

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

---

Court Review: The Journal of the American  
Judges Association

American Judges Association

---

2022

## Twenty-Five Years of the Adoption and Safe Families Act

Eve M. Brank

Follow this and additional works at: <https://digitalcommons.unl.edu/ajacourtreview>

---

This Article is brought to you for free and open access by the American Judges Association at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Court Review: The Journal of the American Judges Association by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

# Twenty-Five Years of the Adoption and Safe Families Act

An Interview with Maureen Flatley by Eve M. Brank

The year 2022 marks the 25th anniversary of President Clinton signing into law the Adoption and Safe Families Act (ASFA). Enacted in November of 1997, ASFA was a bipartisan federal law intended to address concerns with the foster care and adoption systems.<sup>1</sup> With fiscal incentives attached, states quickly adopted complementary ASFA legislation.<sup>2</sup>

At its core, ASFA changed the primary objective from family reunification to the child's health and safety. In doing so, ASFA sought to decrease the amount of time a child spent without a permanent home by limiting how long a child could spend in foster care. Referred to as the 15/22 timeline, ASFA required a state to file or join a petition to terminate parental rights (TPR) when a child had been in out-of-home placement for fifteen of the most recent twenty-two months.

Exceptions to the 15/22 ASFA rule include when a child is in kinship care, the state can document that a TPR is not in the best interest of the child, or the state has not done what is needed to attempt reunification. In addition to the 15/22 timeline, other ASFA provisions provide clear and supported paths toward encouraging adoptions such as financial incentives for states to improve adoption rates,<sup>3</sup> requiring states to address geographic barriers to adoptions between states, and not requiring family reunification efforts when aggravated circumstances exist. *Aggravated* circumstances were to be defined by state law and could include "but need not be limited to abandonment, torture, chronic abuse, and sexual abuse."<sup>4</sup>

Although research suggests that the number of foster children has decreased and adoptions increased since the implementation of ASFA,<sup>5</sup> not everyone believes it has been a complete success. In particular, the 15/22 timeline can be challenging, if not impossible, to meet when the parents and family need extensive and lengthy services<sup>6</sup> or if the case plan is not relevant to the parents' needs.<sup>7</sup> And just because a TPR has occurred does not mean an adoption will automatically follow. Many children are legal orphans because their biological parents' rights have been terminated, but it is unlikely they will ever be adopted.<sup>8</sup>

To get some firsthand insights into how ASFA came to be and where it stands today, I had the privilege of sitting down with Maureen Flatley. Ms. Flatley is an independent government relations consultant who specializes in representing children, families, and the programs that serve them. Using this expertise, Ms. Flatley worked with members of Congress to develop ASFA and continues to focus attention on how to improve the child welfare system.

**Eve Brank (EB):** How did you get involved in working on ASFA?

**Maureen Flatley (MF):** I have to say, I have a nontraditional path to child welfare work. I'm not an attorney and I'm not a social worker. But I had the great privilege of working for many years with my father who was a retired FBI agent. My dad spent most of his career on Capitol Hill doing oversight investigations. When he retired, he started a consulting business, and I went to work for him. We had some very interesting and very high-profile cases, that taught me to not only recognize that there was a problem, but how to fix the problems and use Congress to support those efforts. My dad died very suddenly and unexpectedly, and I was left to continue his good work.

I really had no intention of getting into child welfare, but I was called upon, by a childhood friend who was a priest in California. My friend had a parishioner whose child was taken away from her in a dispute over medical treatment and my friend did not know what to do. I knew how to investigate matters, so he flew me out to California, and we discovered very quickly that the county involved had been putting kids in care and then giving them multiple Social Security numbers to make multiple claims. It turned out to be a criminal fraud case and I knew exactly what to do with that. I went back to Washington, D.C., and started having conversations with people about the underlying issues. At the same time, one of the families that had given me information about the fraud case hired me to develop a strategy to reform foster care.

## Footnotes

1. Adoption and Safe Families Act of 1997 (ASFA), Pub. L. No. 105-89, 111 Stat. 2115.
2. Eve M. Brank et al., *Parental Compliance: Its Role in Termination of Parental Rights Cases*, 80 NEB. L. REV. 335 (2001).
3. Mary Eschelbach Hansen, *Using Subsidies to Promote the Adoption of Children from Foster Care*, 28 J. FAM. & ECON. ISS. 377 (2007).
4. See 111 Stat. at 2116.
5. Emilie Stoltzfus, CONG. RSCH. SERV., R43025, *Child Welfare: Structure and Funding of the Adoption Incentives Program along with Reauthorization Issues*, (2013), <https://sgp.fas.org/crs/misc/R43025.pdf>.
6. Lenore M. McWey, Tammy L. Henderson & Susan N. Tice, *Mental*

*Health Issues and the Foster Care System: An Examination of the Impact of the Adoption and Safe Families Act*, 32 J. MARITAL & FAM. THERAPY 195 (2006).

