developed in-house based upon previous studies reliant on case files (D'Andrade, Choice, Martin, Berrick, & Austin, 2000), and input from an advisory committee composed of social workers, county child welfare administrators, private foundation officers, and other researchers.

For purposes of this study, data were collected on all child or family characteristics described in the case file, which might have made that child or family eligible for a reunification bypass (whether the bypass was recommended by the social worker or ordered by the judge). Decision rules were intentionally conservative; that is, the court report needed to state affirmatively that a parent had a particular characteristic; research staff did not infer.

*Parents are the unit of analysis; however for informational purposes, these 1,055 parents were represented in 639 families.

Quantitative data were supplemented with a qualitative study in each of the six counties and was conducted parallel to the implementation of the quantitative study. A purposive sampling method was used. In each of the six study counties, four groups of stakeholders were recruited for participation (child welfare agency staff, court personnel, birthparents, and foster caregivers. Initial interviews with child welfare agency administrators were used to understand the general structure and size of each of the six county agencies, and develop a sampling strategy tailored to that county's organizational composition.

Agency personnel across the range of relevant service programs were recruited for participation, including emergency response (intake), court investigations, continuing services (in-home and out-of-home care), and placement services including adoption. Child welfare workers and supervisors in each service program were included in the study, although they were usually interviewed separate from one another. Court personnel included attorneys representing children, parents, and the county child welfare agency, and juvenile court judges. In one county, where no court personnel were effectively recruited, a child welfare agency staff person who had acted as court liaison for many years was interviewed instead. Child welfare personnel participated in in-person interviews and focus groups; court personnel participated in telephone interviews.

The final sample for the process study is summarized in Table 2. The varying subsample sizes across the six counties reflect the counties' varying sizes (in terms of population and agency staff). In most cases, participants were available in each of the subcategories de-

TABLE 2

Process Study Participants by Type and County

	County A	County B	County C	County D	County E	County F	Total
Social Workers	34	7	20	14	40	10	125
SW Supervisors	7	7	4	5	11	4	38
Court Personnel	4	2	2	1	5	3	17
Total	45	16	26	20	56	17	180

scribed previously (e.g., all types of social workers and supervisors), although certain subgroups (e.g., attorneys and judges) proved especially difficult to recruit and were less well-represented.

Data Collection

Interview and focus group protocols were developed based on the literature and input from the advisory committee. These were used as guides for semistructured interview and focus group processes. In general, participants were asked to discuss their knowledge and understanding of reunification bypass, how and when it was utilized in their county, their perspectives on and philosophy about, and the conditions under which they were more or less supportive of its utilization. In-person focus groups and interviews were audio taped wherever possible and transcribed. Telephone interviews were translated into written notes by researchers and observations and reflections by researchers were included in written notes.

Transcripts and notes were managed and analyzed using the qualitative software program ATLAS.ti. Using a combination of inductive and deductive processes, written text was coded into relevant themes and ideas. Patterns were identified and codes grouped until central concepts emerged. Reliability and validity were addressed through a combination of regular peer debriefing to guard against bias, negative case analysis, and leaving an audit trail to enhance reproducibility (Padgett, 1998). Additionally, findings were checked by examining exceptions to early patterns and taking a skeptical approach to emerging explanations (Miles & Huberman, 1994).

Results

Quantitative Study

Table 3 includes a description of the 1,055 parents studied in Cohort II. Parents in this study included 628 (60%) mothers and 427 (40%) fathers. (Fathers whose whereabouts or identities were unknown, or for whom the social worker had no information, were not included in the sample.) About 15% of parents were African American, 43% Caucasian, and 20% Hispanic; it was largely an

