

Child **TRENDS** RESEARCH BRIEF

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4301 Connecticut Avenue, NW, Suite 350, Washington, DC 20008
Phone 202-572-6000 Fax 202-362-8420 www.childtrends.org

THE TIMING OF TERMINATION OF PARENTAL RIGHTS: A BALANCING ACT FOR CHILDREN'S BEST INTERESTS

By Raquel Ellis, M.S.W., Ph.D., Karin Malm, M.S., and Erin Bishop, B.A.

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OVERVIEW

One of the central purposes of the Adoption and Safe Families Act of 1997 (ASFA) is to facilitate timely adoptions for children in foster care who cannot be reunited with their birth parents by shortening the timeframe for terminating birth parents' rights to their children. This process is formally known as termination of parental rights or TPR.¹ However, in recent years, concerns have been raised by judicial and child welfare professionals that the accelerated timelines towards achieving permanency, or securing a permanent home for a foster child, may have an unintended consequence for some children. Specifically, concerns have focused on the risks of terminating parents' rights prior to an adoptive family being identified and whether this practice increases the likelihood that a child will remain in foster care until adulthood rather than be adopted. When children are not adopted after their parents' rights are terminated, they become, effectively, legal orphans.² Legal orphans refer to children who no longer have legal ties to their birth family, yet have no adoptive family either.

While the accelerated timelines for TPR have caused some to worry, others find that delaying a TPR ruling has unintended consequences of its own. For example, in many states, strategies to recruit adoptive parents cannot be conducted for a child until TPR has occurred. Further, adoption recruitment specialists have expressed concerns that many prospective adoptive parents are reluctant to care for a child whose birth parents' rights are still intact.

A sample of 20 judges representing 18 different states participated in telephone interviews to explore their perspectives and experiences around termination of parental rights proceedings and the challenges faced when making TPR decisions.

The findings of this study suggest that some judges are concerned about the prospect of creating legal orphans, and the absence of an identified adoptive family does make some judges more apprehensive about TPR. The judges also cited other issues that make TPR decisions more challenging, including some older children's opposition to adoption and the potential loss of ties to the birth family. However, some judges also noted that the use of legal risk placements, open adoptions, post-adoption contact agreements, case conferencing models, and model court programs have helped to address their concerns about TPR and have made for a less-divisive decision-making process.

This research brief also presents the study's implications for juvenile and family court policy and practices: the advantages of judges and caseworkers exploring children's views about TPR and adoption; ways for foster children to maintain birth family connections to support their well-being while in care and post-adoption; the importance of judges having familiarity with adoption recruitment efforts to inform their permanency decisions; and the importance of seeking consultation and additional guidance on ASFA mandates when needed.

INTRODUCTION

With overwhelming bipartisan support, the Adoption and Safe Families Act (ASFA) passed in 1997 to address concerns about the number of children entering and languishing in the foster care system. However, concerns are now being expressed about whether ASFA's accelerated timelines towards achieving permanency for foster children have created legal orphans. Although a causal relationship has not been proven, federal statistics suggest that the number of children who had a goal of adoption and/or whose parental rights have been terminated rose significantly in the few years after ASFA became law.³ The most recent national data showed that there were 129,000 children waiting to be adopted on September 30, 2006, and the average wait period was 39 months.⁴

Foster youth who remain in foster care until adulthood, which is often referred to as "aging out" of the child welfare system, are at high risk of homelessness, lack of employment or dropping out of high school, early pregnancy or parenthood, and criminal involvement.^{5,6,7,8} These outcomes have raised concerns among some judicial and child welfare professionals about the risks of terminating the parental rights of a child before an adoptive family, or resource, has been identified.

