

Chapter 8

**CHILD
PROTECTION**

I. CONDITION INDICATORS

A. California Child Abuse Reports and Disposition

Child abuse reports in California increased steadily from 175,200 in 1980 to 554,000 in 1990, to a high of 706,918 in 1996, and decreasing only slightly to 666,000 more recently.¹ The percentage of complaints that are investigated is currently 63%—a 5% decline over the previous two years.² The proportion of substantiated cases has consistently stayed in the 18%–21% range over the last few years,³ increasing to 23% during April 2001.⁴ The initial reports come mostly from “mandated reporters”—teachers, medical professionals, and others who have professional credentials and interact on a regular basis with children. The number of reports after 1990 may understate totals *vis-a-vis* previous numbers because of a statute effective that year which halted the automatic count of a drug/alcohol-exposed child as an abuse report.⁵

Of the 666,497 child abuse reports received during 2000, 35.9% involved general neglect, 21.3% involved physical abuse, 12% involved a child at-risk due to the abuse of a sibling, 10.6% involved sexual abuse, 8.8% involved emotional abuse, 6.6% involved an absent or incapacitated caretaker, and 2.5% involved severe neglect.⁶ In general, the number of mandated reports have declined by about 5% over the last five years. However, the cases have increased somewhat in severity and in meritorious findings. By inference, actual abuse remains close to its historical high.⁷

The children reported for emergency response (ER) are subject to a panoply of possible outcomes. ER services include case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, out-of-home respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, and transportation.⁸ Included in this category is the growing and controversial pattern of “family preservation,” under which children who have been abused short of grave physical jeopardy are left in their in homes, and services are provided without the formal filing of a juvenile court dependency petition. This “diversion” alternative has grown in use since 1990. Only a small and declining percentage of reports results in the removal of a child, or the filing of a juvenile dependency court petition (between 2% and 4% of total incoming reports).

B. California Clinical Indicators of Child Abuse

The rate of drug-exposed babies continues at high levels. Serious drug or alcohol abuse by parents correlates closely with child abuse and neglect incidence. A U.S. General Accounting Office report states that in three representative counties nationwide, including Los Angeles County, an estimated 62% of the preschool-aged children removed from their parents and placed in foster care had been prior victims of prenatal drug/alcohol exposure—more than double the 29% at risk of such problems in 1986.⁹

As discussed in Chapter 5, a 1993 study indicates that one of every nine babies born in California in 1992 was exposed to alcohol or drugs shortly before birth. The authors of this *New England Journal of Medicine* study concluded: “[W]e estimate that 11.35% of maternity patients at California hospitals in 1992 (approximately 67,000 women) had used a licit or illicit drug, or alcohol within hours or days of delivery.”¹⁰ The study also found that an additional one in eleven mothers admitted that she continued to smoke during pregnancy.¹¹ The results of this study were characterized by its authors as “conservative” given the limited detection permitted by the testing performed (which could only detect use within hours or days of birth).

A 1992 national study which included California used another conservative method, seeking admissions of alcohol/drugs/tobacco use during pregnancy. The National Institute of Drug Abuse found that of four million women who gave birth, 5.5% used illicit drugs while they were pregnant, close to the California results.¹² However, the self-reporting of alcohol or cigarette use involves less stigma (and only recent use would be detected by the California survey). Alarming, 18.8% of pregnant women admitted to exposing their fetuses to alcohol, and 20.4% to their cigarette smoking.¹³

The Centers for Disease Control found that the rate of American babies born with health problems caused by diagnosed fetal alcohol syndrome (FAS) rose almost sixfold from 1979 through 1993.¹⁴ Babies born with FAS suffer central nervous system dysfunction, including delayed motor development, mild to profound mental retardation, and learning disabilities.¹⁵ FAS also causes problems that affect speech, language, swallowing, and hearing development.¹⁶ In July 1995, 4,878 California children were in foster care due to their severe drug or alcohol exposure *in utero*; they cost California an estimated \$1.7 million each month in direct expenses.¹⁷

Another statistical indicator of potential abuse/neglect has been low birthweights. Although not indicative of direct abuse *in utero*, they statistically correlate closely with later child neglect risk. Delicate health and enhanced family stress are associated with neglect and/or abuse problems. California ranks 9th in all states in the rate of low birthweight babies; 6.2% of all children born in California weigh under five pounds, eight ounces.¹⁸ The rate differs greatly for African American babies; 12.6 of every 100 African American births are underweight, compared to 5.4 of every 100 white births.¹⁹

On March 26, 2001, the Journal of the American Medical Association released an analysis of studies to date on cocaine use. The results suggest that the “crack baby epidemic” of severe lifelong disability of thousands was exaggerated. Some news reports then highlighted the study as debunking the danger of cocaine use. However, the analysis is not original research, but an opinion based on existing literature. Most of that literature finds substantial, measurable harm to infants from *in utero* cocaine use. As the Analysis concludes, that harm does not take the form of cognitive dysfunction or visible, disabling handicap as some had feared. However, many who deal with such children believe that it has clear effects on behavior. One leading researcher in the field concluded in 1998: “Recent long term studies have revealed that prenatal drug exposure has a direct impact on the child’s behavior at 4 to 6 years of age, with prenatally-exposed children showing significantly higher rates of depression and anxiety, aggressive behavior, thought problems, impulsivity, and distractibility. In addition, the mother’s continuing drug use during the early childhood years is a major factor that predicts the child’s level of cognitive functioning at school age.”²⁰ Longitudinal studies extending beyond age 6 have yet to be completed.

Whatever the final judgment about child abuse through *in utero* contamination as a form of child abuse, the literature to date—as well as the experience of child advocates, social workers, educators, judges and others—universally confirm the extremely high correlation between parental alcohol/drug

abuse and child suffering. Most who deal with the dependency court system are aware that well over three-fourths of the children removed from their homes have one or more parents with serious substance abuse problems.²¹

Neither side to the debate over harm from cocaine use argues that it is not a danger to the child. Lower birth weights correlate with cocaine use. But the exaggerated tidal wave of dysfunctional, severe ADHD impaired, institution bound and beyond mitigation, is clearly not supported by the tests thus far conducted. As to many important variables (including IQ, physical problems) samples of cocaine babies and control groups show no measurable difference. In fact, the evidence does suggest that some contaminants do have more serious endangerment risks, possibly amphetamine use, and particularly alcohol, as Chapter 5 suggests.²²

C. National Study Findings and Correlations

The most recent national statistical compilation uses 1999 data and finds the following profile of victims and services.²³

Reports, Victims, Perpetrators

- ◆ 2,974,000 million referrals were received, 39.6% screened out, and the remainder transferred for investigation or assessment.
- ◆ 54.7% of the referrals (“reports”) were received from professionals; the remaining 45.3% of reports were submitted by nonprofessionals, including family and community members.
- ◆ Most states have established time standards for initiating the investigation of reports. The average response time to initiate investigating reports was 63.8 hours.
- ◆ 29.2% of investigations found substantiated or indicated maltreatment, 54.7% found the report unsubstantiated, the remaining 16.1% received some other disposition.
- ◆ An estimated 826,000 children were abused nationwide, the 1999 rate of 11.8 per 1,000 children was a decrease from the 1998 rate of 12.6.
- ◆ 58.4% of all victims suffered neglect, 21.3% suffered physical abuse, and 11.3% suffered sexual abuse. More than one-third (35.9%) of all victims were reported to be victims of other or additional types of maltreatment.
- ◆ The highest victimization rate is for the 0–3 age group (13.9 per 1,000) with rates declining with the age of the child.
- ◆ The victimization rate ranged from a low of 4.4 per 1,000 for Asian/Pacific Islanders to 25.2 African-American victims per 1,000.
- ◆ 61.8% of perpetrators are female, and the most common pattern is a child neglected by a female parent (44.7%) with no other perpetrators identified. Male parents were identified as the perpetrators of sexual abuse for the highest percentage of victims.

Fatalities

- ◆ 1,100 children died of abuse or neglect (1.6 per 100,000 child population), with 42.6% not yet one year of age, and 86.1% not yet five years of age.
- ◆ 2.1% of the fatalities occurred while the victim was in foster care.

Services

- ◆ 1.56 million children received preventive services, with the average time from the start of investigation to provision of service being 47.4 days.
- ◆ 461,000 child victims received post-investigative services, and an estimated 217,000 children who were the subjects of unsubstantiated reports also received services.
- ◆ 171,000 children were placed in foster care up from 144,000 in 1998), another 49,000 children who were not victims were placed in protective supervision during the investigation.
- ◆ About 80% of the victims subject to court action were appointed counsel or other representatives.
- ◆ 21.2% of victims had received family preservation services within the previous five years, while 5.1% had been removed previously, and reunited with their families.
- ◆ Average annual caseload for a Child Protective Service investigation/assessment worker was 72 investigations.

In September 1996, the U.S. Department of Health and Human Services released a national incidence study of child abuse and neglect which tested important correlations.²⁴ The Department's second study used data from 1986; its 1996 study was based on 1993 surveys of 5,600 professionals working in 842 agencies serving 42 counties—including California samples. The study compared 1986 and 1993 results, using two standards: "harm"—meaning experienced abuse or neglect, and "endangerment"—meaning at risk of harm. The researchers arrived at the following conclusions:

- ◆ The total number of abused and neglected children in 1993 was 67% higher than in 1986; the number of children endangered roughly doubled. The total number of children seriously injured quadrupled in this seven-year span.
- ◆ Girls were sexually abused three times more often than boys.
- ◆ Approximately one-fourth of seriously-injured children are investigated by local child protective service workers.

The study found the following correlations between families and child abuse:

- ◆ Children of single parents had a 77% greater risk of physical abuse, an 87% greater risk of neglect, and an 80% greater risk of serious injury than children living with two parents.
- ◆ Children in the largest families were physically neglected at three times the rate of one-child families.
- ◆ Children from families with annual incomes below \$15,000, compared to those with incomes above \$30,000, were 22 times more likely to be harmed, 25 times more likely to be endangered, and 56 times more likely to be educationally neglected.

Most studies find that for between one-third and two-thirds of children involved with the child welfare system, parental substance abuse is a contributing factor; data from the 1996 National Household Survey on Drug Abuse reveal that an estimated 8.3 million children in the U.S., 11% of all children in the country, live in households in which at least one parent is either alcoholic or in need of substance abuse treatment.²⁵

D. California Family Violence

California law requires parents who cannot settle a child custody dispute to engage in mediation. Approximately 85,550 families per year use child custody mediation court services.²⁶ In approximately 65% of court-based mediation cases, one parent has alleged domestic violence, and 55% have at one time involved a restraining order.²⁷ According to the Judicial Council of California, there were 41,890 filings in 1998–99 concerning children who have been abused or neglected; this figure rose 129% over the past two decades.²⁸

E. “Family Preservation” Services in the Home

Federal law requires states (as a precondition to receiving federal child welfare services and adoption assistance funding) to use “reasonable efforts” to preserve families by not removing children, and independently to use “reasonable efforts” to reunify children with their parents once they have been removed.²⁹

The increase in the number of child abuse reports depicted above, combined with cutbacks in public funding, have led to a larger percentage of children left in potentially abusive homes under the “family preservation” option. In California, the Legislature authorized allegedly intensive services to purportedly abusive families—while leaving children at home—in 1989–90 as a pilot project. This program is invoked where local child protective service workers find a meritorious report of abuse or neglect but conclude that the child is not in jeopardy of injury and the family would benefit from services. Beginning in 1994–95, federal funds were made more available for this program;³⁰ the 1995–96 budget included \$61.3 million for these “in-home” preservation services, \$19.2 million of which was federal.³¹

About 25%–30% of children receiving some child welfare services from county agencies are served in the home as part of the family preservation approach; this percentage is down slightly from 1987, reflecting the more serious nature of cases now passing through the screening process. In 1994, just over 50,000 children received this in-home services option, while 28,000 children were removed from homes and put into foster care over the same period.³²

The state Department of Social Services (DSS) conducted a study using January 1993 data. The primary sources of reports of abuse were schools (21%), relatives (18%), health care professionals (17%), or concerned citizens (17%). Reports were verified with findings of actual abuse in 48% of the cases. Using state law definitions, the percentage rates of each category of child abuse and neglect are as follows: physical abuse (31.8%); emotional abuse (30.7%); sexual abuse (16.7%); caretaker absence or inability (9.2%); general neglect (7.2%); and exploitation (0.3%).³³ Law enforcement was involved in 37.5% of the referrals.³⁴

The average age of the mother was 31 years old, the average family size was 4.2, and the ethnic breakdown paralleled the general population—except with a disproportionately low Asian incidence (45% white, 35% Hispanic, 15% African-American, 2% Asian). The primary languages spoken were English (81%) and Spanish (15%). The father (adoptive or natural) resided in the household in 37.9% of the cases. About 53% of the families received public assistance, which for 90% meant AFDC (now TANF). “Health problems” were identified in 49% of the households, often signaling alcohol and drug abuse. In 45% of the homes, unemployment or poverty were cited as stress contributors. “Family interaction problems” were identified in 70% of the families.

The most common services provided were counseling (65%) and crisis intervention (54%). Parenting training was provided in 14% of the cases. Prior reports and interventions had occurred in 47% of the cases, with the number of such interventions averaging 2.7 among this 47%.

The efficacy of these “preservation” services is increasingly questioned. One source reviewing the literature concludes that there is “considerable indication that in-home services are helpful to the families served but that they do not have a substantial impact on the prevention of foster care placements.”³⁵

The same source cites a massive evaluation of Illinois' intensive in-home alternative program ("Family First") which found that 39% of the children involved were the victims of a subsequent *substantiated* child abuse report. A conventional control group had a similar recidivist rate.³⁶ While some scholars believe that longer and more intensive services in the home will have a positive impact, their cost is considerable.

California has joined the "preservation" movement strongly, with some child advocates objecting that this priority is driven by its substantially lower cost over removal and foster care. In 1990, as noted above, California changed its policy regarding babies impaired by drugs at birth and no longer requires the automatic filing of a mandated abuse report or removes affected children without additional evidence. Illinois has implemented a similar policy. In 1992, over one-half of the Illinois children who entered foster care because of drug exposure were more than one year old. All of them had been screened at birth as substance-exposed but had been sent home. They were later removed from the home after independent reports of subsequent abuse or neglect were received.³⁷

F. California Children Removed for Their Protection

The removal of a child from parental control (from the home) challenges the constitutional rights of persons to "parent." It occurs only where a parent is affirmatively found to be "unfit" by "clear and convincing evidence."³⁸ The adjudication of these cases is complex and cumbersome. It involves multiple proceedings, beginning with the petition to detain (remove temporarily), followed by the critical petition to give the juvenile dependency court "jurisdiction." That jurisdiction supplants parental authority but—as noted above—parents retain a federal and state statutory right to "reunification," or the chance to obtain the return of children removed into temporary foster care. And, under federal and state law, the state must make "reasonable efforts" to accomplish reunification, and parents (generally) are now given twelve months to create a safe environment for their children, with six-month review hearings to review progress.

The number of original or subsequent petitions filed for court jurisdiction increased from 12,000–15,000 in the 1970s to a high of 46,950 in 1996–97, and dropped to 40,672 in 1999–2000.³⁹ Currently, judges and commissioners decide issues of child removal, reunification, and placement (where parental rights are terminated) at the rate of more than 30 cases per day⁴⁰—making difficult decisions on the basis of social worker reports and several minutes of oral argument. They rely heavily on social workers from child protective services within county departments of social services, attorneys for the child and the parents involved, and "Court Appointed Special Advocates" (CASA) volunteers—citizens appointed by the court to monitor children under court jurisdiction and who report to the court.

The removal of a child by the state to preclude further abuse by parents does not assure the child's safety or productive future. The state's treatment of children in its charge may have its own negative effects. Some of these involve abuse within the foster care system itself. Recent problems have ranged from child molestation to murder perpetrated by other group home assigned youth to the alleged routine drugging of children to assure easy management.⁴¹ One recent report indicated that the four most frequent allegations against certified family homes involved personal rights (35%), physical abuse/corporal punishment violations (26%), neglect/lack of supervision (19%) and sexual abuse (6%).⁴²

Of universal concern is the lengthy delay while parents are given a statutory twelve months (which sometimes becomes two to four years in practice) for family "reunification" (return of their children). During this interim, children are in temporary "foster care," and they often are transferred from one foster care parent to another, in what child advocates call "foster care drift." Recent data indicates that, after two and a half years in foster care, 37% of children in kinship care and 64% of children in non-kin care had experienced three or more placements.⁴³

Cases Open	99,816
Federal AFDC-FC	53,655
State AFDC-FC	14,435
Non AFDC-FC	31,726
Ages	
Under 1	4%
1-5	22%
6-10	26%
11-14	25%
15-18	22%

TABLE 8-A. California Foster Care Population Data—April 2002⁴⁴

Table 8-A presents basic foster care population data in April 2002. The federal AFDC-FC category stands for “Aid to Families with Dependent Children-Foster Care,” (AFDC) the name generally given child safety net payments for parents below the poverty line in general prior to the passage of the Congressional enactment of welfare reform (the “PRA” in 1996). While the new federal law changed AFDC entitlement money to a capped block grant under the new Temporary Aid to Needy Families (TANF) system, it did not change the previous system as applicable to foster care children. They remained “entitled” to a federal match for cash grants to their care givers where placed outside the home (see payment levels discussed below). They must have been removed for a reason listed in Title IV-E of the federal Social Security Act. The parents remain liable for recompense of these expenses in the same way an absent parent is responsible for welfare payments made to support his or her child. That liability stops when a child is reunited with a parent and expenses for out-of-home placement cease, or when parental rights are terminated.