TABLE 3

Sample Characteristics

	TOTAL (N = 1055) (%)	MOTHERS (N = 628) (%)	FATHERS (N = 427) (%)	CHI SQ/DF
Ethnicity				
African American	151 (14.5)	88 (8.5)	63 (6.1)	2.49
Hispanic	210 (20.2)	122 (11.7)	88 (8.5)	
White/Caucasian	449 (43.2)	280 (26.9)	169 (16.3)	
Other	229 (22.0)	130 (12.5)	99 (9.5)	
	1039 (100.0)			
Parent Age				
−18	18 (1.8)	15 (1.5)	3 (0.3)	40.01***
18–25	229 (22.3)	160 (15.6)	69 (6.7)	
25–30	246 (23.9)	154 (15.0)	92 (8.9)	
30–40	393 (38.2)	235 (22.8)	158 (15.4)	
40+	143 (13.9)	56 (5.4)	87 (8.5)	
	1029 (100.0)			
Parent's Primary Language				
English	679 (89.2)	418 (54.9)	261 (34.4)	1.92
Other	82 (10.8)	44 (5.8)	38 (5.0)	
	761 (100.0)			
Parent's Good General Health				
Yes	201 (19.4)	134 (12.9)	67 (6.5)	5.26*
No	837 (80.6)	484 (46.6)	353 (34.0)	
	1038 (100.0)			
Has the Parent Held a Job?				
Yes	474 (45.4)	239 (22.9)	235 (22.5)	29.98***
No	569 (54.6)	382 (36.6)	187 (17.9)	
	1043 (100.0)			
High School Graduate or GED				
Yes	177 (17.1)	105 (10.1)	72 (6.9)	0.01
No	860 (82.9)	514 (49.6)	346 (33.4)	
	1037 (100.0)			

English-speaking sample. As identified in court reports, a very large proportion of parents (80.6%) were *not* in good health, about half had held a job, and less than one in five parents had graduated from high school or obtained a GED.

Among the parents with children ages 0 to 10 entering out-of-home care in 1998 to 2000, 44% were eligible for a reunification bypass (hereafter referred to as *eligibles*). Although a large number of parents were eligible for a reunification bypass, very few recommendations were made to the court. About 12% (n = 58) of all parents who were eligible for a reunification bypass were recommended to the court (about 5% of the total sample; see Figure 1); and of those recommended, 79% (n = 46) were ordered by the courts (4% of the total sample).

Of the parents in this sample eligible for a reunification bypass, most were eligible due to bypass condition #12 (chronic substance abuse)—18% of the total sample. In descending order, somewhat less than 1 in 10 parents would have been eligible for a bypass for condition # 10 (permanent plan ordered for a sibling), #11 (parent convicted of a violent felony) and #1 (parent's whereabouts unknown; see Table 4). Among the parents who were eligible, almost half (48%) had one reunification bypass condition present in the case, 34% had two conditions, and 18% had three conditions present.

We found differences between the parents recommended for a bypass and those not recommended among those eligible (see Table 5). Parents recommended for a bypass were more likely *not*

FIGURE 1

Reunification Bypass Eligibles, Recommended, and Approved

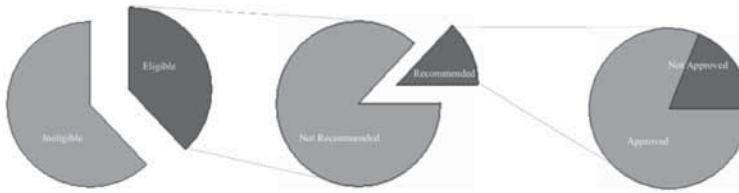

TABLE 4

Utilization of Reunification Exception Indicators in California

REUNIFICATION EXCEPTION INDICATOR	REI SITUATION EXISTS "ELIGIBLES"		REI AGENCY RECOMMENDED		REI COURT ORDERED	
	FREQ	%[1]	FREQ	%[2]	FREQ	%[3]
1. Parents whereabouts unknown	68	6.45	12	17.7	8	66.7
2. Mental disability rendering parent incapable of making use of services	17	1.61	3	17.7	2	66.7
3. Child or sibling a prior dependent due to abuse, removed and returned, now being removed again	26	2.46	3	11.5	2	66.7
4. Parent caused another child's death	9	0.85	2	22.2	2	100
5. Child made a dependent under 300(e) [Child under five and suffered severe physical or sexual abuse]	10	0.95	0	0.0	0	—
6. Child or sibling or half-sibling suffered severe sexual or physical abuse	54	5.12	2	3.7	2	100
7. Sibling did not receive reunification services due to #3, #5, or #6	4	0.38	3	75.0	2	66.7
8. Child conceived by rape (applied only to the perpetrator)	6	0.57	0	0.0	0	100
9. Child has been willfully abandoned and endangered	42	3.98	7	16.7	3	42.9
10. Permanent plan ordered for sibling, or termination of parental rights ordered for sibling, and parent not made reasonable efforts to treat problems	98	9.29	29	29.6	23	79.3
11. Parent convicted of a violent felony	86	8.15	9	10.5	9	100
12. Chronic history of substance abuse, has resisted treatment within last three years, or failed case plan compliance for	186	17.6	26	14.0	20	76.9
13. Parent wants no services nor to have child returned	35	3.32	9	25.7	8	88.0
14. Parent abducted child, sibling or half-sibling, and refuses to disclose whereabouts of child	19	1.80	3	15.8	3	100