At the same time, adoption recruiters have raised specific concerns that many effective strategies for recruiting adoptive parents cannot occur prior to the formal start of termination proceedings. For example, many adoption recruiters across the country have noted during interviews conducted for the evaluation of the Wendy's Wonderful Kids program (an intensive, child-specific adoption recruitment program) that they are prohibited from using child-specific recruitment strategies or providing any other services on adoption cases prior to TPR. In some states, a special court order is needed to proceed with recruitment.⁹ Further, adoption recruiters in some states are prohibited from utilizing photo listing services like AdoptUsKids (the national, federally-funded photo listing service) prior to termination of parental rights.¹⁰ Consequently, some foster children, especially older foster youth, remain in foster care without permanency because they are unable to receive the benefit of these services to assist them in finding an adoptive home prior to TPR. In the absence of empirical evidence, the assumption behind ASFA that it is easier to find an adoptive family for foster children whose parents' rights have been terminated is likely to remain controversial, especially for older children since they are generally less likely to be adopted.^{11,12}

Another important aspect of this discussion is the use of "legal risk" placements, which involve the placement of a child with foster parents who can also serve as prospective adoptive parents and who accept the risk that the adoption of the child may not be finalized or completed. While "legal risk" placements are common in many states, many potential adoptive families may opt not to start the process of adoption because of their concerns about caring for a child whose parents' rights have yet to be terminated. These concerns were echoed by many adoption recruiters in the Wendy's Wonderful Kids national evaluation as well as findings from a national survey of adoption attitudes, which revealed that many families interested in adopting from foster care fear birth parents' ability to circumvent an adoption.¹³

The purpose of this research brief is to describe the perspectives and experiences of judges in making decisions around termination of parental rights and, in particular, the challenges faced when making TPR decisions. The findings can inform child welfare officials and state and federal policymakers on current judicial practices related to TPR and adoption.

ABOUT THE METHODOLOGY USED FOR THIS BRIEF

In collaboration with the National Council of Juvenile and Family Court Judges, Child Trends identified 24 judges to participate in a 30-45 minute, semi-structured telephone interview. In 2008, we completed interviews with 20 judges representing 18 different states across the country. The characteristics of the judges include the following:

The number of years of experience hearing civil child abuse and neglect or child protection cases, usually referred to as “dependency cases”, ranged from 2 to 25 with an average of 12.56 years.

- Four judges serve in courts hearing only dependency cases.
- Eight judges serve in courts hearing both dependency and juvenile delinquency cases.
- Six judges serve in courts with jurisdiction over dependency, delinquency, divorce, domestic violence and other family matters.
- Two judges serve in courts of general jurisdiction, hearing a variety of cases including dependency cases.

The interview instrument included a range of questions related to termination of parental rights and adoption proceedings. Judges were first asked to rate on a scale from 1 (not very important) to 5 (very important) the level of importance of different factors they may consider in approving a permanency goal of adoption and determining whether to terminate parental rights. Judges were then asked a series of open-ended questions that explored their perspectives and experiences in making permanency decisions on behalf of children and youth in foster care. Differences in responses between specialized (e.g. those who only preside over dependency cases) and non-specialized judges are not commented on in the findings as no major differences were found.

FINDINGS

The major findings from the interviews with judges are presented in the following sections, followed by a discussion of the findings and implications for juvenile and family court policy and practices.

What factors do judges consider in approving a goal of adoption?

Key Finding: *When approving a goal of adoption, judges consider factors associated with parents’ actions or progress to be more important than a child’s opinions about adoption and whether there is an identified adoptive placement.*

In general, judges rated issues relating to the child, such as age or feelings about adoption, as having little importance in their decision to approve a goal of adoption. However, issues relating to parents, such as current parent-child visitation and the severity of abuse or neglect, were rated as important in their decision. The two factors that every judge rated as very important were parents’ progress in meeting their case plan requirements and whether the child welfare agency had made reasonable efforts to reunify the child. Parents’ history with child protective services was the only parent factor that was not considered very important.

Although two judges viewed the existence of an adoptive resource or the likelihood of finding an adoptive resource as very important, most judges said that these factors had little importance in their decision to change a child’s permanency goal from reunification with a parent to adoption.

Do children have to consent to adoption?

Key Finding: *Judicial practices reflect varying state judicial laws on whether a child needs to provide consent to a goal of adoption or consent to his/her adoption by a specific family.*

To determine how children's opinions about adoption affect judicial practices, we asked judges whether children had to provide consent to a goal of adoption and/or adoption by a specific family. Overall, judges provided varied responses. The majority of judges (75%) do not require a child to consent to a goal of adoption, while five judges (25%) did report requiring child consent. The type of consent reported ranged from being required by statute to have a child's written consent before proceeding with a goal of adoption to taking the child's wishes into consideration when making the decision. One judge who requires child consent before approving the goal of adoption reported that the state's statute requires that children as young as 10 years of age be allowed to weigh in on this decision and that once a child reaches age 14, written consent from the child is required to proceed with a goal of adoption. The other four judges reported the age of consent as 12 (2 judges) or 14 (2 judges).