The “State AFDC-FC” category includes children made dependents of the court but not fitting within the federal Title IV-E list justifying AFDC-FC payment. These providers are paid from a state-only account separate which is included in Table 8-E below. The number of cases with AFDC-FC, either federal or state, is approximately 70,000.

Separate and apart from the AFDC-FC account is a state Kin-GAP program. As explained below, if an abused child is removed from his or her home and placed with a relative “guardian,” the federal jurisdiction will not provide AFDC-FC. The Kin-Gap program allows relative placement, guardianship status for parental authority and stability, and recompense so that commitment is not punished through loss of expense payments—albeit from state sources. The program has increased from 6,285 children in 2000–01 to 10,595 in current 2001–02 to a projected 15,309 in proposed 2002–03.⁴⁵ The Non-AFDC category will often involve families who are eligible for the TANF program, depending upon income. If foster parents earn too much income to be eligible for TANF assistance, the children may still receive such aid under the “child only” category—which has grown substantially in the state over the last three years. However, the amount of recompense will vary substantially between these alternatives. AFDC-FC will pay substantial sums per child to group homes (commonly over \$5,000 per child per month), and approximately \$600/month per child to family foster care providers. The Kin-Gap recipient will receive the latter amount, since placement is in the family setting. However, TANF aid for a single child is only \$319 in Region 1 (urban) counties and \$303 in Region 2 counties. Moreover, two children will yield a doubling of the AFDC-FC levels since provider pay is multiplied by number of children, however in the Region 1 counties, 2 child only TANF recipients will get \$520 together, 3 will get \$645. Three or more children together will cost the federal/state payers at least three times as much per child in AFDC-FC, as for TANF welfare. Involved incentives in these measures are important to consider—incentives that affect care givers in one direction, and public officials who seek to minimize public costs, on the other.

Apart from AFDC or Kin-GAP help, an increasing number of children receive services. A record number among the 31,726 non-AFDC-FC or Kin-Gap cases receive such foster care services. This includes those persons during their immediate placement in direct County operated “receiving” homes or centers—designedly a temporary residence while temporary placement is decided.

As Figure 8-A represents, the number of California children in foster care has grown steadily since the 1980s, more than tripling from the 1983 level. The number of children receiving AFDC-FC increased from 25,573 in 1980, to 31,365 in 1985, to 56,658 in 1990, to 69,215 in 1995.⁴⁶ A proper trend analysis includes the Kin-GAP count and that number plus federal and state AFDC-FC totals 86,136 for 2002–03.⁴⁷ As discussed above, not all foster care children receive AFDC, particularly the many children placed with relatives—such relative placement has been stimulated by the much lower costs to counties—particularly if TANF is not claimed (or known to be available) by the relative care giver or for the children—which is often the case. The overall population of children in foster care has doubled from the late 1980s, from approximately 50,000 to the current number of just over 100,000 by the middle 1990s. The leveling that has occurred over the last six years is partly the result of substantial increases in family preservation response and foregoing child removal (see above) and in an increase in “family reunification”, as discussed below. Both trends have lowered numbers of children in foster care, but such a reduction does not necessarily imply reduced child abuse and neglect, and may instead reflect reduced intervention and protection. Notwithstanding the recent leveling, underlying trends are ominous, and the Little Hoover Commission projected the actual foster care population to rise to 167,456 by 2005.⁴⁸

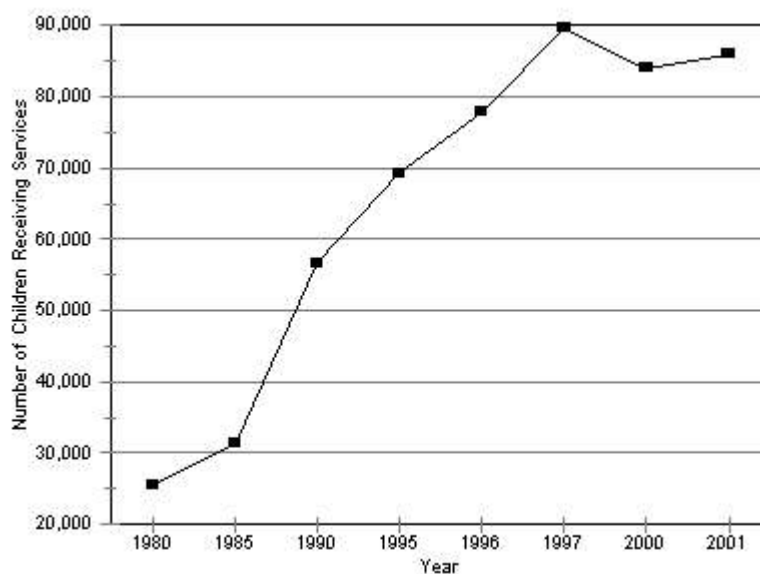


FIGURE 8-A. Number of California Children Receiving Foster Care/Kin-GAP Payments

Recent state foster care profile data are presented in Table 8-B, which covers the vast majority of foster care children. This group includes those children who have been removed from their homes for their protection and are subject to the protection and jurisdiction of the juvenile dependency court.

The children placed into foster care by action of dependency courts are 48.5% female and 51.5% male. As a group, nearly 50% suffer from chronic conditions such as asthma, cognitive abnormalities, visual and auditory problems, dental decay, and malnutrition, birth defects, developmental delays, or emotional/behavioral problems. From 40%–72% require ongoing medical treatment, and studies indicate that 50%–60% have moderate to severe mental health problems. According to studies, some of these conditions are caused by exposure to drugs and alcohol, lack of medical care, poor parenting, domestic violence, trauma of family separation, and unstable living arrangements and relationships, including foster care drift instability.⁴⁹

	August 1996	February 2002
Average age at case opening	7.0	na
Average Age	8.9	9.7
Average Months in Placement	26.0	24.5
Sex		
Female	50.6	48.5
Male	49.4	51.5
Ethnicity		
African American	35.8%	33.7%
White	35.5%	30.1%
Latino	26.2%	31.9%
Location		
w/relative (or guardian) in foster care	45.5%	44.4%
in foster care (non-relative)	35.0%	39.0%
in group home	16.6%	13.2%
in facility or unknown	2.9%	3.3%

Source: California Department of Social Services

TABLE 8-B. Statistical Profile of California Foster Care Children

The 24.5 months of “average months in placement” includes a small population of delinquents who have been placed into foster care for rehabilitation purposes. This population of 6,400 only remains within Probation Department jurisdiction and foster care placement an average of 11.3 months. The children who are victims of abuse and neglect under the dependency court average 25.8 months within foster care authority jurisdiction.⁵⁰

In 7% of the cases, the child is placed with a relative who assumes the relatively permanent status of guardian (within the 44.4% grouping of Table 8-B). Within the 39% listed as placed in foster care and not in a group home, 16.5% are in a foster family “agency,” and 28.5% are in a foster family home. Of the 44.4% (44,500) placed with relatives, about half of these are licensed as family foster care providers, and another 11,000 (15,000 as projected in 2002–03) have become Kin-GAP guardians of children.

The profile data indicate few adoptions and little permanency, delays substantially beyond the previous 18-month—now 12-month—presumed statutory maximum timeline for reunification, tolerance of delay by courts and social workers, and consistent solicitude for parental rights over timely resolution for involved children. Only one-half of children who entered child welfare supervised foster care between 1998 and 2000 left care within 19 months.⁵¹ Of those children *leaving* foster care over the past year, the average time in placement was 20 months, a significant six-month reduction from 1996. However, the group successful in leaving is not representative of the population as a whole, where the average length of stay in foster care is 39.7 months. On average, a two-year-old toddler removed from a home will be five years and four months old when leaving foster care.⁵²

“Termination data” lists where children removed from their homes and placed into foster care for their protection end up if they exit the system. According to the July 2001 report of the California Department of Social Services, in 2000, 58% of exiting kids were reunified, 15% were adopted, 12% had legal guardianships, 8% emancipated, and 7% had other/unknown exits. Reviewing termination data for a recent typical month illuminates these cited percentages. In December 2001, 1,266 cases were terminated during the month, 845 were reunited with parents, 81 were adopted, 326 were terminated for other reasons (usually dismissal), and 14 are “unknown/missing.”⁵³ A review of other months in 2001 indicates these figures are typical.

The data indicate that few children are being adopted into a permanent, loving family where they will attach to acceptable and protective parents. Rather, almost all fall into two categories: reunification

with parents and permanent foster care placement. The reunification population, now up to over 70% of those leaving foster care, join with an even larger “family preservation” group who receive services in the home and remain with their parents, as noted above. The success of parental reunification has been limited. Social service programs do not always or even reliably change the lifestyles, values, and habits of adults. Drug addiction, violent tendencies, molestation, and other proclivities are not easily altered through counseling, occasional drug testing, meetings, classes and therapy—the typical services required of parents to achieve reunification.

A study by the University of California School of Social Research examined recidivism, the “re-entry” into foster care after court-approved “reunification.” Those who have “reunified” with families (and those who are subject to family preservation and are not removed) make up the “success stories” which are the focus of most child welfare account spending. Parents’ rights advocates argue that saving families is a benefit justifying the foster care drift of many children. Examining the immediate three-year period after reunification, 20% of those children reunified (placed back into their homes) were removed again—generally after independent reports of further abuse.⁵⁴ Child advocates argue that a much larger percentage of children reunited with parents are subject to abuse unabated by the drug rehabilitation, violence management counseling, and similar services which are routinely a part of “reunification.” Some concede that the retention of TANF grants—which are cut off when children are not in the home—is the primary motivation for some parents to seek reunification.

The percentage of children who would be removed following reunification were the state to retain some monitoring role, and pro-actively check future status as a matter of course, rather than relying on *de novo* reports of renewed abuse is unknown, but would be substantially larger than the 20% proportion who are subsequently removed following new and usually unconnected reports.

In August 2001 a study published by the Journal of Pediatrics examined reunified children versus a control group over a six year period. It found the reunified foster youth to be more self-destructive, engage in more substance abuse and in high-risk behavior than do non-reunified youth. Although the study was somewhat limited (149 ethnically diverse youth from 7 to 12 years of age) the findings were significant enough to warrant close attention.⁵⁵

Despite the uncertain results of reunification, most child advocates familiar with the foster care system exhibit receptivity to it; to a large extent that sympathy is driven by the alternative of the state as parent. As the data and state policy (budget) review below suggest, the state has proven to be a consistently neglectful parent—notwithstanding the best of intentions of social workers, judges, counsel, and others. Its neglect is reflected in the low investment in foster children, the secrecy of the juvenile court process, caseloads, foster care drift and detachment syndrome damage, delay, funding and family foster care supply/compensation shortfall, and lack of emancipation assistance as these children turn 18 years of age.

Most children are not reunified and fewer are adopted. Most remain in the system for their entire childhood. The subtraction of the 1,300 children from the foster care population each month occurs in the context of over 100,000 children in that status. About 16,000–20,000 a year leave it and 25,000–30,000 are added annually. That 16%–20% departure rate suggests the fate of most children placed into foster care. The adoption of from 1,200 to 3,000 foster children a year represents 1.2%–3% of those in the system—although several initiatives have increased adoptions at the margin (see discussion below), the overall level is not substantial in relation to the numbers who would clearly benefit from a stable, committed parent. Some foster care children are with relatives in long term relationships that afford many of the advantages of a permanent parent—especially where given guardianship status. But current policy is to use relatives regardless of parental capacity because of their lower cost and many such placements are problematical. The subtraction of all of them would leave over 55,000 children not living with relatives, many of whom have been formally labeled “unadoptable” by the state.

Of the vast majority who remain in foster care (are not reunified), movement between care givers is common—affecting the basic need for “attachment”—a deep requirement of children in common. As indicated above, those who are placed with relatives obviously have less movement between

caregivers.⁵⁶ But much of the total foster care population—even including those placed with relatives—has been in three or more separate placements within six years.⁵⁷ A study by the Office of Legislative Analyst confirms these levels of instability, finding that overall, one-third of current foster care children have been subject to three or more separate placements (with different families or institutions).⁵⁸

In 2001, the Legislative Analyst's Office (LAO) reported that those children for whom a foster family agency (FFA) home was their primary placement stayed in care for almost two years, or twice as long as youth in nonrelative foster family homes (FFH). According to LAO, "increased time spent in foster care is generally considered undesirable, as children are less likely to be reunified with their family of origin or adopted."⁵⁹ While noting that longer stays in FFA homes might be justified if research indicated that the children in FFA need more services prior to reunification or adoption than do children in FFHs, LAO stated that "available research does not demonstrate such differences."⁶⁰ LAO also noted that from 1989–98, the number of children placed in FFAs increased tenfold, from 2% to approximately 23% of the total foster care population. Because the FFA rate is more than three times the rate paid to FFHs, LAO opined that the higher rate "potentially creates a fiscal incentive for FFAs to keep children in foster care longer."⁶¹

The Center for Social Services Research at the University of California, Berkeley, released information in April 2001 summarizing recent foster care exit trends. According to the Center, of children who entered foster care in 1998, 74% of the children placed with kin were still in care one year after entry; this figure was 65% for children placed in non-kin care. For children in both kin and non-kin care, exits at the one-year mark were highest among children ages 11 and over, and lowest for infants.⁶²

A 1998 inquiry into Orange County's system by Tracy Weber of the *Los Angeles Times* produced compelling evidence of the human dimension to foster care drift. Confirming the experience of the Children's Advocacy Institute's clinic representing abused children in San Diego County, Weber's two-part series outlined children with character and promise subjected to parental abandonment, drug- and alcohol-induced neglect and beatings, and unconscionable molestation. Although a large number of foster care families sacrifice resources and personal health to provide a loving home for these children, the result of removal is quite often relegation to a kind of foster care limbo—with transfers between institutional settings (sometimes in company with delinquents), impersonal hand-offs of frightened and confused children, and interminable delays as the needs of parents, courts, and other adults are all given higher priority.⁶³

Table 8-B and the above discussion excludes a separate population of foster children which has a very different profile. As of August 1998, 5,436 youth have been placed in foster care through the delinquency side of juvenile court. These children are commonly arrested for offenses for which punishment is inappropriate, but where there has been parental abandonment. They include children coming before the court due to non-criminal "status offenses" (e.g., truancy, curfew violations, or running away). The August 1998 total is slightly down from the 1997 level (5,637), but above the 1996 total (5,321). Here, the average age of foster children is 17.1 years, 81% are males, and 59.7 are placed in group home foster care.⁶⁴

G. Supply of Foster Care Providers

As of December 2001, there were 12,027 licensed foster family homes in California with space for approximately 29,920 children.⁶⁵ Approximately 1,627 licensed group homes have space for just under 16,000 children.⁶⁶ The growing foster care population increasingly requires intensive care; estimates place 30% as seriously disabled, and 58% with serious health problems.⁶⁷ In San Diego County, there are approximately 1,500 foster homes; the former director of the county's foster home licensing would like to see 500 more.⁶⁸

The supply of foster home placements for children is lower than it was in 1985—while the foster care population has doubled. Family foster care is especially in short supply—although the most personal type and the most likely to lead to adoption (about 80% of adoptions come from foster family placement). In 1985, the number of foster care placements exceeded the number of licensed spaces

by a small margin. That margin has grown. Currently, we have just under 30,000 spaces or capacity in licensed family foster care—and 48,404 children in family foster care placement (20,000 with relatives who have been so licensed). As the figures suggest, undersupply of slots causes placement above the six-child-per-family maximum, or leads to temporary or waived licensure. Children in FFA homes numbered 9,900, and there were 7,348 in group homes in 1995,⁶⁹ and have risen by June of 2001 to 16,500 and 10,102, respectively—increases notwithstanding the higher cost of each such placement—particularly for group homes.