[1] *Indicates percent of total sample.*
[2] *Indicates percent of "eligibles".*
[3] *Indicates percent of "recommended".*

TABLE 5

Characteristics of Eligible Parents for Whom Recommendations Were Made and Not Made

VARIABLES	% OF PARENTS RECOMMENDED	% OF PARENTS NOT RECOMMENDED	TEST STATISTIC
Parent's Age			
−18	0.0	1.9	8.62
18–25	20.0	22.4	
25–30	10.9	24.6	
30–40	49.1	37.6	
40+	20.0	13.6	
Parent's Ethnicity			
African American	15.8	14.5	5.47
Hispanic	19.3	20.3	
White/Caucasian	31.6	43.9	
Other	33.3	21.4	
Parent's Good General Health			
No	94.8	79.8	7.92**
Yes	5.2	20.2	
Has the Parent Held a Job?			
No	70.2	53.7	5.93*
Yes	29.8	46.3	
Income from?			
AFDC/TANF or SSI	10.3	16.0	7.84*
Work	12.1	24.8	
Other	77.6	59.2	
Parent's Support System			
No	87.9	60.2	17.85***
Yes	12.1	39.8	
Parent Had a Child Removed Previously			
No	29.3	70.1	41.84***
Yes	70.7	29.9	
Child's Sibling in Care			
No	59.7	38.8	9.74**
Yes	40.3	61.2	
County			
A	37.9	23.6	20.23***
B	10.3	6.8	
C	22.4	11.3	
D12.8	24.2		
E	12.8	23.7	
F	1.7	10.4	
	Mean		
Child's age	2.52	3.31	1.94*
Child's Maltreatment Severity Score (MSS)	3.22	3.77	1.29

*Note : * < .05; ** < .01; *** < .001*

to be in good health, *not* to be employed, *not* to have a strong support system, and they were more likely to have income from "other" sources (which includes illegal activity). Also, parents who had a child previously in care were more likely to be recommended, parents whose child had a sibling currently in care were *less* often recommended for a bypass, and parents with younger children were *more* often recommended for a bypass. Age appeared to weigh heavily in child welfare workers' and judicial officers' decision making. The average age of the children in the total sample was 3.3. Children in the eligible sample were 3.1 years, recommended children were 2.5 years, and children for whom a bypass was ordered were 1.9 years. In addition to these child and family characteristics, we found substantial variability between counties' use of the reunification bypass provision.

Although the values upon which the bypass conditions were crafted would suggest that some parents simply can not or should not be given an opportunity to reunify, we examined whether or not parents with one or more reunification bypass conditions indeed reunified within a one-and-a-half to three-year time frame (since data were collected on a 1998 to 2000 entry cohort and data collection was closed as of summer, 2002, all children had at least 18 months to reunify or achieve alternative permanency). We examined all parents with one or more reunification bypass conditions, including those who were recommended and those who were ordered to receive a reunification bypass, and compared them to the parents who had no reunification bypass conditions. Our findings suggest that a substantial proportion of families eligible for a bypass reunify with their children. Although Chi-square tests indicated that parents with no reunification bypass conditions were significantly more likely to reunify with their children (51%) than parents with one or more reunification bypass condition (35%) ($\chi^2 = 28.17$, $p < .0001$), a substantial proportion of these more challenging families reunified.

Qualitative Study

A fairly large proportion of parents are eligible for a reunification bypass, yet few parents are recommended or so ordered. We at-

tempted to examine the relatively low utilization of reunification bypass through our interviews and focus groups with social workers, supervisors, managers, attorneys, and judges. Child welfare staff expressed a certain degree of ambivalence about its use due to philosophical perspectives on the social work profession, and on parents' capacity to change. According to one worker whose comments typified those of her colleagues, "It doesn't fit with the social work ethic. We are social workers. We do this work because we think people can change."

Decisions to deny services were taken very seriously by child welfare staff; even in situations that appeared especially intransigent, the decision to forego services was considered momentous, and led to caution in its application: "We could be wrong about whether the parent can change this time. That weighs on you."