7. Esme Noelle DeVault, *Reasonable Efforts Not So Reasonable: The Termination of the Parental Rights of a Developmentally Disabled Mother*, 10 ROGER WILLIAMS U. L. REV. 763, 775 (2005).
8. Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 HARV. C. R.-C.L. L. REV. 267, 288 (2021); See also Shanta Trivedi, *Adoption and Safe Families Act is the "Crime Bill" of Child Welfare*, THE IMPRINT: YOUTH AND FAM. NEWS (Jan. 28, 2021), <https://imprintnews.org/adoption/adooption-safe-families-act-crime-bill-child-welfare/51283>.

It was sort of like being struck by lightning. On the one hand, I thought this was an opportunity to work with kids where I can do a lot of good but, on the other hand, I very quickly discovered that this was a system that was filled with fraud, waste, and abuse. The issues were very complex and really had not been addressed in any kind of meaningful way. At the same time, adoption and child welfare are almost exclusively state law issues. The problem is that dating back to the orphan trains in the 1850s adoption was fundamentally interstate activity. By 1995 when we started working on ASFA, millions and millions of federal dollars were flowing into the states to support child welfare programs. That juxtaposition of state laws versus federal dollars snapped things into focus for me.

I had done a lot of work just prior to this time with the House Republicans; this was when Newt Gingrich was the Speaker of the House of Representatives. Bill Clinton had recently been elected president. The conversation was beginning to start about child welfare reform. There was broad consensus among the members of Congress that something had to happen to avoid children spending their lives in foster care. Everyone agreed that we could do a better job with permanence. So, in late 1995, early 1996 robust and reciprocal communications between a Democratic White House and a Republican Congress started taking place.

**EB:** Were you pleased with how that communication went and the resulting final version of ASFA?

**MF:** I was very happy with the final version. We had this big thing that needed to be changed and there were lots of different views about how that should happen. There were several different bills in the House, and there were a couple of ideas percolating in the Senate. A few basic trends were clear. First, people did not want to see kids spending a lifetime in foster care and that is how the ASFA timelines were born. Second, people were tremendously concerned about kids being in one state not being allowed to cross the border to go to another state. That concern led to a focus on geographical barriers. Finally, the overall tension between family preservation and termination of parental rights garnered a great deal of attention. We were trying to develop something that would bolster safety, but not be totally at odds with family preservation and so that's how the aggravated circumstances elements were developed.

And so, bit by bit, one bill here one bill there, one idea here one idea there, it really started to come together relatively quickly. The bill passed the House with little opposition. It passed unanimously in the Senate. It moved quickly; the entire package moved from start to finish in about eleven months. That speed indicated there was a tremendous appetite for change and there was a tremendous concern about the system.

**EB:** How did the state courts react to this new law?

**MF:** I did some implementation training soon after its passage and found the judicial community really understood in very vivid terms what was at stake and why these reforms more important. In a very real way, it was kind of up to the courts to make sure that this law worked. ASFA created a baseline for everybody and removed the ambiguity that could result in kids staying in the system far too long. It really began to feel like for the first time that the system had a little more structure. The ASFA timelines worked well from the standpoint of permanence.

**EB:** Did you have concerns about ASFA and how it was implemented?

**MF:** I think the name of the bill kind of stigmatized it in the sense that everybody viewed it as just an adoption bill. Adoption was certainly a large part of the bill, but there was much more to it. Also, it still troubles me that for every child that was adopted, we had two kids left behind that were legally free for adoption, but who did not get adopted. And a substantial number of those kids aged out of the system. That to me, is a failure.

Another concern I have is the number of failed adoptions and that we do not really know that much about why they are failing. More funding for services will not help if the adoption was not a good idea from the outset and proper home studies were not completed. I am not sure we fully understand trauma and all the ways it impacts children.

I think ASFA is a constructive tool. I think it moved a lot of kids out of the system. I think it certainly got the attention of the states. It also started a serious conversation about how much the federal government should be able to tell the states what to do.

**EB:** What do you see as some current issues in child welfare?

**MF:** Obviously, the states have an extremely difficult job, but in a lot of ways, it feels to me like it is made harder by the lack of similar infrastructure across states. All the States have different technology systems and different case management systems with different levels of adequacy and different abilities to work across state lines. In my view, the big downside of letting the states develop their own case management tools is that they all end up doing something different.