In 1991, family foster care rates were 20% below the direct costs of a child as measured by the Department of Agriculture—with the California disparity somewhat greater. From 1991 to 1998, no COLA increase was granted, placing compensation almost 40% below costs and constricting supply, as discussed above. In 1998, a modest 9% increase was approved, with small COLAs of 2.36% keeping compensation even in 1999, 2000 and 2001. The rates remain approximately 30% below out of pocket costs. No increase is included in the 2002–03 budget for family foster care. Notwithstanding the stark disparity in rates and the trends indicated by Table 8-C, group homes are budgeted for a cost of living increase of approximately 2%—well illustrating the advantages of lobbying and political organization. Compensation to families for foster care is estimated at less than half of the costs of raising a typical child. The Legislature rejected the 25% increase sought by Assemblymember Goldsmith, which was intended to keep family foster care even with inflation from 1991.

Payment levels per child for foster care vary with the age of a child, with the lowest rates paid for children 0–4 years of age, and increasing for each four-year age group to those from 15–20 years of age—set approximately 30% higher. The rates paid vary much more dramatically between family foster care and group home alternative placements. Adjusting for inflation to current levels, Table 8-C presents average payment levels per child in 1990 and 2001.

	1990	2001
Family Foster Care	\$536	\$660
Family Foster Care Adjusted	\$682	\$660
Family Foster Agency	n/a	\$1,748
Family Foster Agency Adjusted	n/a	\$1,748
Group Homes	\$2,682	\$5,139
Group Homes Adjusted	\$3,413	\$5,139

Adjusted to deflator (2001–02=1.00).

TABLE 8-C. Average Foster Care Payments Per Child/Month⁷⁰

Part of the supply problem stems from difficulty in retaining foster care providers. One study of the reasons for abandonment cites several major reasons: (1) lack of agency support; (2) poor communication with assigned social workers; (3) lack of say as to the child’s future; (4) lack of other services needed; and (5) lack of day care. The authors note that a “foster buddy” system where parents have a parent “buddy” working with them to help share the load, assist with problems with the bureaucracy, could help retention rates.⁷¹ Interestingly, problems with the child are rarely cited; most difficulties derive from needed services denied which the low compensation make critical, problems dealing with the local bureaucracy, and an underlying fear of losing a child to whom they have bonded.

The group home cost per child is more than seven times costlier than family foster care and has increased markedly in adjusted compensation, while family foster care compensation is lower as adjusted. Some of the disparity accruing to group homes is attributed to the high number of special needs children they receive because of their more extensive facilities, staffing, and experience. However, the compensation difference substantially exceeds that justification and ignores both the increasing special needs children in family foster care and the regrettable failure of many group homes

to achieve educational mainstreaming, quality services, or adequate individual personal attention—for which child advocates contend there is no substitute.

H. California Adoptions

Parental rights are terminated only in extreme cases of abuse and neglect, usually involving criminal convictions for molestation or repeated drug offenses and related abuse, with little indication of rehabilitation interest. The reunification mandate of federal and state law has meant that the vast majority of parents interested in reunification are able to receive a full twelve-month opportunity to achieve it—usually by attending programs, counseling, and sometimes drug testing. Where those rights are finally terminated, the court is obligated to seek “permanent placement” for a child. Some are placed with relatives. Many find no takers. Where adoption does occur, it is most often with a family foster care provider who has bonded with a child. As noted above, decreased compensation has lowered the supply of family foster care placements markedly. That hurdle, exacerbated by juvenile court confidentiality rules, leads to more children in long term foster care, in group homes, or with relatives of abusive parents—often until emancipation at 18 years of age. This is now the fate of most children entering the foster care system.

1. Adoption Demographics/Incidence

Over 45,000 California children need homes, but prospective adoptive parents often seek healthy infants, not abused or disabled toddlers or older children. The characteristics of public and private adoptions in California are different. The typical child placed through a private adoption agency was a newborn when removed from the home, one month old when placed, had spent 50 days in foster care before placement, and became a member of a family with a median gross annual income of \$70,000.

The typical child placed for adoption through a public agency was two months old when removed from the home, 49 months old when placed, had spent 1,110 days in foster care before placement, and became a member of a family with \$33,883 in gross annual income. The average fee for an adoption through a public agency was \$500, while the average private agency adoption fee was \$4,000⁷²—excluding additional large payments often required for counsel, other facilitators, and the expenses of the birth mother.

The California Department of Social Services reported 9,941 requests for adoptive placement in 1994–95, 7,738 from county agencies. A total of 2,799 children were placed in adoptive homes by county agencies. Although 13,058 applications to adopt were received, refusals or denials by county agencies limit actual adoptions to less than one-third the demand.⁷³ The number of children recommended for adoption study or freed for adoption increased (to a total of 10,432), the number placed for adoption decreased by 2% from the prior year.⁷⁴ Since 1995, adoptions from the foster care population have declined from this level, amounting to 2,122 in 1995; 2,141 in 1996; and 2,281 in 1997. State adoptions from all populations averaged 3,287 during that three year period. During 1999 the state increased the number modestly to 3,958.

The modest increases that did occur in 1998 to 2001 are partially attributed to a 1996 to 2001 “California Adoptions Initiative” within the California Department of Social Services. The initiative is credited with helping 14,300 children achieve adoption. Approximately 10,000 of those adoptions have been finalized. The initiative funneled an additional \$138 million into county adoption bureaus, providing positions for an additional 250 social workers. It won \$17.7 million in federal awards for adoption improvement under the federal Adoption and Safe Families Act discussed below.⁷⁵ The federal money was partly used for post-adoption services for the new families. This effort involved the education of local social workers on the complex paperwork required for adoption. One innovative approach to the paperwork obstacle was developed by Gibson, Dunn & Crutcher attorney Steven Meiers, “Adoption Saturdays” tap volunteer attorneys and others to fill out prodigious paperwork for large groups of children and adoptive parents in a single day, with the important help of county social workers who similarly work intensively, followed by the superior court opening its offices on a Saturday for a full day of hearings and approvals. The red tape cutting impact of the new procedure is considerable, and some adoptions which

take two or more years in the normal course are accomplished in weeks. A recent Los Angeles adoptions day accomplished 300 adoptions in a single day. The adoptions day concept has been replicated in several other counties, including Sacramento in November 1998 and again in November 1999—when 137 children won adoption.⁷⁶

Although a substantial percentage improvement, the actual numbers of adoptions accomplished by the “Initiative” are quite modest in relation to the need. They amount to less than 20% of the population that would benefit from adoption. In the two years following the initiative, rates have fallen again, and 2001 adoptions appear to be at a rate below 2,000 with 2002–03 projected realistically at yet lower levels. The basic barriers to adoption remain unabated—stultifying, incomprehensible paperwork and delay. At the same time, the private adoption market is endangered by a lack of regulation, strong incentives to facilitators to close adoptions and to make promises consistent with that end. Both the minimal public checks on private adoption, and the delay and barriers to foster care adoption remain and require decisive leadership to ameliorate, including the creation of simple procedures undertaken with the priority and urgency that befits the creation of a new family. No such initiative is promised in 2002, nor in the proposed budget of 2002–03. In fact, as discussed below, the caseworker cuts planned will add further barriers and delays.

Although some California foster care children are in relatively stable settings (*e.g.*, in foster care with close relatives), discounting all relative placements and those awaiting possible reunification, the total winning successful adoption still amounts to about 4%–6% per annum of remaining children who warrant adoption.⁷⁷ One study of children leaving foster care described the foster care termination population (those freed for adoption) as follows: “Children entering care as infants were clearly more likely to be adopted within four years than older children, and very few children who entered care when they were older than five were adopted.”⁷⁸ Older children exit from the system three ways: 20% run away, 17% achieve legal emancipation by the court (usually after having run away as well), and the remainder reach the age of 18 still in the foster care system, exiting by virtue of achieving majority.

2. Secrecy (Juvenile Court/Foster Care Confidentiality)

Adoptions are also clearly hampered by the secrecy of the foster care system. Child advocates have argued that humane societies seeking to place dogs have more visibility. Perhaps partly from lack of awareness, Californians commonly spend ten to twenty thousand dollars to arrange private adoptions. They seek increasingly expensive *in vitro* fertilization—sometimes not involving genetic contribution from either parent. They seek children from the Balkans, Brazil, Russia, and Asia.

3. Adoption Assistance Restrictions

Prior to two years ago, adoption assistance payments have been denied in California for families with income above the state’s median, reflecting the longstanding policy of the previous Wilson administration. The Youth Law Center filed suit in federal district court on behalf of adoptive parents of an 8-year-old child with serious problems from the drug use of his mother while pregnant. In November 1999, in the case of *In Re Nathan H.*, U.S. District Judge Lawrence Karlton signed a stipulated order applicable to the case in Sacramento County and also applicable to the Department of Social Services for statewide impact. The court order (agreed to by the Davis administration) requires eligibility for adoption assistance money for adoptive parents to be based on customized factors in a formula which factors in ability to pay and the particular expenses required for a child. One problem with the rejected policy was that any child with substantial expenses for care would not be easily cared for by the important supply of prospective parents earning just above median income. Indeed, the incentive is then to leave the child in foster care, where compensation and services are more substantial given the foster care status as a child of the court and state. Hence, the payment of more substantial adoption assistance can save some public money while giving the child the permanence and commitment of a family of his or her own. However, the order does not assure a child-friendly or adoption stimulating decision and maintains the right of counties to use a means test. To deny adoption assistance, it simply prohibits the mechanical denial of adoption assistance. Child advocates hope for a more generous policy

which allows adoption assistance payments at the full equivalence of foster care payments (which are not means tested). See discussion of the Adoptions Assistance account and trends below.

The order ends California's pattern under a 1992 statute of capping "special" adoption assistance payments. Although former Governor Wilson vetoed 1998 legislation which would have allowed more flexibility, that legislation altering previous law was enacted in 1999 and was effective as of 2000, paving the way for the order entered by Karlton without the need to strike California law.

Stimulating the adoption of children in foster care was a priority goal of former President Clinton and some in the Congress. The Small Business Job Protection Act of 1996 included a new adoption tax credit for that purpose.⁷⁹ The law allows married couples filing a joint return to claim a credit for "adoption expenses" for an eligible child (a person under 18 years of age unable to care for himself or herself) through 2002. After 2001, the credit will be limited to children "with special needs," defined as a citizen or resident of the United States for whom the state has determined assistance is needed to effectuate an adoption—that is, someone the state cannot place. The credit is limited to necessary adoption fees, court costs, legal fees, and similar costs. The maximum credit claimable is \$5,000 per child, and it is not refundable; it may only be used to offset tax liability, and is of no value to those who pay little in taxes. A similar credit is available to an employer who pays such costs for an employee seeking to adopt.

4. Racial Preference Obstacles

The problem of racial bias in child adoption is longstanding. The placement of a child with an adoptive parent of his or her own ethnic make-up has advantages—including those which flow from appearance similarity between parent and child. But those advantages apply when other factors are near equal. Over 70% of foster care children are minorities. The supply of non-white adoptive parents is limited. But social workers continue to balk at white adoption of minority children—even where the alternative is continued foster care drift, and even when foster care placements are commonly with white foster care providers. Many social workers bend toward family foster care placement, using the kinship statutes as a justification. Often those choices are much inferior to an attentive couple seeking a child who have a strong and clear commitment to him or her—whatever the race of either.

The Congress has enacted two successive statutes to address the continuing problems of racially based adoptive rejection. First was the Multiethnic Placement Act of 1994. California responded administratively to the terms of this statute, but failed to implement the Interethnic Adoption Provisions of 1996, which further amended the law to accomplish interracial adoptions over foster care drift. In 1998, the General Accounting Office issued a report on that compliance, documenting California's failure to respond.⁸⁰ In a particularly incisive remark following extensive interviews of California social workers handling adoptions, Associate Director Nadel notes: "The belief that race or cultural heritage is central to a child's best interest when making a placement is so inherent in social work theory and practice that a policy statement of the National Association of Social Workers still reflects this tenet, despite changes in the federal law." Nadel then understates: "The personal acceptance of the value of the act and the 1996 amendment varies among the officials and caseworkers...." Numerous California caseworkers admitted to a strong bias precluding white adoptions of minority children, speaking of "the need for children—particularly minority children always to be placed in homes that will support a child's racial identity. For those individuals, that meant a home with same-race parents."⁸¹

Some counties still have special pools of prospective parents divided by race: Hispanic, African American, and white. They direct children of a race to their respective group. The end result has been and remains the condemnation of over 50,000 minority children into foster care drift without parents, commitment, or stability. While social workers pursue personal and illegal notions of racial purity, many thousands of children fail year after year to win adoption. When they are emancipated at 18 years of age, their statistical fate is bleak.

I. Emancipation From Foster Care [Independent Living Transition]

Those foster care children not returned to their parents or adopted (as discussed above) remain in the foster care system until they emancipate at the age of 18. These children are commonly sent into the world without the family structure that supports most children during their early years of adulthood. Until the 1970s children were subject to juvenile court protection until they reached 21 years of age. Hence, their foster parents would continue to receive compensation (or group homes) to assure their room and board while they attended college, vocational school or other higher education. With the lowering of the age of majority for most purposes to 18 years of age, that cut-off of support was moved younger—at a time when higher education has become more important to employment and future advancement.

Surveys of emancipated foster youth two to four years after emancipation find that fewer than half had completed high school or were employed, 30% did not have access to health care, 60% of the women had already given birth (the vast majority unmarried), and less than 20% were self supporting. Males made up a highly disproportionate share of incarcerated populations, at least five times the incidence of the general population.⁸²

One study of former foster care youth in California found 55% had left foster care without graduating from high school. A 1997 study of 400 homeless individuals found 20% had been foster care children and 20% had one or more of their children in foster care. Another study found that 22% had lived in four or more places in the previous 12 to 18 months and that homelessness was not uncommon.⁸³

The Governor added \$812,000 in his May 2000 Revise to allow youth in foster care when 18 years of age access to Medi-Cal funded mental health services up to age 21, and other reforms will afford underlying Medi-Cal coverage for several years after a child turns 18. Federal legislation discussed below now makes available some federal funding for foster care youth turning 18, some of it requiring only a 20% state match (see Foster Care Independence Program below). See also President Bush's proposal to provide some education related funding for these children. In August 2001 Governor Davis signed AB 1119 (Hertzberg) to give \$10 million to housing programs, \$6.5 million for educational help, and \$1.5 million for health coverage. As discussed below, this \$18 million was the sum result of a pledge to fund foster care more broadly with \$330 million in needed support—of which child advocates expected \$90 million would cover emancipation assistance with available federal addition (room and board, higher education expenses to age 23 if in school, with some small assistance for two years for those not in school while obtaining employment or beginning work).

The state funds for this group is compromised by the overall cut of 20% in county administration funds discussed below. To reach this currently underserved population would require substantial caseload increases, at a time of state cuts and county financial travail.

Meanwhile, the Congress has made a number of program gestures for this population. In 2000–01 \$12 million in federal dollars was made available each year from 1998 to current 2002 to help foster youth who “term out” of the system at the age of 18. The enactment of the Foster Care Independence Act of 1999 (see discussion of terms below) added some flexibility and a national \$140 million in capped entitlement monies, doubling the previous sum available under the “Independent Living Initiative.” These John Chafee program monies may allow up to \$27 million to be used by California for emancipating youth.

The President proposes to add \$60 million nationally for higher education costs of emancipating youth in the federal 2003 budget, of which the state's share would be \$8 million. The total sum of \$18 million from the state noted above, and this \$35 million could yield up to \$53 million for these purposes and would enable some important assistance for these children—the total sum from all three sources would amount to about \$300 per month for these youth in need, excluding medical coverage. Further, the President's initiative provides only education vouchers of up to \$5,000—no living costs. California already provides low tuition and fee levels and those attending public higher education will not be able to use more than 10% to 35% of these voucher amounts. The sum available for living expenses from state and federal sources amounts to about \$250 per month.

This sum would pay below half of the current median rent costs in urban California. Assuming housing is shared, these youth have substantial additional living expenses, including high utilities, food, transportation if they are to work (see state costs and budget data presented in Chapter 2).

For many emancipating youth, the sums proposed to be offered may be equivalent to no help at all given current economics. If one must earn \$400 to \$700 per month for rent, another \$180 per month for food, \$150 per month for utilities and other essentials, assistance of \$250 per month alone may still not allow higher education opportunity. Note that TANF assistance for these youth before the age of 18 is \$520 for a mother with one child, plus \$150 in food stamps. These now emancipated youth are not eligible for such aid unless they have children themselves.

It is difficult for most adults who come from homes and families to be fully aware of the reality facing someone who is about to turn 18 years of age and has been told to leave a group home or other caregiver. There is no home or family to fall back upon. No room and board continuation. There is little safety net, and none that would allow deferral of full-time immediate work—on the disadvantageous terms available to an 18 year old lacking higher education.