The tenuous balance in child welfare between children's needs and parents' rights is highlighted in cases of a reunification bypass. Although children can get on with their quest for permanency using a bypass, parents lose not only access to their children but also opportunities for improved parenting skills. As one attorney expressed the sentiments of others, "Counties implementing a bypass fail to recognize that any services provided to the parent will improve the quality of any future contact the child has with his birthparents, whether the birthparent retains custody of the child or not."

Although reluctant to recommend a bypass in general, staff were somewhat more inclined to consider such a recommendation for young children. When the child was especially young, child welfare workers were more optimistic about the opportunities for adoption; they were also less concerned about the child's pre-existing relationship with the parent. Opportunities for adoption were powerful factors in staff decision making. Older children, who have lower adoption probabilities, were less likely to be recommended for a bypass, as were children in sibling groups where adoption prospects were dimmer.

Children's age factored into decision making positively, yet it also worked to confirm staff's and judge's natural inclinations

against such recommendations. In California, state law provides only six months of reunification services to parents with children ages three or younger (AB 1564). Staff and judges indicated that recommendations for reunification bypass were often litigated by parents' attorneys, resulting in court hearings and continuances that delayed decision making considerably. In cases involving young children, staff indicated that it was preferable to offer six months of services. As one worker put it, "Why go through all the hassle of having the hearing continued and contested when in six months it's over anyway?"

Finally, the relatively cumbersome, bureaucratic process for approving bypass recommendations works against their widespread use. Consultation with supervisors, managers, and county counsel is often extensive. Were social workers given more freedom to make recommendations without involving others, bypass provisions might be acted on somewhat more frequently.

Discussion

Results from this study raise a number of questions about the utilization of reunification bypass provisions in other California counties and in other states. While the data are informative, a number of study limitations suggest that more research is needed to better understand the extent to which bypass provisions operate elsewhere. This study was limited to six California counties; inclusion of more states would have provided a better national portrait of the phenomenon. Sampling was limited to children age 10 or younger at the time of entry to care; although one might anticipate that reunification bypass is used more frequently when young children are involved (and indeed the data from this study bear this out), a sample including children of all ages would have been more representative of all children placed in out-of-home care. Court reports in case files were used as a principal data source; while useful, these documents are not developed specifically for research purposes and thus, gaps in data may occur among and between

cases. Notwithstanding these limitations, the study has value as the first assessment of reunification bypass used in any state since ASFA passed in 1997.

A large proportion of parents whose children are removed to out-of-home care are eligible for a reunification bypass in the six California counties examined in this study. Many fewer parents are recommended for a bypass than are eligible, although of those recommended by social workers, the vast majority are ordered by the courts. Philosophical, bureaucratic, and permanency considerations limit the use of reunification bypass, although we found considerable variability between counties in their use of the bypass provisions.

Variability between counties is disconcerting, as families' destinies should not be determined principally by geography. Given that there are no reporting requirements associated with the federal or California state laws, parents and their attorneys cannot inquire about the likelihood of receiving a service recommendation and judges have no relative standards against which to measure their own decisions. In light of the absence of data, social workers, administrators, and policymakers cannot determine the use or appropriateness of reunification bypass policies. If some jurisdictions use the bypass provisions more aggressively than was seen in these counties, or if California and other states continue to expand the numbers and types of "aggravated circumstances" provisions, the opportunities for parents to reunify may be significantly restricted over time.

Some state legislatures have been eager to develop statutes to narrow parents' rights to reunification services. In some cases, their legislative efforts have been adopted with little discussion or controversy (as has been seen in California). Most recently, however, New York's state legislature engaged in a partisan struggle over Republican efforts to expand reunification bypass provisions (Kaufman, 2004). The debate was weak on data and strong on ideology. In the absence of information on the profiles of parents who rarely reunify with their children it would seem that caution might be in order before adopting new reunification bypass statutes. Indeed,

with the federal government's endorsement of concurrent planning (see D'Andrade, Frame, & Berrick, 2006), child welfare workers concerned about the likelihood of reunification for an individual family could pursue reunification services simultaneous to placing the child in a potentially permanent foster-adopt home. If after 12 months the parents were not able to change the circumstances that brought the child into care, adoption could proceed expeditiously.