Over half of the judges (60%) reported either requiring or desiring child consent to an adoption by a particular family before approving that decision. The laws on consent vary, ranging from a requirement that a child sign a written consent form to a regulation that a judge must take a child's wishes into consideration. The influence a child's opinion has also varies by the child's age. For example, one judge reported that state law requires a child's written consent to adoption by a particular family if the child was age 10 or older, while all other judges who require or desire child consent reported the age of consent in their state as either 12 (6 judges) or 14 (5 judges) years old. Further, judges who consider but do not require child consent to an adoption by a particular family reported that the older the child, the more weight that child's opinion has in a ruling. The reported rationale behind this practice is that if a teenager is not in favor of being adopted, it will be much more difficult to find an adoptive home than it would be for a younger child who is not in favor of being adopted.

Do children attend permanency hearings?

Judges were also asked about children's attendance at permanency hearings. Nearly every judge who addressed the topic (14 in total) reported that children usually attend *permanency* hearings, but only about one-half reported that children show up for *TPR* hearings. Judges' reasons for having children attend permanency hearings included wanting to see the parent-child interaction and wanting to confirm with the child that the information the judge previously received was accurate. The hearings also give judges an opportunity to explore a child's reasons for being opposed to adoption and alleviate the child's fears or misconceptions. Some children are only requested to attend *TPR* hearings in certain situations, such as when they are called to serve as a witness or in cases where parents are seeking to voluntarily relinquish their rights. Among the 5 judges that reported predominantly hearing *TPR* cases involving older youth, all reported requesting to hear from the youth. Two other judges did not specify particular ages of children they hear from during *TPR* hearings.

What factors do judges consider in terminating parental rights?

Nearly all judges reported that the factor most critical to consider in determining whether to terminate parental rights is whether the parents have met state statutory grounds for *TPR*. Common grounds across states for filing a *TPR* petition include physical or sexual abuse, child neglect, parental abandonment, failure of a parent to maintain child contact or extreme disinterest, mental illness or deficiency,

alcohol- or drug-induced incapacity, felony conviction or incarceration, loss of parental rights of another child, failure of parent to provide support, and murder or manslaughter of a sibling child. Once it has been determined that statutory grounds have been met, judges then determine whether TPR is in the best interests of the child, which was reported by many judges to be the most complicated part of the decision-making process. Some of the factors judges consider when assessing the best interests of the child include:

- the likelihood that an adoptive resource can be identified;
- whether or not the child wants to be adopted;
- the level of bonding between the child and parent and/or child and sibling;
- the severity of the maltreatment the child experienced;
- parent compliance in working towards case plan goals;
- the likelihood of the child ever being reunified with the parent(s);
- whether there is a relative that is willing to provide a permanent home, but either does not want to adopt or is unable to support the child on an adoption subsidy;
- whether reasonable efforts have been made towards reunification with the parent(s); and whether the loss of benefits (e.g. child support, Social Security, special services only offered to foster children, etc.) would pose a detriment to the child.

Are adoption recruitment efforts affected when a child's parental rights are not terminated?

Key Finding: Several judges reported that the absence of TPR limits the adoption recruitment efforts of the child welfare agency.

Half of the judges reported that the decision not to approve a TPR petition does not affect adoption recruitment efforts. Among these judges, three added that adoption recruitment efforts can begin as soon as a child comes into custody, as soon as the case is transferred to the adoption unit, or whenever the judge orders adoption recruitment to begin. In contrast, six other judges reported that the reluctance to terminate parents' rights does restrain some recruitment efforts. Three of these judges specifically stated that usually a child cannot be listed on an adoption exchange website (a resource that connects families seeking to adopt with children waiting to be adopted) prior to TPR. Three other judges added that the lack of TPR makes children less appealing to prospective adoptive parents because of the risk that the child may not become available for adoption. Four judges reported not knowing enough about the adoption recruitment efforts of the agency to be able to give an informed response to this question.

Many judges also pointed out that the use of concurrent planning has assured that most foster children are in placements with caregivers who are willing to provide permanency either through adoption or legal guardianship.