Given modern costs of rent, utilities, transportation, clothing, and tuition—even in a low tuition state such as California, the assistance given these children must be sufficient to give them choices and a chance. The help that a responsible parent would provide for a child of 18 remains missing from the state (and federal) budget for these “children of the state.”

J. Special Cross-Cutting Problems

The major sequences of the child welfare system presented above raise four seminal problems: (1) adequate supply/quality of family foster care providers, (2) foster care drift—the movement of foster children between placements, (3) secrecy and other barriers to adoption, and (4) failure to provide for the majority of foster care children who emancipate out of the system without sufficient help for employment and transition to independence. In addition, other problems cut across these three underlying failures, as follows:

1. Foster Children and Records

Recent studies underline the continuing problems of abused children moved into foster care. As a part of the “foster care drift” pattern, they often move between foster families or group homes. With every move comes uncertainty about their prior medical history. The advent of managed care may exacerbate the problem given the need to change managed care organizations as a result of some of the moves, and the difficulty in securing timely disenrollment from health plans which make monthly income based on enrollments. A new Medi-Cal card cannot be issued until disenrollment occurs, and the red tape and difficulty can be a major impediment to needed preventive care (see discussion in Chapter 4). “Medical passports” (updated medical information about foster children under care) are used in some jurisdictions, but are still not the rule in foster care transfers.

Related to this problem are common reports by social workers, teachers, schools, and foster care providers concerning the lack of helpful information about foster care children in general. The confidentiality of the dependency court system and other obstacles commonly deprive those who care for or teach foster care children of information about their histories or special needs. That information is often important in the sensitive and effective education and care of these children.

2. Los Angeles County

Los Angeles County has a disproportionate share of mandated child abuse reports, child deaths, children in foster care, and youth in the juvenile justice system. The county has special problems arising from its heterogeneity, size, impersonality, transportation barriers, and large impoverished population.

In October 1996, the Bureau of State Audits released its report on the Los Angeles County Department of Children and Family Services. The study concluded:

- ◆ The Department does not assess relative risk consistently to enable the highest risk cases to receive immediate attention.
- ◆ The Department does not always visit children following reports which warrant in-person attention.
- ◆ The Department did not always perform criminal background checks on relatives with whom children were placed.⁸⁴

Beyond explicit findings, the underlying data gathered by the State Auditor indicates another serious root problem. In 1992, 50,000 cases were referred for investigation from the hotlines, with caseloads of 33 per social worker. In 1996, the number of cases had grown to 70,000 and caseloads had increased to 42 per worker. If a social worker travels to a school, home, or hospital to evaluate a child, spends two hours, returns and completes necessary paperwork, only one child can realistically be evaluated each day. To the above list must be added review of the file, phone calls to sources, interviews of the physician or other mandated reporter, assistance to the deputy county counsel for cases going forward, and appearances in court. At a caseload of 42, the next visit to a given child cannot occur for at least two months, given the obligations presented by other cases.⁸⁵

On January 11, 1998, the *Los Angeles Times* conducted an inquiry into the “up front” performance of Los Angeles’ hotline system.⁸⁶ The *Times* found pre-investigation hotline calls increasing from 110,000 in 1990 to 200,000 in 1997—while the number of people assigned to answer phones and initially screen calls remained at just over 350. As a result, many callers are put on hold for up to an hour. Computer records indicate that up to 200 callers per day hang up before any person answers. For those callers who get through (usually mandated reporters with professional competence), an increasing number are not referred for further or in-person investigation due to similar caseloads at the next level. The *Times* contends that the rate of such declines to further investigations increased from 4% in 1989 to 24% in the first half of 1997. When in-person investigations are ordered, the caseloads are too high to allow anything but cursory checks of allegations. The *Times*’ report contended that a lack of resources *vis-a-vis* burgeoning caseloads⁸⁷ has led to demoralization within the Department, and the loss of confidence in the local agency by mandated reporters who are relied upon as the critical early warning system to protect children.⁸⁸ Although some additional resources have been committed to the system over the past several years, the cited problems remain a legitimate concern.

Adding to the chorus was a Los Angeles County Grand Jury report released publicly in July 2000. The 1999–2000 Grand Jury found that poor training, mismanagement, and large caseloads created a “broken” system within the county. The Report noted that typical New York City Child Protection social workers have caseloads of twelve cases each, while Los Angeles has 45 to 50 cases.⁸⁹

Presiding Juvenile Court judges Terry Friedman and Michael Nash have implemented a number of reforms since 2000, including a policy of openness about court operations—and support for state legislation to reduce juvenile court confidentiality. They expanded county-wide family-group decisionmaking to help families in crisis avoid dependency court, and worked hard to increase adoptions. However, underlying problems beyond the powers of these skilled jurists remain to perplex the state’s largest jurisdiction, and which includes 37% of the state’s foster children. Judge Friedman has identified some of the underlying problems in public statements—consistent with the critique of many child advocates, including: (1) a shortage of qualified family foster care providers, (2) excessive caseloads for social workers, (3) reduced discretion to place some children with relatives because of new federal law requiring them to meet formal licensing standards (see discussion below of each of these problem areas).⁹⁰

In 2001, 7 children died in Los Angeles County foster care placement, a record level. The limited number of foster care providers reduces both quality and choice for the child welfare system. Tort cases

brought against foster care providers must be submitted to the County for possible payment without the need for litigation. However, it has been the County’s de facto policy to deny every claim as a matter of course.⁹¹

On July 27, 2001, State Controller Kathleen Connell announced fiscal audits were to be ordered of the Los Angeles Department of Children and Family Services. The audit will determine what percentage of money committed for children reach their intended beneficiaries. She noted a particular concern with the multiple placements of children. She also noted in her announcement of the audit “a tremendous number of former foster children who are seek state assistance” (such as mental health needs) denied while growing up in foster care. “In some cases,” she is quoted as saying “the youth are seeking help for injuries they received while in foster care.”⁹²

3. Excessive Caseloads

Journalistic reports of child welfare problems, particularly in Los Angeles County, led to an examination of the caseloads extant for hot line operators, child protective service social workers, and related personnel handling child abuse cases. Some cases of death and serious injury from the system’s failure fueled a \$68.4 million addition to the 1998–99 budget (\$40 million from the general fund) to lower caseloads; this funding was continued in 1999–2000. Further, 1998 legislation (SB 2030 listed below) required the Department of Social Services to contract with an independent entity to study and report on caseload levels, and determine optimum or maximum caseload standards.⁹³

In April 2000, DSS released the report mandated by this statute. Among other things, the report compared the current workload standard for child welfare service (CWS) workers with the actual current measured workload time, and with the composite minimum recommended standard time and the composite optimum recommended standard time. In the table below, the first number in each cell is the average number of hours per month per case, and the second number (in parenthesis) is the number of cases of that type that one worker can carry. “Current workload standards” are the values that have been used since 1984 for budget allocations. “Measured workload time” is derived from a two-week workload study. “Composite minimum” and “composite optimum” recommended standard time reflect the results from the review of the laws, policies, standard-setting focus groups, and outcome expectations.

CWS Basic Program Area	Current Workload Standard	Measured Workload Time	Composite Minimum Recommended Standard Time	Composite Optimum Recommended Standard Time
Screening/Hotline/Intake Caseload per worker	0.36 (322.50)	0.78 (148.85)	1.00 (116.10)	1.69 (68.70)
Emergency Response Caseload per worker	7.35 (15.80)	7.19 (16.15)	8.91 (13.03)	11.75 (9.88)
Family Maintenance Caseload per worker	3.32 (34.97)	3.97 (29.24)	8.19 (14.18)	11.44 (10.15)
Family Reunification Caseload per worker	4.30 (27.00)	4.97 (23.36)	7.45 (15.58)	9.72 (11.94)
Permanent Placement Caseload per worker	2.15 (54.00)	2.37 (48.99)	4.90 (23.69)	7.07 (16.42)

Source: Department of Social Services, *SB 2030 Child Welfare Services Caseload Study, Final Report* (Sacramento, CA; April 2000) at iii.

TABLE 8-D. Comparison of CWS Time Per Case Standards, Hours Per Case Per Month, and Cases Per Worker

The Governor’s proposed 2002–03 budget responds to this problem with an allocation of an additional \$30.4 million in funds beyond current year levels to “maintain higher social worker staffing levels.” The increase adds to the first increment for such caseload reduction provided in the current budget of \$100 million. The \$130 million increase over two years was not canceled in the May Revise 2002. However, the same May Revise will strike 20% from all county administrative funding relevant

to social services. In particular, it will require the lay-off of 221 foster care workers, 126 local staff working on adoptions, and 420 child welfare service social workers.⁹⁴ Caseloads will not decrease. The cuts will save \$91.9 million in general fund obligation and with pay increases over two years, will substantial blunt caseload reductions all agree is necessary for child protection.

4. Education Failure of Group Homes.

Serious questions have arisen during 2001 and 2002 concerning the educational efficacy of children committed to group homes. The group homes may collect over \$20,000 per child per year to provide on-site education. Their success in providing such education is questioned by many child advocates, including those who work with foster children in group home settings. Many children reach 18 years of age with reading skills below middle school level. There is little check on the efficacy of these efforts since it is unclear whether these vulnerable children will be subject to the phalanx of "accountability" measures applicable to public schools (see Chapter 7 discussion).

The problem is exacerbated by the mix of incentives, which preclude the transfer of the over \$20,000 available to group homes over to public schools for the mainstream education of these children. That mainstream education by professional, certified teachers, including the varied science and language programs available in the public school system may be critical for educational success. And college placement AP and other courses necessary for UC or other college admission may similarly require an educational institution to scale. And the socialization skills needed for success is less likely to be learned in a group home setting. Nevertheless, public schools are expected to pick up these students, who often require special help, without extraordinary help.

In addition to this problem is the related difficulty of identifying a "surrogate parent" for these group home placed foster children. Where a family foster care placement exists, the foster parent will be designated as a "surrogate parent," allowing authorization of public benefits and other applications for the child. Of special importance is the fact that many foster care children qualify for special education services under the federal IDEA statute (see Chapters 5 and 7 discussion). In order to seek such status, someone must assure screening, and then must negotiate the Individual Education Plan (IEP) required for the child. Under current arrangement, these group home children often have no designated "surrogate parent." Of special concern, the school district may name the "surrogate parent" for special education purposes under current law. The conflict of interest between the district which may wish to avoid special education expense and the surrogate parent obligated to represent the interests of the child, is self-evident.

Legislation is pending in 2002 to rationalize the surrogate parent designation, to allow the court to appoint an independent person, or to allow counsel for the child to serve this role on a default basis (see SB 1677 (Alpert)).

5. Invisible Children in Trouble

Several populations are in trouble and may not be detected through the mandated reporter system relied upon. The four of greatest concern are (1) those children of TANF families no longer receiving assistance or subject to penalties; (2) the children of the working poor lacking child care help; and (3) the children of incarcerated parents, and (4) recent immigrant children. The first group is discussed below and in Chapter 2, and the second is discussed in Chapter 6. Of particular concern are children under the age of five in both of these groups. Such children are not normally as visible to mandated reporters as are children in school at the age of 5. The data suggest a counterintuitive increase in basic sustenance shortfall of children as TANF rolls decline and the economic recovery continues. But many have left rolls for lower or no other income, some out of immigration based fears notwithstanding the qualification of their children for safety net help. A larger number of children are now below 50% of the poverty line, a level associated with homelessness and serious nutritional shortfall. However, although shelters are at overcapacity, the child neglect authorities are not picking up a substantial proportion of these children.

The second group listed above, the working poor unable to afford licensed child care, lack nearby child care spaces, and often leave their children in questionable settings, with friends, marginal relatives, or young siblings. As discussed in Chapter 6, California has one of the highest rates in the nation of latchkey and other deficient placements for these children. They also are not being reliably picked up by child protective service authorities, are not monitored, and CalWORKs liberally allows placements in unscreened, unqualified settings to facilitate the compelled employment of parents.

The third group may be the most ignored. There is no systematic review of the fate of children whose parents are incarcerated. According to one calculation, 856,000 California children have one or both parents in jail. They include 22,000 children of incarcerated women, 80% of whom are parents, and 75% of whom retain custody of their children, and few of whom can rely on the biological father.⁹⁵ Where are these children? What we know about them is that they are statistically five times more likely than other children to end up incarcerated themselves.⁹⁶ No agency take responsibility to track and review and provide for their well being. One source notes acerbically, “California tracks vital statistics of prisoners, such as the individual’s height, weight, gender, distinguishing marks...laws protect us from felons voting. Yet no law or protocol exists to track whether an individual who is arrested leaves a minor child alone, in an unsafe setting. The California Research Bureau finds that ‘California does not request or keep family information about arrested or convicted persons.’”⁹⁷

The final group—immigrant children—is of special concern to California, the arrival state for almost one-half of new immigrants in the nation. Nearly 5,000 unaccompanied children are detained by INS nationally each year. As many as 80% of these children appear in federal court without an attorney or other relevant adult protection (e.g., guardian ad litem). Federal law does not allow for counsel for these children at public expense. *I.e.* a person accused of a crime, or a parent whose parental rights are at issue has a constitutional right to counsel—but a child alone in this country who has violated no law—may be detained (and many are so detained) for many months, without appointed counsel.⁹⁸

K. Recent and Pending Legislation

1. The Federal Adoption and Safe Families Act of 1997

During 1997, the Congress passed a conference committee bill (H.R. 327) which supplanted prior House and Senate initiatives to stimulate adoptions and further protect children.⁹⁹ The new statute reauthorized the pre-existing Family Preservation and Support Services Act for fiscal year 1999 at \$275 million, fiscal year 2000 at \$295 million, and fiscal year 2001 at \$305 million. The reauthorization amended the prior Act by expanding the already required “state plan” to include “community-based” support services, *time-limited* family reunification services, and adoption promotion and support services. The Act was amended to require assurances that “safety of children” is the paramount concern in state administration.

These changes were driven by a number of concerns, including the following:

- ◆ highly publicized cases of children “reunified” with parents who subsequently murdered those children;
- ◆ the growing evidence of harm to children subject to the then 18-month period of waiting while “reunification” efforts proceed;
- ◆ a large percentage of children waiting the full 18 months even where parents showed little interest in reunification;
- ◆ use of procedural artifices to commonly extend the then 18-month period to two years and beyond; and

- ◆ a “permanency plan” after conclusion of the 18-month period where children were not reunified, and which did not involve adoption and stability but continued foster care drift—often with little further court monitoring.

The new statute made the following changes to address those concerns:

- ◆ “Reasonable efforts” to reunify are guided by “the child’s health and safety” as the paramount concern, and 12 months instead of 18 months is allowed in the normal course to make the disposition decision, with even shorter time spans allowed under some circumstances.
- ◆ “Reasonable efforts” may not be required where there is abandonment, chronic abuse, torture, sexual abuse, the parent has seriously injured a child or sibling, or parental rights to a sibling have been terminated. The first two elements on this list are both new and potentially applicable to large numbers of children in the juvenile court dependency system.
- ◆ Where the court has determined that no reasonable efforts are required, a permanency hearing is to be held within 30 days.
- ◆ Permanency planning and reasonable efforts to reunify with parents can proceed *concurrently*, to enable preparation for a permanent alternative (such as adoption) if reunification is denied.
- ◆ The “disposition hearing” is replaced by a “permanency hearing.” The previous terminology appeared to sanction a continued “holding pattern” status for affected children. Permanency options include return to the parent(s), termination of parental rights and placement for adoption, referral for legal guardianship, or placement in another planned living arrangement.
- ◆ A petition for termination of parental rights must be filed for foster children who have been in state custody for 15 out of the most recent 22 months, and for all children for whom reasonable efforts to reunify are not required. However, exceptions are allowed where children are placed with a relative of a parent, where services have not been completed to allow safe return of a child (and that is the permanency plan), or where there is a compelling reason why it would not be in the best interests of the child to so terminate parental rights.
- ◆ Foster parents, pre-adoptive parents, or relatives providing care have a right to notice and opportunity to be heard in any review or hearing about a child, but do not have “party” status.
- ◆ States may receive an “adoption incentive payment” of \$4,000 times the number of increased foster child adoptions (above a base period average from 1995 through 1997); the money must be used for child welfare services. An amount of up to \$20 million each year from 1999 through 2003 is authorized (not appropriated) for this purpose.
- ◆ To receive incentive payments, a state must provide health insurance coverage to any child with special needs who is subject to an adoption assistance agreement.