Although some might argue that further statutory efforts in this area are harmless if—as suggested by this study—reunification bypass statutes are implemented infrequently, such arguments do not take into account the inequities in due process that may result if individual workers, supervisors, or judicial officers are favorably inclined toward implementing the statutes while others are more reticent about their use.

Efforts to promote permanency for children and youth should be made diligently and swiftly once children are placed in care. But hasty moves to begin the process of severing the legal relationship between parents and children without an opportunity for parental change may represent the far end of the continuum as the pendulum swings between family preservation and child safety. Even if, as congressional leaders claimed in the 1990s, reunification efforts were "extraordinary" (*Foster children,* 1996), and "reasonable efforts [were] . . . too often misinterpreted to mean reunifying families at all costs" (*Reasonable efforts*, 1997), we should be cautious about shifting the fundamental principles of child welfare so much so that child safety and alternative permanency preside and family support is abandoned altogether.

References

Adoption and Safe Families Act of 1997, Pub. L. No. 105-89. 111 Stat 2115.

Christian, S. (1999). *1988 state legislative responses to the Adoption and Safe Families Act of 1997*. Denver, CO: National Conference of State Legislatures.

Courtney, M. E., Needell, B., & Wulczyn, F. (2004). Unintended consequences of the push for accountability: The case of national child welfare performance standards. *Children and Youth Services Review, 26*(12), 1141–1154.

D'Andrade, A. (2004). *A quantitative evaluation of concurrent planning in California public child welfare.* Berkeley: University of California at Berkeley, School of Social Welfare.

D'Andrade, A., Choice, P., Martin, M., Berrick, J. D., & Austin, M. J. (2000). *Concurrent planning: The influence of bypass and poor prognosis indicators on child welfare outcomes.* Berkeley: University of California at Berkeley, Bay Area Social Services Consortium.

D'Andrade, A., Frame, L., & Berrick, J. D. (2006). Concurrent planning in public child welfare agencies: Oxymoron or work in progress? *Children and Youth Services Review, 28*(1), 78–95.

Foster children. 104th Congress, S5710 (1996). Statement of Senator M. DeWine. Retrieved from the Congressional Record Online via GPO Access, June 9, 2008, from wais.access .gpo.gov.

Frame, L., Berrick, J. D., & Brodowski, M. L. (2000). Understanding reentry to foster care for reunified infants. *Child Welfare, 74*(4), 339–369.

Gendell, S. J. (2001). In search of permanency: A reflection on the first three years of the Adoption and Safe Families Act implementation. *Family and Conciliation Courts Review, 39.*

General Accounting Office. (1999). *Foster care: States' early experiences implementing the Adoption and Safe Families Act*. Washington, DC: Author.

General Accounting Office. (2004). *Children and family services review: States and HHS face challenges in assessing and improving state performance*. Washington, DC: Author.

Kaufman, L. (2004, July 21). Bill to save foster care costs is stalled in the legislature. *New York Times.*

Kim, C. H. (1999). Putting reason back into the reasonable efforts requirements in child abuse and neglect cases. *University of Illinois Law Review*, 287.

Maluccio, A. N., & Ainsworth, F. (2003). Drug use by parents: A challenge for family reunification practice. *Children and Youth Services Review, 25*(7), 511–534.

Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook* (2nd Ed). Thousand Oaks, CA: Sage Publications.

O'Flynn, M. (1999). The Adoption and Safe Families Act of 1997: Changing child welfare policy without addressing parental substance abuse. *Journal of Contemporary Health Law and Policy, 16,* 243–271.

Padgett, D. K. (1998). *Qualitative methods in social work research: Challenges and rewards.* Thousand Oaks, CA: Sage Publications.

Reasonable efforts. 105th Congress. S3947 (1997). Statement of Senator M. DeWine. Retrieved from the Congressional Record Online via GPO Access, June 9, 2008, from wais.access .gpo.gov

Smith, B. D. (2003). How parental drug use and drug treatment compliance relate to family reunification. *Child Welfare, 82*(3), 335–365.

Smith, C. J., & Young, D. S. (2003). The multiple impact of TANF, ASFA and mandatory drug sentencing for families affected by maternal incarceration. *Children and Youth Services Review, 25*(7), 535–552.

Stein, T. J. (2003). The Adoption and Safe Families Act: How Congress overlooks available data and ignores systemic obstacles in its pursuit of political goals. *Children and Youth Services Review, 25*(9), 669–682.