Another issue is the lack of oversight and real consequences when problems do occur. Nothing really happens when states fail to meet the goals of ASFA.

**EB:** What do you think law makers should focus on in any future updates to ASFA?

**MF:** I would like to see a focus on the youth aging out of the system. They leave the state's care with nothing but the clothes on their backs. They have no money and sometimes the state has kept what little Social Security money they may have been entitled to. There is no way that we can call that a success. I think that part of the challenge is to figure out how do we make every single child important. The evidence is incontrovertible for these youth who age out of the system—they are homeless, they are pregnant, they are mentally ill, they are substance abusing, and they are in jail. Many do not graduate from high school and very few go to college.

I also believe we need to think more about extended family relationships in creating permanency for children. I think we could consider ways to divert kids from the system if they are concretely moved in the direction of something else like a family member.

I do believe we should treat these kinds of laws as living breathing things and see what is working and not working. We need to revisit them occasionally. At the same time, we need to be looking at what is working and what has not worked. We should think about how we can avoid similar pitfalls moving forward.

To keep child welfare moving forward in constructive and responsible ways we need more research. When I started looking

at this issue, I was flabbergasted at how little truly objective research there was. We just don't know nearly enough about what works and what does not work and how these kids are really doing. There is no way that we'll ever get our arms around what is going on in the system without much, much more research.

**EB:** Any final thoughts for our judge readers?

**MF:** The judges really are the oversight and the enforcers of everything. I think most of the good things that have happened because of ASFA have happened because judges all over America could see the problems and helped create solutions.

**EB:** Thank you so much for your time. I am grateful for sharing your insights with the readers of *Court Review*.

**MF:** Getting to do this work and focus on child welfare has been the great privilege of my life. Even though I did not plan this line of work, it is a good example of life putting something in your path and then walking down the path and seeing what happens. There are so many great and smart people working in the field and I appreciate all the opportunities I have had to work with them.



Maureen Flatley is a government relations and strategic consultant with subject matter expertise in child welfare and adoption. She provides expert consultation to policy makers, attorneys, nonprofits, families and individuals on a wide range of related issues. She is currently involved in major campaigns to ensure consistent national home study standards for foster care and adoption; to expand recruitment for permanent families for older children in foster care; to ban private rehoming in adoption and to ensure more accurate reporting in the child welfare and adoption systems.



Eve Brank, J.D., Ph.D., is a Professor of Psychology, Courtesy Professor of Law, and Director of the Center on Children, Families, and the Law. Dr. Brank's research primarily focuses on the way the law intervenes (and sometimes interferes) in family and personal decision making. She is the author of *The Psychology of Family Law* (2019, NYU Press), which was the 2021 Winner of the Lawrence S. Wrightsman Book Award bestowed by the American Psychology-Law Society.

## Court Review Author Submission Guidelines

*Court Review*, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work.

*Court Review* is received by the 2,000 members of the American Judges Association (AJA), as well as many law libraries. About 40 percent of the members of the AJA are general-jurisdiction, state trial judges. Another 40 percent are limited-jurisdiction judges, including municipal court and other specialized court judges. The remainder include federal trial judges, state and federal appellate judges, and administrative-law judges.

**Articles:** Articles should be submitted in double-spaced text with footnotes in Microsoft Word format. The suggested article length for *Court Review* is between 18 and 36 pages of double-spaced text (including the footnotes). Footnotes should conform to the current edition of *The Bluebook: A Uniform System of Citation*. Articles should be of a quality consistent with better

state-bar-association law journals and/or other law reviews.

**Essays:** Essays should be submitted in the same format as articles. Suggested length is between 6 and 12 pages of double-spaced text (including any footnotes).

**Book Reviews:** Book reviews should be submitted in the same format as articles. Suggested length is between 3 and 9 pages of double-spaced text (including any footnotes).

**Pre-commitment:** For previously published authors, we will consider making a tentative publication commitment based upon an article outline. In addition to the outline, a comment about the specific ways in which the submission will be useful to judges and/or advance scholarly discourse on the subject matter would be appreciated. Final acceptance for publication cannot be given until a completed article, essay, or book review has been received and reviewed by the *Court Review* editor or board of editors.

**Editing:** *Court Review* reserves the right to edit all manuscripts.

**Submission:** Submissions should be made by email. Please send them to [Editors@CourtReview.org](mailto:Editors@CourtReview.org). Submissions will be acknowledged by email. Notice of acceptance, rejection, or requests for changes will be sent following review.