2. Federal Foster Care Independence Act of 1999¹⁰⁰

In 1999, the Congress enacted the Federal Foster Care Independence Act, a statute focusing on youths from 18 to 21 years old who age out of the foster care program but are often not given the kind of support youths receive from their families, and are often left without resources, prospects, or income for basic expenses once on their own. Federal funding for “independent living” programs doubled with the legislation, from \$70 million to \$140 million and requires only a 20% state match. The funds can be used to help youths transition to independence by financing: education, training in daily living skills, substance abuse and pregnancy prevention, health services. Those in foster care as of their 16th birthday can use these funds even if adopted before their 18th birthday. States can use up to 30% of the funds for supervised room and board for youths 18 to 21.

The law also increases the amount of assets allowable for children in foster care and still allow eligibility for foster care assistance (from \$1,000 to \$10,000). Hence, where youth has managed to save \$3,000 for further education, his or her foster care parents are not precluded from receiving payments and continuing to provide room and board.

The law also allows states to provide medicaid (Medi-Cal) to those emancipated from foster care, and increases funding for adoption assistance payments to states. Finally, the statute provides the these youth may participate in planning their transition to independence.

Up to 30% may be used for room and board of youth between the ages of 18 and 21. The measure gives states some latitude to provide its monies to children well prior to emancipation (to prepare for it). States may extend Medicaid coverage to these youth until they reach 21. And the asset limitation allowed youth receiving help has been raised from \$1,000 in total savings (the 1998 federal limit) to \$10,000. See discussion below of funding impact of existing and proposed federal and state monies for this population.

3. Federal Child Abuse Prevention and Enforcement Act of 2000

On February 1, 2000, the House of Representatives passed H.R. 764, the Child Abuse Prevention and Enforcement Act of 2000. The law (1) allows state grants under the Crime Identification Technology Act of 1998 to be used to deliver a timely and complete criminal history information to child welfare agencies (e.g., to guide foster care placements); (2) allows state law enforcement (“Byrne”) grants to enforce child abuse laws and to prevent child abuse, including cooperation between law enforcement and the media to apprehend serious criminal abusing children; and (3) provides additional money (doubling from \$10 million to \$20 million) for child abuse victims under the Victims of Crime Act of 1984.

4. Major Recent California’s Legislation: Enacted

a. 1997 Kinship Adoption Statute, As Amended

California implemented some of the provisions of the new federal statute discussed above, and expedited adoptions of foster children by relatives. Effective since January 1, 1998, the state statute (AB 1544):

- ◆ specifies additional circumstances under which reunification need not be offered, roughly similar to the 1997 federal changes;
- ◆ requires the juvenile court to conduct an inquiry of the identity and address of all presumed and alleged fathers, and to notify them of pending proceedings (to prevent allegedly belated claims by fathers to children after adoption is under way or completed);
- ◆ removes some barriers to adoption by relatives, allowing relatives to file petitions for adoption, and allows a parent to enter into a voluntary “kinship adoption” agreement to expedite permanency placement; and

- ◆ allows a family foster care placement to have more than the maximum six foster care children at one time—if necessary to keep siblings together.¹⁰¹

b. Kin-GAP Status for Relatives: Guardianship

Further refining the kinship changes of 1997, SB 1901 (McPherson) was enacted in 1998 and amended in 1999¹⁰² relevant to dependency court appointment of non-parent relatives as legal guardians. The program is called the “kinship guardianship Assistance Program (Kin-GAP)”. The court is required to read and consider a specified list of factors considered by the agency supervising the minor and the county adoption agency to gauge the eligibility and commitment of the prospective guardian. Under prior law, once a guardianship was established for such a dependent minor, the court could continue dependency jurisdiction, but under the new law, the court must terminate its jurisdiction absent exceptional circumstances after a period of time in satisfactory guardianship over the child. Thus, the new procedure gives kin guardians the chance to obtain parental control over the child similar to the authority of adoptive parents (there is no supervening court authority).

Equally important, underlying law provides aid to any minor who has been placed in foster care because he or she has been adjudged a dependent child or ward of the juvenile court or because of other specified circumstances. SB 1901 established, as of July 1, 1999, the Kinship Guardianship Assistance Payment program to provide financial assistance for children who are then placed in legal guardianship with a relative. The bill directs DSS to establish payment rates, adopt emergency regulations, administer, and apply for any necessary federal waivers to implement the program.

Current benefits under “Kin-GAP” include: (1) 100% of the basic TANF-FC rate schedule, based on the age of the child; and (2) aid beyond the age of 18 continues (as does CalWORKs and TANF-FC) if the minor is in high school, or an equivalent training program full-time and is “reasonably expected” to finish prior to his or her 19th birthday.

To qualify, the minor must have lived with the guardian for at least twelve months; juvenile court jurisdiction must terminate after January 1, 2000; the child’s parent does not reside in the same home; and the minor meets basic CalWORKs eligibility.

On July 10, 2000, Governor Davis signed AB 2876, a budget trailer bill, which improves further upon the program. For example, it makes dependency court jurisdiction termination optional (recognizing that there are circumstances where a child’s best interests may make continued jurisdiction preferable, and a guardian may so opt. Further Kin-GAP children will be eligible for the Independent Living Program at age 16. These children will be allowed to retain cash savings up to \$10,000 including interest, and other technical changes are made to give these children the same options available to foster children generally. As noted above, the Kin-GAP population has tripled from its 1999 start, and is projected to number 15,309 during the projected 2002–03 fiscal year.¹⁰³

c. Audits and Expanded Independent Living Program

SB 933 (Thompson) (Chapter 311, Statutes of 1998) made several significant reforms to California’s foster care system, based on the recommendations of a task force assembled by the Joint Legislative Budget Committee. The task force was convened in response to high-profile media criticism of the foster care system in the *Los Angeles Times*, *Sacramento Bee*, and the *Los Angeles Daily Journal*, particularly the state’s regulation of group homes and out-of-state placements. This law appropriates \$65.5 million to fund annual audits of group homes, perform background checks on group home employees, improve staff training, expand support services for foster children, expand the Independent Living Program, increase monitoring of foster placements, and other programmatic changes. Another \$50 million is appropriated in this measure to give group home and foster family agency operators a 6% increase in the rates paid by the state.

d. Proper Social Worker Caseloads

SB 2030 (Costa)¹⁰⁴ requires DSS to contract with an independent and qualified entity to conduct a study to determine appropriate caseload per child welfare social worker and best practices within the child welfare field that will adequately protect children. The bill required DSS to report the findings of this study no later than January 30, 2000. See discussion above and CWS account below regarding the blunting of implementation by proposed 2002–03 statewide county staff reductions.

e. Attorneys for Abused Children

Enacted in 2000, SB 2160 (Schiff)¹⁰⁵ provided that every child subject to dependency court jurisdiction has a presumed right to independent counsel to represent him or her, unless the court makes specific, detailed findings that such representation is not necessary. The proposed rules of the Judicial Council suggest that such findings would include the finding that a child is sufficiently competent to represent himself or herself with the skills of an attorney—an unlikely finding. The result of the legislation is likely to be, for the first time, universal representation of children—a right afforded parents of such children in California and all other states.

f. Amnesty for the Surrender of Newborns

SB 1368 (Brulte),¹⁰⁶ also enacted in 2000, allows any person having lawful custody of an infant less than 72 hours old may surrender him or her to a public or private hospital ER room (or other designated locations) without suffering liability for child abandonment. The legislation was supported by child advocates across the political spectrum. It is intended to prevent a substantial number of infanticide offenses now occurring.¹⁰⁷

g. Dependency Court Visitation Orders Survive Jurisdiction Termination

AB 2464 (Kuehl)¹⁰⁸ resolves a conundrum plaguing juvenile dependency courts. Theoretically, the court's jurisdiction terminates upon reunification et al., but the court has heard substantial evidence and has entered orders which properly apply post hoc. This bill, enacted in 2000, allows for the continued applicability of such orders. While a seemingly esoteric procedural point, it has momentous practical implications in allowing courts whose first obligation is the protection of children to extend that protection further.

h. Must Report Certain Crimes Against a Child Under 14 Years of Age

Spawned by the well publicized strangling of a little girl in a bathroom in a Las Vegas casino, the legislature enacted in 2000 a measure to require the reporting to a peace officer any observed lewd act accomplished by force or fear, murder, or rape victimizing a child under the age of 14. Currently, certain categories of persons (social workers, teachers, physicians) are “mandated reporters” charged with reporting child abuse, broadly defined. AB 1422, enacted in 2000, makes it a misdemeanor offense for any person who sees one of the three crimes listed above and does not report it. One inducement for the statute was the fact that the companion of the killer of the Las Vegas casino victim did not report the offense and suffered no civil or criminal sanction as a result.

i. Immediate Criminal Checks of Foster Care Providers

SB 2161 (Schiff) was enacted in 2000 to facilitate quick criminal record checks of persons in whose custody foster children are placed by county authorities, including placements with relatives. A failure to obtain such checks expeditiously has contributed to molestations and other further victimization of foster care children while in the supposed protective custody of the state. The bill gives county welfare departments access to criminal history information in the California Law Enforcement Telecommunications System (CLETS).

j. Partial Expansion of Wrap-Around Services

AB 2706 (Cuneen) expands the number of children able to participate in the Wraparound Services Pilot Project. This concept allows counties to provide comprehensive services for children without removal from their current homes, rather than place such children in more expensive and impersonal group home settings to obtain those services.

k. Transitional Aid

Enacted in 2001, AB 1119 (Hertzberg) provides \$18 million for transitional aid to foster children 18 to 21 years of age who have emancipated out of the system (see discussion above of the reduction of funds for foster children from a promised \$330 million to this limited addition for foster children). The funds are divided between transitional housing help (\$10 million), educational costs (\$6.5 million) and health related coverage (\$1.5 million). The amounts committed will fund from 10% to 15% of anticipated transitional/education costs for the population addressed. As noted below, help to age 23 at a scale to assure higher education opportunity was killed in suspense.

I. Minor 2001 Legislative Adjustments

Although the three major bills involving financial investment and major opportunity for foster children were killed in 2001, seven bills of some import but involving little cost were enacted as follows:

◆ AB 333 (Wright) requires that social worker visits with foster care children include a private conversation with the child. The change is not academic, since foster parents commonly seek to be present while visited by county child protective service workers and such presence may impede accurate information about a child's living situation.

◆ AB 636 (Steinberg) requires a work group for child and family service system review, and the systematic state monitoring of county welfare systems consistent with applicable federal standards, with reviews to begin January 1, 2004. The measure is to some extent a preemptive effort by the state to anticipate a federal probe of county child welfare performance (see discussion of investigations below).

◆ AB 685 (Wayne) requires family foster care homes to report accidents of injury or death to DSS before the close of the next working day, including reports to parents and guardians.

◆ AB 899 (Liu) establishes the "rights" of foster care children in California statute, including 13 existing regulatory protections and four new rights. Social workers must inform children of these rights.

◆ AB 1261 (Migden) conforms state law to amended federal law concerning the independent living program, *i.e.*, it allows a foster child to have \$10,000 in total savings or resources (rather than the previous \$5,000) in order to be eligible for assistance. However, note that if a child is the beneficiary of an insurance policy or other income meant only for him or her, the state claims the right to take such monies to recompense itself for foster care costs. Legislation to allow such children to benefit from such revenue intended for them has thus far failed.

◆ SB 104 (Scott) reduces from 90 days to 30 days the period during which parents can sign a written statement revoking a previous signed consent to the adoption of their child.

◆ SB 841 (Alpert) requires DSS to provide technical help to counties that elect to develop Early Start Emancipation Programs for youth ages 14 and 15. See discussion of more liberal allowance for federal funding from the new federal Foster Care Independence Program—allowing some help down to this age so a child in the foster care system may prepare for emancipation to come.

m. 2002 Programs/ Proposed Legislation

(1) SB 1312 Child Abuse Index Due Process Hearings

SB 1312 (Peace), currently pending in the legislature, is intended to provide “due process” to persons whose names are placed on a state child abuse index. The index is a compilation of mandated and other child abuse reports. A San Diego journalist (Mark Arner de France) caught in a divorce dispute suffered a false abuse report and had to expend substantial expense to excise his name from the state index. The legislation seeks due process hearing rights for those added to the list. However, child advocates note that the list is not a public document, but is a compilation designed to assist law enforcement in pattern detection. It does not purport to be an adjudicated judgment. Each year, 44,000 child abuse investigations are added to the list, which now contains 2 million possible victims and 817,481 suspects. The Central Index was established in 1965 and its reports to the State Department of Justice come from police, sheriffs, county welfare departments, and probation departments. The list is checked by law enforcement to detect possible patterns, and by licensing agencies, persons who apply to adopt children, or serve as foster care children, or seek to become child care workers. Being on the list is not a bar to such a status, but simply triggers inquiry to assure the safety of involved children.

To require due process hearings at such an investigative level, given the confidentiality of the list, its role to simply trigger inquiry, and the volume of information culled, is unworkable and would wound efforts to protect children. Those efforts often depend upon the confluence of 5 or 6 independent indicators of a problem—each one of which alone would not pass a judicial review.

The measure is analogous to prohibiting the Justice Department from adding any name to a terrorist watch list unless there is first a due process hearing. Or to prohibit the Medical Board from maintaining complaint records against physicians in its investigative files unless each one is preceded by a due process hearing. While the removal of such an entry that has been adjudicated as groundless (such as is the case with Arner de France) would not harm child protection, a broader due process system would do so. The bill’s focus on rectifying a narrow wrong without regard to its broader impact is symptomatic of Sacramento’s penchant for legislation by atypical anecdote or without regard to broader implications to inarticulate groups collaterally harmed.

Parents who have been accused of wrongdoing currently have a phalanx of due process protections—even on the civil (non-criminal side). Those protections include: review of the case by social workers prior to issuance, review by attorney public officials for the county, pleadings setting forth the specific acts of abuse, a detention hearing within 48 hours of a child’s removal, the appointment of counsel for a parent at public expense if need be, the burden on the state to show parental unfitness by “clear and convincing evidence,” a hearing before a neutral superior court judge not only at point of detention, but to warrant “jurisdiction” by the court in a separate hearing. This is followed by a statutory obligation to seek reunification buttressed by “reasonable efforts” to facilitate that reunification, followed by termination and permanent placement hearings—also before a neutral adjudicator with the burden on the state. At most of these junctures, review to an appellate court by way of writ review is available. With all of these safeguards for the rights of parents, the Legislature has seen fit to remove the absolute immunity of social workers recommending child removal, and now this measure would add yet another element of imbalance against abused children. Those children left in homes for continued abuse are afforded none of the protections listed above.

(2) Department of Social Services 2003 Plan for Child Welfare Improvement

In May 2001, the Department of Social Workers released a report drafted by a 60 member group of “stakeholders”—foster parents, foster agency directors, adoption agencies, and officials of the Department, including Director Rita Saenz. The Report calls for a retreat from the “punitive philosophy” regarding parental abuse, and an more positive attitude to facilitate reunification. Hence, counties are urged to make drug testing arrangements convenient for parents with addiction problems to remove gratuitous barriers to compliance (such as requiring testing at inconvenient locations and times). It also urged a more refined system, adaptable to the individual situations extant, and not attempting to force a standard regime of parental behaviors on all persons. The Report draft recognizes the problem of social worker caseload excess and the inadequacy of family foster care supply. The group is now soliciting comments and is scheduled to report back to the legislature in 2003.

The refinement sought by the report is not realistic given current resources committed to the child protective services, foster care, and adoptions. The current administration has not supported reform likely to have an empirical impact: increasing family foster care supply and quality and investing public funds in that effort (allowing legislation to accomplish those tasks die in Suspense in 2000 and in 2001, and fated to do so in 2003—see AB 1330 above). Similarly, it has not supported meaningful educational support for emancipating foster care youth. Nor has the administration undertaken policies to revise dependency court/foster care confidentiality and other barriers to the adoption of children.

Instead, the administration's actions have included the rejection of those underlying reform efforts, and the proposal in May 2002 to cut resources devoted to the system locally by 20%, as discussed below.

(3) A Manual for New Parents

In an effort to buttress prevention of child abuse and neglect, the California Child and Families Commission (the Proposition 10 state commission) voted in November of 2001 to develop a set of "operating instructions"—a collection of 8 informational booklets, a resource guide, and six videos, to assist new parents. The statewide project will be funded with a \$20 million grant, and follows the format of an Alameda County pilot project in place since October 2000. The material was compiled by experts at the University of California at Berkeley. About 500,000 of the brightly colored boxes of information will be distributed at hospitals, prenatal clinics, or during home visits.