Do judges feel they have the information they need to make informed decisions?

Key Finding: Most judges reported that they receive the information they need to make informed permanency decisions on behalf of foster children and youth.

The majority of judges (85%) reported receiving sufficient information to make informed permanency decisions on behalf of children in foster care. Whether the child welfare agency made reasonable efforts to provide services to the parents was reiterated by several judges as critical information that is

needed to make these decisions. Several judges also emphasized the importance of having case history, information on the child's needs, and information on parent compliance with the case plan, which they deem helpful in determining what is in the best interest of the child. Judges report that they received this information through written and oral testimony from caseworkers, Court Appointed Special Advocates (CASA), attorneys, and other service providers such as mental health professionals, or Foster Care Review Boards.

Although most judges reported receiving the information they need, most judges (85%) also reported *not* receiving information on specialized adoption recruitment efforts. This lack of information was reported to be less of a concern for judges in states where an adoption resource is not required prior to terminating parental rights (which is the case for most states represented in this study). However, a few judges identified the need for caseworkers to report more information to the court on potential adoptive families and adoption recruitment efforts made on behalf of children on their caseloads.

Another judge cited the need for more information on the biological fathers of children in foster care as a particular concern. This judge reported that diligent searches often do not identify the whereabouts of fathers, which hinders permanency decision-making.

Are judges concerned about creating legal orphans?

Central to the interviews were discussions about whether judges were concerned with the possibility that children whose parental rights were terminated would not subsequently be adopted. Judges were divided on this issue with 55 percent reporting not being concerned. Some reported not being concerned because this happens so infrequently in their state or because of the good reputation of their local child welfare agency staff in locating and securing adoptive homes for foster children. Others reported being less concerned because the main reasons why children whose parental rights have been terminated are not subsequently adopted are out of their control. Some examples of events considered out of the judges' control include prospective adoptive parents deciding not to go through with the adoption, a teenager changing his/her mind about wanting to be adopted prior to the adoption finalizing, or an adoption dissolving after it was finalized.

Other judges identified the issue of creating legal orphans as a real concern. A common concern involved the possibility that children whose parental rights have been terminated may not be able to secure a permanent family prior to emancipation due to: 1) not having an identified adoptive resource in place before TPR and/or 2) different child characteristics, such as older age, that make it more difficult to find an adoptive resource for them. The loss of ties and rights to visit birth families was also reported as a concern. In particular, some judges worry about the emotional effects of the loss of ties to siblings, extended family members, and birth parents who, while not capable of taking custody of the child, maintained supportive relationships. One judge noted that he would rather have children maintain contact with their birth parents since they often return to their pre-foster care home after they emancipate.

A few judges also reported a concern with the loss of benefits a child experiences once they become legal orphans. Children forgo such benefits as child support and survivor benefits (if a parent was to pass away) once a TPR ruling is made. These financial supplements could be used to support the needs of the child while in foster care. One judge suggested that a new law be enacted to prevent the potential loss of benefits children experience as legal orphans. This judge also noted that one state is currently considering a law that would allow legal orphans to still receive survivor benefits.

How do judges' concerns with creating legal orphans impact TPR practices?

Key Finding: *Judges who are less confident that children whose parental rights are terminated would be subsequently adopted are less likely to terminate parental rights without an adoptive resource in place.*

The level of judicial concerns about creating legal orphans is reflected in the varied practices surrounding TPRs. Judges' practices fell on a continuum. On one end, some judges reported regularly approving TPRs in the absence of an adoptive resource. On the other end of the continuum are judges that rarely, if ever, approve a TPR unless an adoptive resource is in place.

Representing one end of the continuum, six judges noted that they approve TPR filings without an identified adoptive family. Further, one judge specifically said that he feels that a TPR allows a child to "be adopted more quickly" and that the prospect of creating a legal orphan should not factor into the decision of whether to approve a TPR. Another judge added that the use of concurrent planning and a belief that there are adoptive homes for every foster child lessens concerns about creating legal orphans. In addition, one judge pointed out that legal orphans experience the same challenges as other foster youth if legal permanency is not achieved. This judge felt that once it is determined that the biological family cannot serve as a resource, judges should take the risk of terminating parental rights regardless of whether an adoptive resource has been identified:

What it [TPR without an adoptive resource identified] means is that you had every intention when the termination took place, or every expectation, that the child would be adopted and would have a forever home, but it didn't happen and the child ends up aging out of the foster care system to under a bridge or to a jail or to early pregnancy, living with a guy who is beating her up. Those types of things. Of course that's a concern...we have lots of kids whose parental rights are intact who are in that situation who are being raised by the state too...In my view, obviously it's a terrible thing to have the state raise a child, but on the other hand, if you don't take any risks then I think the state is probably going to be raising more children, but they just won't have their parental rights terminated.