5. Major State Legislation Vetoed or "Suspense File" Killed Without Vote

a. California's "Suspense File" Private Graveyard for Foster Care Legislation

Every bill which may cost more than \$150,000 travels the normal legislative course to policy committee, but then is referred to the appropriations committee of each house prior to final vote on the floor. However, such measures are not voted upon, but are placed in what is termed a "suspense file." The Governor's Office of Finance or other representatives then inform the two respective chairs of the Assembly and Senate Appropriations committees as to which measures should be "pulled" from that "suspense status" for vote. Such consultation is particularly feasible where the committee chairs and Governor are from the same party, as is the case currently in California. The procedure allows legislators to introduce important legislation, for it to be debated publicly, voted upon favorably in policy committees and on the floor of either Assembly or Senate, and then fall into the suspense file, from which it never emerges. No legislator is obliged to vote against it, and the Governor escapes having to affirmatively and publicly veto it. Bills are killed without public vote.

During 2000 and 2001, over 25 such measures relevant to abused children were terminated by the "Suspense File" method. Given the lack of political influence of the children who would benefit from these measures, they tended to dominate as subject matter within suspense files. Most had received widespread bi-partisan support and had been approved in every public vote conducted. Most had been introduced by authors with ostentatious press releases.

In 2001, the State Assembly Democratic Caucus met and announced that foster care reform would be the "highest priority" of the Legislature, presenting an impressive package of bills and a price tag of \$330 million. As discussed below, the most important bills were then terminated in the Suspense Files of Appropriations, or otherwise modified. The sum for foster care children yielded at session's end was under \$18 million, which is being deferred into 2002–03 for additional savings.

b. Important Bills Vetoed in 1999

Three important bills to protect abused children were vetoed by Governor Davis in 1999. First and foremost, SB 305 (Vasconcellos) would have required basic parenting skills as a part of high school curriculum. The Governor's veto message contends that such subject matter should be left to parents, churches, and non-profits. AB 645 (Honda) would have required the juvenile court to ensure that children

within their jurisdiction are screened for special education qualification and given these and related services to which they are entitled. The Governor's veto message contended that "this bill would create mandated costs for local governments to expand the scope of assessments,...[which] exceed the level of funding provided for these purposes in the Budget Act of 1999." Finally, AB 607 (Aroner) would have required foster care children to receive mental health assessments and the annual physical examinations required for impoverished children (see EPSDT account in Chapter 4). The Governor's veto message similarly cited budget concerns.¹⁰⁹

c. Important Bills Vetoed/Killed in 2000

Governor Davis vetoed a substantial number of bills during 2000. One Democratic legislator remarked that Governor Davis vetoed a substantially greater number of her child related bills than former Republican Governor Wilson had. Abused children constituted the group suffering the greatest and most serious of rejections by the new administration. Those items rejected by the Governor of particular merit, and where the Gubernatorial veto message lacked justification included:

- ◆ **AB 1348 (Vasconcellos)** was yet another attempt to introduce parenting education more effectively into public curricula. The case for that introduction is implicit from the condition indicator discussion above. The measure would have required the Superintendent of Public Instruction to convene a summit by September 1, 2001 to develop a master plan for parenting education. As with his 1999 veto of another measure (above), the veto message cited as reason that it would involve state intrusion "in a subject which is the rightful domain of families, faith-based entities and non-profit organizations."
- ◆ **SB 147 (Alpert)** provided that independent foster care adolescents shall be Medi-Cal eligible without income or asset screening (to streamline and facilitate coverage).
- ◆ **SB 2091 (Ortiz)** would have created pilot projects in three counties to provide enhanced services to emancipating foster care youth (with possible roll out of strategies which prove successful).
- ◆ **AB 2012 (Shelley)** would have facilitated school district educational services to foster youth, an area of great concern given some group home assumption of this educational function.
- ◆ **AB 2392 (Corbett)** would have expanded the list of persons who could make educational decisions about foster care children to clearly include foster parents (commonly denied that status to the detriment of involved children). The Governor's baffling veto rationale was that such inclusion would "infringe on the rights of natural parents."

In addition to these vetoes, the "Suspense File Termination" of bills without vote described above led to the demise of the following additional measures in year 2000:

- ◆ **SB 949 (Speier)** would have increased the supply and quality of family foster care providers. The bill recognized that 80% of adoptions come from such providers. As discussed above, they cost one-seventh the amount publicly spent on group homes, a common alternative. Accordingly, the measure: (1) establishes an office with the assigned task of promoting family foster care supply, with a substantial outreach and media budget; (2) increases compensation for family foster care to attract supply; (3) keys adoption assistance payments to foster care levels to remove financial inducements not to adopt; (4) provides enhanced compensation for providers with special certification (enhanced training, skills). Although the increase in family foster care compensation involves a cost, each such placement saves substantial funds *vis-a-vis* the group home alternative, while increasing personal attention and likelihood of adoption.
- ◆ **SB 1391 (Schiff)**. Related to SB 949 was SB 1391 (Schiff), which would shift dependency court from a presumed confidential system to a presumed public process while allowing for

closure where in the best interests of the child. Child advocates generally agree that the shift is important and beneficial to children. While confidentiality may be important in individual cases, its pervasive status hides the over 100,000 children in foster care from attention which can facilitate adoption. That secrecy also hides mistakes and lowers the public visibility of these children, contributing to the intractability of their plight. As with the measure above, the costs associated with this measure are insignificant; nevertheless, it was placed in the "suspense file" and was not removed for public vote.

d. Important Legislation Killed in 2001

As noted above, on April 17, 2001 the Democratic leadership of the Assembly publicly announced a coordinated package of foster care related legislation. They pledged \$330 million in resources to rectify deficiencies across a spectrum of problem areas, and identified thirteen bills as part of their coordinated high priority program. Although a powerful combine, the final amount was reduced to \$18 million for transitional living expenses. The May 2002 announced a savings because of "deferred county implementation of the Supportive Transitional Emancipation Program."¹⁰ Legislation pending in 2002 promises virtually nothing for these children. The following two measures were of the greatest importance to emancipating foster children:

- ◆ **AB 557 (Aroner)** authorizes and stimulates local recruitment of more family foster care providers, recognizing the current supply shortage.
- ◆ **AB 1330 (Steinberg)** increases rates for family foster care providers, sets up a certification system with a compensation augmentation, bans the designation of children as "unadoptable," and establishes a state office dedicated to the enhancement of both supply and quality of family foster care providers.

All were killed by "Suspense File" referral during 2001 without vote. AB 1330 had received the approval of the Assembly Policy Committee, the Assembly floor, and Senate Policy Committee with no negative votes before being terminated in Senate Appropriations suspense.

L. Major Litigation 2000–02

1. Youth Law Center Child Shelter Challenge

On December 18, 2000, the Youth Law Center filed *Warren v. Saenz* in San Francisco superior court,¹¹ challenging the State Department of Social Services (DSS) oversight of the "receiving" shelters throughout the state where abused children are brought upon removal from their homes. The suit alleges that the state Community Care Licensing Act requires state DSS to license, monitor and regulate any shelter given 24 hour residential care to abused children. The suit points particularly at the nine shelters run respectively by Los Angeles, San Diego, Santa Clara, Orange, Placer, Humboldt, Kern, San Joaquin, and Sonoma counties. The law requires shelters to conduct background checks and training for staff, to limit the use of physical restraint, and to prevent overcrowding. Theoretically, the violation of statutory minimums should yield state enforcement against the licensee. Accordingly, a petition for writ of ordinary mandamus may lie against a state official who "abuses his discretion" by violating a statute, or by failing to carry out a mandatory duty.

The suit seeks an order against DSS director Rita Saenz to either compel compliance, or to revoke the licenses of non-complying shelters. The detailed allegations in the Center's pleadings are disturbing. They include the contention that police were called to the Los Angeles main shelter MacLaren Children's Center 339 times during the first six months of 2000, approximately twice a day! The allegations concerning crowding contend that the facilities are commonly well above their rated respective capacities. For example, although MacLaren is rated to serve a maximum of 125 children, its average population in the first 6 months of 2000 was 152 and it reached 181 on occasion. Other shelters were similarly overcrowded. Children who have been abused or badly neglected are removed from their homes and end up sleeping on cots, couches, and sleeping bags. The state's initial defense is that the

receiving facilities which are the subject of the suit are not covered by the community care licensing statute (*i.e.*, that the state has no duty to assure compliance with the law).¹¹²

On April 13, 2001, the Center obtained a stunning order from superior court judge David A. Garcia, rejecting the state's argument, and commanding county run shelters to comply with state law. Failure of any shelter to do so could result in an order directing DSS to close it down. Importantly, the court ruled that the shelters must comply with the same strict licensing requirements imposed on privately run facilities. Moreover, the court gave the shelters 60 days to comply.

2. Litigation to Require Monthly Visits of Children in Foster Care

In *Alliance for Children's Rights v. Los Angeles County Department of Children and Family Services*, 95 Cal.App.4th 1129 (2002), the Second District Court of Appeal upheld a Los Angeles superior (juvenile) court order that social workers must visit foster children at least once every month. The interpretation of state law interposing that requirement was decided in the context of 7 deaths of foster care children in Los Angeles County during 2001—a record number. The Los Angeles County Board of Supervisors voted in February 2002 to appeal the decision to the Supreme Court, but that Court denied review in May 2002.

M. Recent and Pending Investigations of California's Child Welfare System

In addition to the various investigations and reports (and litigation) discussed above, several additional inquiries have been started or concluded relevant to the state's child welfare system, most of them federal, as follows:

1. DHHS Audit Report on Protections Provided to Children in Foster Care

On December 22, 2000, the federal Department of Health and Human Services released its audit on California's performance in complying with federal minimum standards in the protection of her children in foster care.¹¹³ This audit focused on the smaller population of foster care children so designated through the delinquency side of juvenile court (*e.g.*, possible juvenile offenses may be involved). Such children may be incorrigible as a result of abuse or neglect and are considered appropriate not for juvenile hall or punishment, but for probation referral to foster care to provide effective adult supervision.

The audit took a sample of 81 cases and found extensive violations of minimum standards. Findings included the following: 76 of the 80 cases requiring periodic reviews did not always have such reviews or they were late or they failed to meet the State's own standards. The audit found that 52 of the cases were required to have a permanency hearing (to determine placement for the child) and 47 of these had similar deficiencies. The audit also found that in some of the 59 cases where judicial determinations were made they were either "inconsistent with the facts of the case," or "were not in the best interest of the children."

Consistent with some of the litigation allegations discussed above, the audit found a general lack of oversight by the state's Department of Social Services. Most alarming was the concluding summary: "We found significant problems in the mandatory foster care protections provided to federally funding foster care children....the State plan requirements for the case review system were, in large part, not met."¹¹⁴

2. DHHS 2002 Audit of California's Foster Care Performance

A 1999 report (see discussion above) found that the state needed to double its 6,449 child welfare workers to meet minimum legal requirements for caseload. In addition, another federal General Accounting Office study released in November of 1999 found serious problems with California's system of providing for the transition of foster care youth into independent adulthood.¹¹⁵

Following these and related federal findings, the federal Department of Health and Human Services announced a compliance audit, to be completed in 2002. The announcement indicated that DHHS was disappointed in the state's performance (where caseloads rank among the highest in the nation). The audit has been announced as the most comprehensive inquiry to "measure the quality of foster care. Inspectors will take a comprehensive look at California's programs, from the safety of foster children, to how long it takes to place children in permanent homes."¹¹⁶ In February of 2002, the DHHS announced its inclusion of Los Angeles County's system, noting the death of 7 children during 2001 while in foster care "protection."¹¹⁷

The DHHS as emphasized that it intends to audit not merely process numbers, but gauge outcomes for affected children. Susan Orr, deputy director of the Children's Bureau of DHHS noted that one quarter of all foster children emancipating from the system nationally become homeless as adults, half do not graduate from high school, and 60% of the girls have a child within four years of emancipation.¹¹⁸

II. MAJOR PROGRAMS AND BUDGETS

State funding for child protection is allocated to five major accounts. Child Welfare Services (CWS) funds the initial response system and associated costs of "family preservation" (leaving the children in the home while providing counseling, parenting education, or other services). Where children are removed, parents normally have twelve months to seek reunification (the return of the child). Child Welfare Services can fund these services as well, which may involve drug testing and substance abuse rehabilitation. And the CWS account can fund the direct costs of care for a child for up to thirty days after removal from a parent's home, including initial foster care.

While a removed child is under the jurisdiction of the juvenile court, he or she may be ordered into temporary placement with a relative or with a foster care provider. After 30 days, payment for care generally occurs through the Aid to Families with Dependent Children-Foster Care (AFDC-FC) account—the largest account in the child protection area.

Where reunification is denied, a child must be given a "permanent placement" plan, which hopefully leads to adoption, with help from the Adoption Assistance Program (AAP).

The state Office of Child Abuse Prevention (OCAP) promotes prevention programs, including "Healthy Beginnings" and a number of new prevention initiatives.

Finally, juvenile court costs were primarily paid as part of local county budgets until 1998, when state "trial court funding" took effect; the impact of this change is still unclear statewide, but troubling problems for children are developing in some counties, as discussed below.

A. Federal Welfare Reform Changes

All child protection programs in California are heavily dependent upon federal funding. Federal funds for Aid to Families with Dependent Children-Foster Care (AFDC-FC) is available for 50% of the cost of placement for children eligible under federal eligibility guidelines, based upon the income of the family of origin. These costs are funded through the Title IV-E Foster Care program. Federal welfare reform has not directly changed AFDC-FC, which is separate from the new TANF system—and remains an entitlement for every child in need.

Child Welfare Services is dependent for over 50% of its total dollars on federal Title IV-B Family Preservation and Support revenues. The rest is made up with state funds and state revenues realigned to counties.

Adoption and adoption assistance spending relies on the federal Title IV-E Adoption Assistance Program for 30% of program revenues.

The Office of Child Abuse Prevention, while the smallest state program, still relies on the federal government for over 20% of its program revenues.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA) does not directly alter child protection programs. The traditional requirements of the federal Adoption Assistance and Child Welfare Act remain in force. Eligibility, entitlement status, and funding for AFDC-FC, Adoptions Assistance, and Medicaid for foster care and adopted children are substantially maintained in current law. A child's eligibility for federal foster care and adoption assistance will be based on the eligibility of the child's family for AFDC according to the rules in effect on June 1, 1995, rather than on the family's eligibility for the new TANF welfare block grant.

The few foster care provisions in the PRA require states to consider giving preference to an adult relative over a non-related caregiver when determining a foster care placement for a child, and open up eligibility for Title IV-E foster care payments to for-profit child care institutions as well as nonprofit and public institutions. Enhanced funding for states' foster care, adoption, and child welfare tracking systems is extended for one year, and the Secretary of the U.S. Department of Health and Human Services is required to undertake a national random sample study of abused and neglected children.

1. Federal Social Services Block Grant Cuts

Although the PRA does not appreciably change rights or standards, it cuts federal funding contribution substantially. Funds for the Social Services Block Grant, which is used in part for child protection services, were reduced 15% in fiscal year 1997, and are being maintained at that reduced level through 2002. Inflation and California child population gain will produce per capita real spending cuts 25%–30% lower by 2002 than was committed in 1996–97. In addition, new demands are placed on the Social Services Block Grant by other provisions of the welfare bill, including the need for vouchers for children whose families lose TANF aid. A state is allowed to use up to 30% of its TANF funds to carry out programs under the Social Services Block Grant and the Child Care and Development Block Grant, provided that not more than one-third of the transferred amount may be used for Title XX child welfare programs.¹¹⁹ Hence, up to 10% of federal TANF funds may be used for child abuse/neglect spending—an important provision if TANF cut-downs produce substantial foster care demand increases as children are surrendered or taken from families unable to provide basic sustenance and barred from adequate public help for that purpose.

2. Cross-Cutting Provisions

Although not altering the child welfare system's legal structure, some provisions of the PRA will affect child protection indirectly.

a. Emergency Assistance

Under the PRA, the Emergency Assistance Program is merged into the Temporary Assistance to Needy Families (TANF) Block Grant. States have the option of continuing to spend emergency assistance funds for family support and other child protection activities but are not required to do so. If they do, any assistance provided to a family under the TANF Block Grant, including family support and other crisis services, will count against the family's five-year time limit on assistance under the block grant even if the family is not also receiving cash assistance.¹²⁰

b. Supplemental Security Income (SSI) for Children

The PRA's changes to the SSI Program for children with disabilities is affecting children with disabilities and their families. Some children in state care will lose SSI, requiring states to use their own funds for care. SSI for some adopted children will also be jeopardized, although Title IV-E adoption assistance payments already being made will continue. In the future, however, fewer children will be eligible for SSI. Families of children who lose SSI, or are not eligible under the new rules, could turn at some point to child protection agencies for services.