Representing the other end of the continuum, nine judges reported that, in most cases, they approve TPR filings only after an adoptive family is identified. One judge with this practice described one of the only exceptions made in terminating parental rights without an adoptive resource identified:

If it comes to a point that the family is so toxic for the child that termination and staying in foster care is in the child's best interest, I don't have a problem with it at all. Why would I want to keep a connection between a toxic parent and a child?

Another judge reported preferring to have an identified adoptive resource in place prior to moving ahead with termination although the state allows judges to move forward with a TPR without having an adoptive resource identified.

How can judges' concerns about creating legal orphans be addressed?

Although several judges reported being concerned about the possibility that children whose parental rights have been terminated would not subsequently be adopted, there was a general consensus that this concern should not outweigh the permanency needs of the child. Several judges described ways they have been able to lessen their concerns related to TPR and advance a child along the path to permanency while minimizing disruption in the child's life. For example, to encourage ongoing contact between children and their birth families, several judges reported placing orders for family visitation at the TPR hearings. Further, one judge appoints attorneys to family members that have played a significant role in a child's life in order to assist them in advocating for visitation and ongoing contact with the child. Some judges also discussed the use of open adoption as a way for adopted children to maintain contact with their immediate and extended birth family as well. To facilitate the process of negotiating an open adoption and working out post-adoption contact agreements, a few judges reported that mediation services are available in their states. Judges in states with no open adoption policy try to encourage birth family contact when appropriate by expressing to the prospective adoptive parents during permanency hearings the importance of maintaining this contact. One judge in a closed adoption state also noted that his state's sibling information exchange statute helps by enabling youth who have spent time in foster care to retrieve the whereabouts of their siblings upon emancipating from the child welfare system.

The use of "legal risk" placements was identified by a few judges as a way to help ensure that a child has an identified adoptive placement prior to a TPR filing and to increase the odds that a successful adoption would follow TPR. One judge noted that providing aggressive judicial oversight, such as having more review hearings after TPR, has helped troubleshoot any problems that occur during this period and ensure that cases move toward adoption finalization in a timely manner.

What does termination of parental rights mean to children?

Key Finding: *Some judges report a need for more discussions with older children to explore and address any concerns they may have about adoption.*

Judges reported differing opinions on what termination of parental rights means to foster children. One judge strongly stated that no child actually enjoys being disconnected from his or her birth family, while two other judges reported that any ill feelings about the TPR usually subside when a child is actually adopted. Other responses tended to focus primarily on older children, because of the belief that they are more capable of comprehending the meaning of TPR. Four judges noted that older children tend to feel more connected to their birth families and thus experience conflicted feelings about TPR. However, two other judges noted that older children often realize that their birth parents are unable to care for them and are more able than younger children to understand the need for termination. One judge noted that TPR often is a relief for some older children; it gives them a sense of finalization and recognition that they did nothing wrong.

Four judges also commented on the tendency of older children to be opposed to adoption and the need for more discussions with them to address their concerns and educate them about what it means to be adopted. For example, one judge noted that it is important to tell the children that it is okay for them to feel happy about the TPR as many children feel a lot of guilt during this time. Another judge provided a poignant example of how a lack of understanding about adop-

tion can hinder permanency efforts:

the social worker came in and said, ‘No, Judge, she [foster child] doesn’t want to be adopted’ and as far as the social worker was concerned that was the end of it; we should just let her sit in foster care. She was with a wonderful foster mother who wanted to adopt her. So I took her back into my office and said ‘So what’s going on?’ and the bottom line was that she didn’t want her name changed. When she found out that she could keep her own name because the foster parent was very fine with that, then she immediately changed her mind. So often we don’t take that next step of saying, ‘Okay, what’s really going on?’