A significant number of foster and adopted children with special needs currently receive SSI, and some of them will have to be re-reviewed under the new rules because they qualified on the basis of the Individual Functional Assessment (IFA) or other provisions which have been eliminated. The two largest categories of SSI/SSP (State Supplementary Payment) withdrawal include children who qualified based on non-medical referrals (“maladaptive behavior”) and children with respiratory problems. The former often involves seriously mentally retarded, ADD, or ADHD children who were born drug-addicted or otherwise subject to abuse or neglect. While disability is clear and serious, there is no organ dysfunction, illness, or traditionally treatable medical condition involved. The condition does not meet the “list” oriented to common adult illness and injury which dominates qualification.

Approximately 90,000 California children received SSI/SSP as of 1997. According to the California Department of Social Services, 14,756 cases were subject to reevaluation under the new standard. As of October 1997, the Department reported that 12,176 of those cases had been reviewed, and 39.7% (4,837) resulted in benefit termination.¹²¹

In addition to the issue of terminations, the same new strict criteria are used to deny new child claimants since August 22, 1996 (the effective date of the PRA); here, the rejection rate nationally has risen to 56%. Final California-specific data are not yet available. Adding to the concern over the withdrawal of SSI/SSP is the record of those cases reviewed by independent administrative law judges. As of January 1998, 63% of the terminations nationally have been reversed¹²² (see detailed discussion of this issue in Chapter 5).

c. Immigrant Children

The problem of unlimited arrival detention of unaccompanied child immigrants is discussed above. Beyond this population are immigrant children who may be abused once they find their families. These children (whether documented or not) continue to be eligible for foster care and adoption assistance payments, with the exception of children placed with foster parents who are themselves unqualified immigrants. The children also continue to be eligible for most child welfare and mental health services because such services can be described as child protection services and they are not “means-tested.”

However, legal immigrant families will be denied other types of assistance formerly applicable, jeopardizing the ability of many who have fallen on hard times to care for and nurture their children. Most legal immigrants arriving after August 22, 1996 are now ineligible for both SSI and food stamps from federal sources. State-only programs currently fill the void, but depend upon year to year funding—with 2002–03 funding difficult and future protection precarious given the general fund shortfall.

Title IV-B and IV-E foster care and adoption assistance programs, emergency Medicaid, the School Lunch Act and other Child Nutrition Act programs, Job Partnership Training Act, Head Start, and other programs are specifically excepted from federal legal immigration cut-off. However, assistance is likely to be denied to many of these lawful immigrants or delayed for longer periods due to new rules on the counting of a sponsor's income in determining a family's eligibility (see discussion in Chapter 2).

These changes for legal immigrants are important in light of recent indications that immigrant children are now suffering extraordinary poverty and hunger (see discussion in Chapters 2 and 3). The increase in the number of children living in families unable to provide shelter and food prospectively may increase the number and burden of child welfare services “neglect” cases (see recent research so indicating discussed below).

3. The PRA and CalWORKs: TANF Cut-Downs and Cut-Offs

a. Limited Employment Availability, “Parent's Share” Cut-Downs, and the Child Welfare System Safety Valve

Although the child protection system cannot protect all of the children affected as families are cut from TANF support, those cuts may stimulate more reports of neglect—particularly for older children in school, where their physical condition will be more visible.

Under the “CalWORKs” alternative selected by California for PRA implementation, 700,000 children are exposed to elimination from TANF grants of “the parent’s share.” Some may be sheltered by the rent/utilities voucher provision of CalWORKs (if implemented as written) until 2003, or up to 60 lifetime months of assistance. Even assuming an optimum scenario for impoverished children (full voucher provision where sanctions occur, or full county provision of public employment from 2000–03), at that point most are likely to suffer TANF aid reductions even if working close to half-time at minimum wage. Any receipt of TANF funds counts against the 60 month lifetime total. Federal money is cut-off for both parent and children under current law. California currently may provide a “child’s share” but its future funding is not certain given current budget constraints. Even with state fill-in of the “child’s share” a typical mother and two children would be cut to \$450 per month in assistance, plus food stamps valued at about \$210 per month for the three of them—and insufficient for the nutritional needs of children. Moreover, as discussed in Chapter 3, hundreds of thousands of children eligible by law for food stamps (particularly those with parents entering the CalWORKs program) are not receiving it, and are losing Medi-Cal coverage as well. The \$7,920 in total income is just over one-half of the poverty line, of particular concern in a high rent state. Should state funding not be available, the sole resource for sustenance may be the \$70 per month per person from food stamps. A parent put in this position has a difficult decision about whether to surrender a son or daughter to the child welfare system to assure sustenance and shelter where private charity is not available.

Systematic or wholesale reliance on the child welfare system to protect children subject to these cut-downs and cut-offs is not supported by current system practices, as indicated above. The problems with such reliance where parents do not surrender or abandon their children to the system include the following:

- ◆ Parental rights may not be terminated without a finding of “unfitness” to parent by “clear and convincing evidence.” Parents are entitled to publicly paid counsel to enforce that constitutionally grounded right.
- ◆ Few neglect cases have succeeded based on poverty alone, particularly where federal law independently requires the state to use “reasonable efforts” to preserve the family.
- ◆ Even severe harm is not likely to be reported for children aged 0–5, who are not yet in school (where their condition might be detected by mandated reporters), but who are at the age where they are especially vulnerable to damage from homelessness and malnutrition.
- ◆ Child protective services would have to cope with a substantial number of such children increasingly subject to cut-downs to extreme poverty levels—occurring shortly after 2002 and predicted in some of the budget projections of the Governor in 2002–03.
- ◆ Where protection is afforded, it would be through a foster care system which is two to three times more costly per child than is TANF.

The PRA has raised the income level of some children through the employment of parents. But a large proportion of those who have left rolls have not obtained alternative employment, and are now in relatively desperate straits. While the economic recovery—perhaps with some help from the PRA’s increased investment in job training and work requirements—has reduced the number of children living below the poverty line by more than 200,000, it has also reduced a larger number from just below the line (e.g., the 70% covered by TANF plus food stamps) to extreme poverty levels (below 50% of the poverty line). At such extreme levels neglect may become endemic. Such neglect will not be reported to the child welfare system at point of income cut-off, but after observable harm has occurred and is reported into the intake system.

Reports to county hotlines of even a small percentage of those scheduled for possible further aid reductions would arrive at already stretched facilities. Currently, 20,000 children are ordered by the courts into foster care statewide annually. If only 5% of those newly at risk by 2003–04 warrant removal, the current number would almost triple. The difficulty of protection is exacerbated by the generally low priority given neglect reports over immediately endangering beatings or molestations.

b. PRA: Drug Offense—Lifetime Assistance Ban

Some of the PRA's specific "bright-line" restrictions will particularly affect child protection agencies. One such rule is a lifetime prohibition from TANF and food stamps to any person convicted of a drug offense. Although children remain eligible, those parents—even those attempting rehabilitation—will be categorically barred. A substantial majority of parents statutorily entitled to "reasonable efforts" to reunify with their children have alcohol and drug abuse problems. The cut-off of parents seems to conflict with the mandate of federal law to reunify families. A more balanced approach would be a "two-strike" rule. On first strike, all aid is in the form of rent and food vouchers to inhibit cash for drugs or alcohol. On the second strike, aid is barred and children are immediately removed for adoption unless minimum sustenance is assured for involved children.¹²³

c. PRA: Minors Removed—Assistance Terminates

The second PRA restriction with a child protection impact prohibits aid "where minors are absent from the home." While parents should not receive aid *qua* parents without children, here the state has removed them and is legally committed to assist with reunification. A short period of waiver so support may continue for four or six months if a reunification plan is in place would achieve statutory compliance.

d. Surrender of Children; Transfer to AFDC-FC

One possible overriding result of the PRA may be the voluntary surrender of children to juvenile court jurisdiction, and subsequent placement with relatives by court order, followed by AFDC-FC claims by grandparents, aunts and uncles, etc.—at higher levels of public cost than TANF, and payable even if their income is too high to qualify for TANF. Although irrational, such an end result would be more rational than most of the alternatives offered and may be expected for those children with competent counsel and willing relatives.

e. Desperation Outcomes

PRA cut downs and cut-offs will increase desperation. TANF fraud attempts, parental drug dealing and illicit income will become more prevalent. Prostitution, including child prostitution, will increase. These reactions will trigger additional caseload for child protective services and the accounts discussed in this chapter. As asked in Chapter 2, can California prove that it used "reasonable efforts" to preserve a family when neglect is the result of the state's withdrawal of assistance unless a parent gets a job—especially where there are fewer jobs than parents who are so required, and the state is unable to locate a job and is unwilling to offer a job itself beyond three years?

In October 2001, the Center for Law and Social Policy released a report summarizing extant research on the impact of the PRA on child maltreatment.¹²⁴ The Report concluded as follows: (1) Grant reductions are associated with increased entry into the child welfare system.¹²⁵ (2) Grant reductions are associated with lower levels of reunification.¹²⁶ (3) An increased proportion of working single mothers is associated with increased rates of neglect.¹²⁷ (4) Increased neglect may be greatest among the most disadvantaged families.¹²⁸ These conclusions are drawn from national data and are applied to a California economy with high rents and rising utility costs.

The Governor's 2002–03 budget projects a \$92.6 million savings due to recipients reaching the 60-month CalWORKs time limit beginning in January 2003. That amount projects to a cut down of \$300 for 26,000 families involving 52,000 children.¹²⁹

B. AFDC-Foster Care Account

The AFDC-Foster Care (AFDC-FC) program provides payments for the out-of-home placement of children who: (1) have been relinquished for purposes of adoption, or whose parents have lost their parental rights by court order; (2) have been removed from the physical custody of their parents or guardians as a result of a voluntary placement agreement or judicial determination that the child is a dependent (finding of abuse or neglect) or a ward of the court (finding of delinquency); (3) are living in the home of a nonrelated legal guardian; or (4) have been placed in foster care under the federal Indian Child Welfare Act.¹³⁰

Children eligible for AFDC-FC payments are placed in foster family homes, licensed group homes, and, in some cases, more intensive treatment facilities. Under California Welfare and Institutions Code § 11401, children “shall” receive these payments if eligible. AFDC-FC pays only for the actual placement of a child, and related administrative costs. Spending from other state and federal accounts, including Child Welfare Services, Medi-Cal, and mental health services, provides supplemental services for children in AFDC-FC placement.

Traditionally, there have been three sources of revenue for AFDC-FC: the federal government, the state, and the counties.¹³¹ As noted above, the federal government has paid 50% of the cost of foster care placement for children from a family eligible to receive TANF. These children must be placed in a family foster home or a nonprofit group home. However, abused children come from families at all income levels, and those ineligible for federal cost-sharing nevertheless have a right to placement under state law, although subject to state or county financing.

As Table 8-E indicates, the average number of AFDC-FC recipients per month has increased from 56,658 per month in 1989 to 88,066 in 1998–99 and has since contracted to 79,131 currently and 73,188 as projected for 2002–03. Some of the decrease derives from the concomitant increase in the state’s Kin-GAP program that provides foster care recompense to relatives willing to assume a more permanent guardianship status (see discussion above). Those Kin-GAP numbers have increased from 6,285 in 1999–2000 to 10,595 currently, to 15,309 as projected for 2002–03. Kin-GAP funding is not included in Table 8-E and began with full statutory implementation in 2000–01 at \$32.7 million, growing to \$58 million in the current year, and projected at \$84 million in 2002–03, consistent with the enrollment numbers above.

The cost of caring for abused and neglected children has risen more sharply than has the number of children in care plus inflation. This difference is explained in part by the fact that the placement rate of children in more expensive group homes has risen faster than the placement rate in foster (family) homes, and which substantially accounts for the per capital increase of the table.¹³²

Foster care spending is not trackable from 1989 because of different accounting since the 1995–96 alteration of the previous Aid to Families with Dependent Children (AFDC) to the new Temporary Aid for Needy Families (TANF) system, even though the foster care part of this system remains an entitlement. Family foster care rates did not increase with inflation from 1991 to 1998, almost a thirty percent real spending decline. The modest increases in 1998 and cost of living allowance since has brought compensation back up to 1989 levels as adjusted. However, providers were receiving compensation well below out-of-pocket costs at the start of the 1990s, and increases have overall kept even with inflation without redressing the continuing shortfall. Moreover, the group homes also included within this account receive foster care payments averaging seven times the per child compensation paid to family foster care providers. Using much more professional and aggressive lobbying in Sacramento, they have won more substantial increases over the past decade.

	Budget Year							Estimated 2001-02	Proposed 2002-03	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02			'89-'01	Proposed
General Fund	N/A	\$311,778	\$370,411	\$384,640	\$414,597	\$396,824	\$425,323	\$434,994	N/A	2.3%	
Federal funds	N/A	\$418,532	\$560,865	\$487,010	\$444,212	\$485,438	\$486,820	\$466,977	N/A	-4.0%	
Other	N/A	-	-	\$1	\$38	\$183	\$0	\$0	N/A	0.0%	

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Total State Budget	N/A	\$730,310	\$931,276	\$871,651	\$858,847	\$882,445	\$912,143	\$901,971	N/A	-1.1%
Counties	N/A	\$456,651	\$511,438	\$535,253	\$546,482	\$588,603	\$636,560	\$651,865	N/A	2.4%
Total	N/A	\$1,186,961	\$1,442,714	\$1,406,904	\$1,405,329	\$1,471,048	\$1,548,703	\$1,553,836	N/A	0.3%
Adjusted Total	N/A	\$1,362,157	\$1,618,274	\$1,534,386	\$1,495,464	\$1,512,221	\$1,548,703	\$1,504,034	N/A	-2.9%
Benefits	\$633,374	\$1,095,678	\$1,212,967*	\$1,247,015*	\$1,225,410*	\$1,262,400*	\$1,290,785*	\$1,316,601*	103.8%	2.0%
Avg. recipients/mo	56,658	78,756	86,690	88,066	85,813	82,170	79,131	73,188	39.7%	-7.5%
Avg. benefits/mo	\$932	\$1,159	\$1,166	\$1,180*	\$1,190*	\$1,280*	\$1,359*	\$1,499*	45.8%	10.3%
Adjusted avg. benefits/mo**	\$1,237	\$1,252	\$1,247	\$1,241	\$1,237	\$1,300	\$1,359	\$1,470	9.9%	8.1%

Dollar amounts are in \$1,000s except per month figures. Sources: Governor's Budgets, DSS.

Adjusted to 0–19 population and deflator (2001–02=1.00). Adjustments by Children's Advocacy Institute.

* Estimated by Children's Advocacy Institute. **Adjusted to deflator only (2001–02=1.00).

TABLE 8-E. Foster Care

The failure to adequately fund family foster care has resulted in fewer placements available, lower quality, and increased numbers of placements in group homes—at substantially higher cost. The end result of underfunding is supply and quality diminution of the persons essential to the future of children most in need and most in trouble, and the persons statistically most likely to adopt abused children. The proposed budget in Table 8-F indicates an adjusted further reduction, reflecting a decline in the anticipated number of recipients rather than a per capita benefit reduction.

Ironically, the budget provides a cost of living increase for group homes, while denying it to family foster homes, further distorting financing equities and continuing the trend of family foster care undersupply. That pattern is particularly frustrating for child advocates who point out that increasing family foster care rates and supply will put more children in placements at one-fifth or less the current group home cost, with greater adoption possibility. Hence, over a three or more year period, such increases will accomplish substantial savings. However, the legislature is preoccupied with immediate year impact.

Separate from the benefits payable under Table 8-E, the Governor's May Revise 2002 affects foster care accounts in its general reduction of county operational social service accounts by 20%. Implementation will require the lay-off of 221 local officials providing foster care related services.

C. Child Welfare Services Account

The Child Welfare Services program provided by state and county authorities is mandated by state statute to cover a broad array of needs.¹³³ CWS' goals are to protect all children; prevent or remedy problems which may result in neglect, abuse, exploitation, or delinquency of children; prevent unnecessary separation of children from their families and provide services to restore to families those who have been removed; identify children to be placed in suitable adoptive homes, if appropriate; and assure adequate care of children living away from their homes.¹³⁴

Generally, Child Welfare Services includes: (1) emergency response to abuse allegations; (2) a Family Maintenance Program to provide ongoing services to children (and their families); (3) a Family Preservation Program of intensive services for families whose children may be removed in the absence of such services; (4) a Family Reunification Program providing services to children in foster care who have been temporarily removed to facilitate possible reunification; and (5) a Permanent Placement Program for children in foster care who cannot be safely returned to their families.¹³⁵

California now has in place a statewide Child Welfare Services/Case Management System (CWS/CMS) operating in each county to allow inter-county coordination of social workers, to provide statistical information, and to comply with federal reporting requirements. The 2001–02 current year includes a substantial \$98 million for contract related maintenance and operation of this system, .