Have judges’ views on termination of parental rights changed over time?

Key Finding: Many judges gained a more favorable view of TPR and experienced a less divisive decision-making process during the course of their time on the bench.

A little over half (55%) of the judges reported their views on TPR have changed during their time on the bench. Five judges reported gaining a greater understanding of the negative effects that dysfunctional parents can have on their children and that this new understanding contributed to a more favorable view of TPR. As a result, these judges reported being hard on parents who are uncooperative or inconsistent in working towards their case plan goals.

Eight judges reported that, in the past, they often felt that parents were not given a fair opportunity to rehabilitate due to a lack of support and resources as well as a lack of reasonable efforts on the part of child welfare agencies. These conditions made for more difficult decision making about TPR. However, judges noted that because resources for parents have become more available and reasonable efforts have become a federal mandate (e.g. ASFA), decisions on TPR have been less contentious.

In contrast, other judges reported that ASFA has made decisions concerning TPRs more difficult. Judges’ biggest concerns were with the shortened timeframes for moving towards TPR for foster children. Several judges reported that 12 months is not a sufficient amount of time for substance-abusing parents to rehabilitate while two judges echoed these concerns in relation to parents with mental health challenges. In an attempt to address these concerns, a few judges reported approving six month extensions of reunification services to parents who were making steady progress, but needed more time to achieve their case plan goals.

Some judges also noted that an increase in the use of alternative programs and services helped change their views on TPR. These programs include specialty drug courts and alternative dispute resolution programs, as well as case conferencing models such as family group conferencing and multi-disciplinary team decision making. Judges described these programs as positive steps towards a less divisive decision-making process around TPR. In fact, 35 percent of the judges reported an increase in uncontested TPRs and voluntary relinquishments as a result of the increased use of these programs.

Model Court programs¹⁴ and other court improvement initiatives¹⁴ were noted by five judges as increasing their knowledge about TPR and dependency issues in general as well as improving practices and policies in this area. One judge described Model Courts as being very helpful in pushing judges to constantly reevaluate whether they are doing things the right way.

Finally, two judges noted their experiences with adoption cases over the years have helped them to realize that TPR should not be considered an end point. According to these judges, much more work is needed to ensure that a successful adoption occurs and judicial oversight during this process is just as important as the oversight provided during the beginning of a child welfare case. In the words of one judge, “the work doesn’t stop until adoption day.”

DISCUSSION AND IMPLICATIONS

The findings of this study highlight the many challenges that judges face concerning termination of parental rights (TPR) proceedings. By shortening the time frames in which these delicate decisions must be made, the Adoption and Safe Families Act of 1997 (ASFA) appears to have exacerbated some judges’ apprehension about making decisions to terminate parents’ rights. At the same time, many judges report that recent innovations in case practice have provided the opportunity to make better, less divisive decisions. The findings also suggest that, for the most part, judges follow similar protocols when determining whether adoption is the most appropriate permanency goal for a foster child. However, the commonalities appear to end at ensuring that a case meets the state statutory grounds for TPR. The process of determining what is in the best interest of the child appears to vary not only because of the complexity of this task but also the differing opinions on whether TPR without an identified adoptive resource poses a detriment to foster children. However, it is important to point out that although most of the judges reported a typical practice (e.g., whether they commonly approve TPRs without an identified adoptive resource or not), they also reported making exceptions to their common practices when appropriate.

The findings have important implications for juvenile and family court policy and practices. Judges and other judicial officers may benefit from the following suggestions:

- *Gain familiarity with adoption recruitment efforts.* Most judges expressed concerns that children whose parents’ rights have been terminated may age out of foster care instead of being adopted. Learning more about adoption recruitment strategies and potential adoption resources in individual cases may help judges in making decisions about whether to approve a TPR. For example, judges concerned about TPR without an adoptive family in place may become less concerned if they know that there are specialized adoption recruitment strategies that have been effective in finding homes for children, or that a particular strategy is in place for the child in a particular case. If judges find that specialized recruitment strategies are limited in their states, this could be an opportunity for them to help advance improvements and expand these services. It would also be advantageous for judges to know which adoption recruitment strategies are restricted to children whose parents’ rights have been terminated to better weigh the risks and benefits of the TPR decision. Gaining more familiarity with adoption recruitment efforts can also assist judges in monitoring the efforts of the child welfare agency in achieving permanency for a child.
- *Explore children’s views about TPR and adoption.* Judges had differing perceptions about how foster children feel about termination, particularly older children. Exploring how a child feels about termination and adoption is critical to alleviating fears or misconceptions. It is typically the responsibility of child welfare agency staff to educate children about adoption and assess their adoption readiness. However, several judges noted that sometimes the fears and misconceptions about adoption have not always been thoroughly explored. Some judges found it beneficial to have discussions

with children about adoption, particularly when a child is opposed to adoption. This suggests that judges in TPR hearings may want to make sure that children understand what TPR and adoption mean legally and in practice, and address concerns that arise. Similarly, caseworkers should ensure that, prior to TPR hearings, they provide an opportunity for children with the maturity to understand what is happening to ask questions about the process and implications. Paying careful attention to children's concerns at this critical juncture may decrease the likelihood that children will change their minds prior to adoption finalization and lessen the chance of a post-adoption disruption.

- *Maintain birth family connections.* Among the judges concerned about creating legal orphans, a primary reason for this concern was the loss of sibling and other family ties and visitation that results from a TPR. The research surrounding the importance of family connections and fostering a life-long supportive network for children in out-of-home care has been building in recent years and has received much attention with the passage of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.¹⁵ Strong social networks can serve as protective factors for overall well-being for foster children and youth.¹⁶ These networks can also enhance the ability of children and youth to safely and successfully navigate their lives post-emancipation. Since many foster children return to live with their birth families upon emancipation,¹⁷ keeping these connections active prior to emancipation may be a critical component to avoiding the social isolation that affects many youth who age out of foster care. With this in mind, it would be helpful for judges to, when appropriate, consider family visitation orders at TPR hearings, encourage open adoptions (or encourage ongoing contact with the birth family in states where open adoptions are not an option), and utilize mediation services to bring birth and adoptive family members together to develop post-adoption contact agreements between children and their birth families.
- *Seek guidance on the requirements of ASFA.* This study suggests that some juvenile and family court judges could benefit from seeking additional guidance and clarification on the ASFA requirements regarding TPR proceedings. As previously stated, some judges noted that the timeframe for moving towards TPR is 12 months. However, ASFA actually requires that the child welfare agency file for TPR if a child is in foster care for 15 of the most recent 22 months – with the start date being the date of adjudication or 60 days from the child's actual removal from the home and placement in foster care.¹⁸ Further, it is important that judges keep in mind that they have the discretion to deny the agency's request for TPR if sufficient evidence is not provided to support this request or if there is a compelling reason why this is not in the best interest of the child. Nonetheless, because of ASFA's focus on timely achievement of permanency, some judges reported feeling pressured to grant TPR in most or all cases. Targeted training on ways to balance the need to adhere to ASFA mandates while still making decisions that support the best interests of the child may be helpful for judges. The National Council on Juvenile and Family Court Judges and the National Center for State Courts publish resource materials and offer training and consultation to support judges in their work. Court improvement program funding can also be utilized to support training.

CONCLUSION

This study explored the issues that judges consider when making decisions about termination of parental rights and adoption of foster children. While the results reported here will advance the understanding of issues addressed when making this crucial decision, the study leaves many unanswered questions. Of particular importance is whether or not terminating parents' rights to a foster child with no

identified adoptive family helps facilitate the finding of an adoptive parent because of the wider array of recruitment strategies available. Likewise, further examination of the positive and negative effects of termination of parental rights on foster youth is needed. Without such examination, juvenile and family court judges, child welfare policymakers and practitioners, will not know whether children in foster care experience emancipation differently if they no longer have legal ties to their birth family and if so, how this experience is different. Overall, the findings suggest that the issue of termination of parental rights prior to identification of an adoptive family remains a controversial issue, particularly in the judicial field, and more exploration into this issue is warranted.

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REFERENCES

- ¹ Termination of parental rights involves severing the rights and obligations between a parent and child through a judicial court order. A child cannot be adopted until after the termination of parental rights.
- ² The term “legal orphan” can also refer to children whose parents are deceased or have relinquished their parental rights yet a permanent, adoptive family, has not been identified or the adoption finalization has been delayed.
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