Table 8-F presents the total level of state, federal, and county Child Welfare Services funding.¹³⁶ From 1989 to 2000–01, spending grew by 133%, adjusted for inflation and child population (0–14 years of age). However, note that substantiated child abuse cases increased at a much faster rate from 1989

than has the child population as an adjustor. Hence, amounts budgeted still fell behind caseloads. Because these services remained an entitlement and are caseload-driven, the increases are an indicator of a growing rate of abuse rather than of greater spending per abuse report, or of declining social worker caseloads.

	Budget Year						Estimated 2001-02	Proposed 2002-03	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-2000	2000-01			'89-'01	Proposed
General Fund	\$289,330	\$308,868	\$455,295	\$428,325	\$494,650	\$522,223	\$593,092	\$596,610	105.0%	0.6%
Reimbursements	\$0	\$23,233	\$32,247	\$26,926	\$27,450	\$34,785	\$32,880	\$36,888	na	12.2%
Federal Trust Fund	\$93,231	\$603,965	\$569,389	\$570,678	\$853,215	\$940,805	\$1,066,443	\$1,053,309	1043.8%	-1.2%
Child Health & Safety Fund	\$0	\$0	\$248	\$151	\$199	\$353	\$429	\$493	na	14.9%
Foster Fam. Home...Fund	\$0	\$407	(\$113)	\$464	(\$145)	\$170	\$0	\$0	na	0.0%
State Budget Total (Counties)	\$382,561	\$936,473	\$1,057,066	\$1,026,544	\$1,375,369	\$1,498,336	\$1,692,844	\$1,687,300	342.5%	-0.3%
State/County Total	\$68,520	\$151,871	\$151,945	\$165,013	\$171,719	\$162,782	\$183,846	\$194,195	168.3%	5.6%
Adjusted State/County Total	\$451,081	\$1,088,344	\$1,209,077	\$1,191,557	\$1,547,088	\$1,661,118	\$1,876,690	\$1,881,495	316.0%	0.3%
Adjusted State/County Total	\$684,653	\$1,224,997	\$1,340,816	\$1,289,875	\$1,637,952	\$1,703,898	\$1,876,690	\$1,827,278	174.1%	-2.6%

Dollar amounts are in \$1,000s. Sources: Governor's Budgets. Adjusted to 0-14 population and deflator (2001-02=1.00). Adjustments by Children's Advocacy Institute.

TABLE 8-F. Child Welfare Services

From 1989-90 to proposed 2002-03, the proportion of federal funds rose from 20.7% to 62.4% of Child Welfare Services account funding. This trend represents maximum use of federal monies and general fund savings. One concern evolving from this trend is the overall supplantation effect it may imply. That is, federal monies are added to provide additional services consistent with Congressional intent, not to replace state general fund monies already committed to the ends that the federal jurisdiction seeks to supplement.

Child welfare service funding has been fragmented and has not always produced services beneficial to involved foster children. Chapter 795, Statutes of 1997, established a statewide program to coordinate services provided to foster children and their families by attempting to redirect existing resources more rationally, and at the needs of children rather than as dictated from competing agencies. The experiment eliminates restrictions on categorical funding to free counties to spend money more flexibly and in less restrictive environments. The program is termed "wrap-around" because the services are intended to focus on the children where they are (in the community) rather than moving them into institutional settings. It is intended to surmount narrowly circumscribed services preventing children from getting the help they most need (see the discussion of the similar "system of care" concept in mental health services discussed in Chapter 5). Neither the budget nor the budget summary clarify the appropriation to coordinate the new effort. As noted above AB 2706 (Cuneen) was enacted in 2000 to mandate its expansion, but it is unclear what monies, if any, have been allocated for it. Related to this effort to rationalize spending is the Department of Social Services "stakeholder" task force discussed above. Findings and changes from this source are due in 2003, but early drafts indicate it will not address the essential problems of family foster care provider under-supply and under-compensation, adoption failure, and emancipation assistance outlined above, but appears to be focusing on matters not requiring public investment.

The 2000-01 budget enhanced family foster care compensation slightly by increasing the allowance for clothes (now amounting to \$6.5 million), although overall compensation remains low in relation to out-of-pocket cost and needed family foster care supply, as discussed above. The proposed 2002-03 budget has no COLA or other increase to match inflation for family foster care compensation, which remain 20% below the USDA designated minimum amount of money for child necessities.

One other funding enhancement over the last two years was for 100 "live scan" fingerprinting machines to clear foster care providers who are relatives for placement of children (the state check for prior child molestation, abuse, etc. problems now required).

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The major spending increases since 1998–99 have been in two related categories. First, “Child Welfare Service Augmentation”—spending to for workers to meet new demand in emergency response, family maintenance/reunification and permanent placement. Increases here have been consistent with population and inflation gain, with \$93.7 million proposed for 2002–03 addition—amounting to a 5% increase, or just above inflation/population gain. Much of this increase is to be directed at emergency welfare services (e.g., for the increasing number of children anticipated to be rendered homeless from the TANF 60-month cut-offs discussed above).

Apart from this augmentation funding is a “base funding adjustment” intended to implement the necessary caseload reductions. As discussed above, SB 2030 (Costa),¹³⁷ requiring a study of proper caseload levels, yielded an April 2000 finding of grossly excessive caseloads throughout California. In current 2001–02, \$102 million was budgeted for this purpose. In proposed 2002–03, another \$30 million is proposed for addition.¹³⁸

Notwithstanding these two increases, overall spending is down as proposed for 2002–03 by an adjusted 2.6%. Moreover, Table 8-F excludes the momentous impact of the Governor's May Revise 2002 proposal to strike 20% from all county administrative funding relevant to social services. In particular, it would require the lay-off of 221 foster care workers, 126 local staff working on adoptions, and 420 child welfare service social workers.¹³⁹ The cuts will save \$91.9 million and will substantially moot most of the caseload reduction spending of the current and prior year.

Although the proposed 2002–03 budget had included a modest increase to the account for “cost of doing business increase” (analogous to a COLA), that augmentation of \$11 million was removed in the May Revise, changing the adjusted 2.6% reduction for proposed 2002–03 in Table 8-F to 3.6%. If the 20% overall county staffing reduction is approved, the \$54.3 million allocated for CWS account reduction would move it to 6.6% lower than in the current year.

D. Adoption Assistance Account

The Adoption Assistance Program (AAP) is a state-financed program which distributes moneys to counties in order to facilitate the adoption of “difficult to place” children. To be eligible for an AAP payment, a child must have at least one of the following characteristics: (1) the child is a member of a sibling group which should remain intact; or (2) the child—by virtue of race, ethnicity, color, language, age, or a parental background that may adversely affect the child's development—will have difficulty being placed.¹⁴⁰

	Budget Year							Proposed 2002-03	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02		'89-'01	Proposed
General Fund	\$28,851	\$64,691	\$66,979	\$76,241	\$94,397	\$124,009	\$154,690	\$179,059	436.2%	15.8%
Federal funds	\$11,061	\$42,752	\$57,186	\$77,042	\$95,321	\$126,984	\$158,204	\$176,650	1330.0%	11.7%
State Budget Total	\$39,912	\$107,443	\$124,165	\$153,283	\$189,718	\$250,993	\$312,894	\$355,709	683.9%	13.7%
Adjusted State Budget Total	\$72,003	\$126,497	\$143,036	\$172,036	\$204,590	\$257,710	\$312,894	\$346,128	334.6%	10.6%
(Counties)	na	\$21,564	\$24,703	\$27,466	\$31,451	\$40,452	\$51,556	\$59,684	na	15.8%
State/County Total	\$39,912	\$129,007	\$148,868	\$180,749	\$221,169	\$291,445	\$364,450	\$415,393	813.1%	14.0%
Adjusted State/ County Total	\$72,003	\$148,930	\$171,493	\$202,862	\$238,506	\$299,245	\$364,450	\$404,204	406.2%	10.9%
Avg Monthly Caseload	N/A	23,090	25,341	29,086	34,285	40,763	48,003	54,823	—	14.2%

Dollar amounts are in \$1,000s. Sources: Governor's Budgets.

Adjusted to 0–14 population and CPI-U (2001–02=1.00). Adjustments by Children's Advocacy Institute.

TABLE 8-G. Aid for Adoption of Children/Adoption Assistance Program

AAP is currently a state entitlement; a child must receive benefits if eligible.¹⁴¹ The Legislative Analyst reported that, in an average month in 1993, there were 268 AAP adoptions; this amounts to a yearly average of 3,216 children.¹⁴² In an average month during 1994–95, 19,871 children received AAP payments each month.¹⁴³ This number increased to a 34,285 in 1999–2000, to 40,763 in 2000–01, an estimated 48,003 for current 2001–02, and is projected at 54,823 for 2002–03.

As illustrated in Table 8-G, the budgetary totals have run above inflation and child population increases since 1989, and will continue to represent real spending increases as proposed. Because this is an entitlement account, not all of the increases in spending reflect budgetary priority, but rather the qualification of larger numbers of children for assistance than our general child population increase adjustor reflects. Even with this factor, however, the rate of increase does indicate recent additional investment in adoption facilitation (especially when combined with the separate special add-on account below). However, the proposed 10.9% adjusted increase was cut by \$9 million in the May 2002 Revise as the Governor eliminated the Cost of Doing Business Adjustment. And more serious is the general 20% reduction proposed in the May Revise, which would eliminate 71 local adoption staff and \$15.9 million from the budget. If applying these adoption changes to the AAP account, the 10.9% increase becomes a 4% adjusted increase. The most important consequence is likely to be on case reductions and adoption delays and difficulties arising from caseload increase.

E. Adoptions Facilitation Account

In 1995–96, then-Governor Wilson proposed an “Adoptions Initiative” apart from the funding in the Adoptions Assistance Account above. The aim of this spending is to increase the number of adoptions of children who would otherwise remain in long-term foster care.¹⁴⁴

	1997-98	1998-99	1999-00	2000-01	Estimated 2001-02	Proposed 2002-03	Proposed % Change,
General Fund	\$45,069	\$44,176	\$47,561	\$63,971	\$58,122	\$52,339	-10.0%
Federal Funds	\$23,219	\$28,833	\$47,215	\$48,094	\$52,316	\$43,980	-16.0%
Total	\$68,288	\$73,009	\$94,776	\$112,065	\$110,438	\$96,319	-12.8%
Adjusted Total	\$78,666	\$81,941	\$102,206	\$114,951	\$110,438	\$93,725	-15.1%

Dollar amounts are in \$1,000s. Sources: Governor’s Budgets. Adjusted to 0-14 population and CPI-U (2001–02=1.00). Adjustments by Children’s Advocacy Institute.

TABLE 8-H. Adoptions

Table 8-H presents the funds committed to this effort. The account (1) provides relinquishment adoption services through four state offices and 31 licensed county adoption agencies; (2) conducts studies of all independent adoption placements through six state offices and three county adoption agencies; (3) reimburses licensed private adoptions agencies for expenses incurred in placing special needs children; and (4) provides minority home recruitment activities through directly provided and contracted services. Funding of some of these functions occurred prior to 1996, but the Governor’s initiative brought related funds into a single account, and added a small sum to it. Since 1997–98, this amount has increased in the raw numbers presented to year 2000–01. The current year imposed a small reduction and proposed 2002–03 will cut the account by an additional 15%. Overall spending on adoptions proposed by the Davis Administration in 2002–03 represents the first reduction in absolute numbers since the California Children’s Budget began recording such data in 1989.

As the demographic data above indicate, that reduction occurs in the face of continuing need and the failure of the state to accomplish the adoption of over 50,000 children in foster care who are not in stable relative guardianships or other relationships and would benefit from a legally and emotionally committed parent.

F. Juvenile Court Funding

The process affected by the accounts listed above intimately involves the activities of the dependency side of juvenile court. Following the removal of a child, an immediate detention hearing is held to review its legal basis and appoint counsel. Traditionally, this has meant an attorney for the parents, and as trends have developed, an independent attorney for the child. Child advocates have long argued that the child's attorney is critical due to the conflict of interest between the child's best interests and the social worker making the decision to pull a child. For example, the law focuses on services to protect a child and change parental behavior, but deputy county counsel representing social workers and local agencies commonly have budgetary pressures limiting available services. Only an independent attorney can demand appropriate services, raise related issues, and litigate to compel action. A county agent (social worker) and his or her counsel cannot. Further, child advocates contend that without independent counsel, there may be nobody to detect social worker errors—which commonly occur. And the court misses the contribution of an advocate for the child to enrich information relevant to what will be among the most important decisions made about the child in his or her life.

After the detention hearing occurs, there is a jurisdictional hearing. This proceeding substitutes court jurisdiction over a child for the authority a parent would normally exercise pending final resolution of the case. When the juvenile court assumes jurisdiction, it takes charge of a child *in loco parentis*, and those persons dealing with the child operate at the direction of the court in a much more direct way than do the deputy district attorneys, police, and defense counsel *vis-a-vis* other courts. Accordingly, the information gathering, legal representation, and many associated costs are a part of the juvenile court budget.

Juvenile courts traditionally have been funded from local county budgets. As noted, this funding includes not just the courts themselves and associated clerks and marshals, but also attorney and even some social work related expenses. Starting in 2000–01, state trial court funding took effect. Now funding is coordinated through the Judicial Council, the administrative arm of the state Supreme Court. This appropriation has taken the form of block type grants—disbursed under local discretion. Amounts available to provide counsel and investigators to represent children vary by county as do the methods of representation. Fortunately, a recent practice in several counties of appointing attorneys for only some children pulled from their homes (e.g., based on the Welfare & Institution Code allegations made) is now violative of recently enacted SB 2160 (Schiff), see discussion above. However, a serious problem remains with the assurance of representation: attorneys representing abused children commonly have caseloads in excess of 500 children each.

In early 2002, the Judicial Council adopted rules which will impose a practical obligation to appoint counsel for children, see California Rule of Court 1438(b) indicating the three findings a court must make to justify not appointing counsel.¹⁴⁵ The Judicial Council's administrative arm is now considering caseload standards for attorneys representing children—of importance since some jurisdictions may respond to the requirement of counsel by simply adding caseload to the point of representation incompetence. Rule of Court 1438(a)(2) required each superior court to have local rules for appropriate caseloads by January 2002. The Administrative Office of the Courts (the Judicial Council's administrative arm) released an RFP for a "Study of Court-Appointed Counsel in Juvenile Dependency Proceedings" on November 19, 2001, with proposals and standards work scheduled for 2002–03. The setting of caseload maximums requires due care from unintended consequences given the variations extant in child representation between counties.¹⁴⁶

G. Office of Child Abuse Prevention

The Office of Child Abuse Prevention (OCAP) provides child abuse prevention services through 175 or more projects administered through contracts. OCAP also provides training and technical assistance for these projects. OCAP is the major budget item dedicated explicitly to child abuse prevention. OCAP's existing projects include data collection, research projects, and education programs in local communities and schools.

As Table 8-I reflects, OCAP’s budget was slashed by almost 50% in the early 1990s. Starting in 1998, funding for these programs had recovered to 1989 levels as adjusted. The major increase in 1998–2000 reflects \$8 million added from the Juvenile Crime Prevention Program. This program funds prevention and family-based services for youth who are truant or first offenders, and strengthens education programs to help families combat drug and alcohol abuse. The account has been cut in the current year to a level 36% below 1989-90 adjusted spending, and is proposed for another 3.4% adjusted reduction.

	Budget Year						Estimated 2001-02	Proposed 2002-03	Percent Change	
	1989-90	1996-97	1997-98	1998-99	1999-00	2000-01			89-01	Proposed
General Fund	\$21,499	\$19,642	\$19,851	\$24,932	\$25,096	\$34,329	\$15,406	\$15,378	-28.3%	-0.2%
State Children's Trust Fund	\$749	\$248	\$218	\$306	\$2,226	\$3,309	\$1,931	\$1,931	157.8%	0.0%
Federal Trust Fund	\$974	\$3,936	\$4,297	\$3,212	\$8,169	\$5,594	\$7,041	\$6,950	623.0%	-1.3%
Total	\$23,222	\$23,826	\$24,372	\$28,450	\$35,491	\$43,232	\$24,378	\$24,259	5.0%	-0.5%
Adjusted Total	\$38,303	\$26,818	\$27,027	\$30,797	\$37,575	\$44,345	\$24,378	\$23,560	-36.4%	-3.4%

Dollar amounts are in \$1,000s. Sources: Governor's Budgets
Adjusted to 0-14 population and deflator (2001-02=1.00). Adjustments by Children's Advocacy Institute.

TABLE 8-I. Office of Child Abuse Prevention (OCAP)

H. Infant Health and Protection Initiative and Healthy Beginnings

In 1998–99, former Governor Wilson launched a “Healthy Beginnings” initiative relevant to child abuse and neglect. The proposal grows from the famous Hawaii program, where parents who fit a future abuse profile are taught parenting skills during pregnancy, and then visited at home by trained parenting educators, nurse practitioners, etc. (depending upon the risk factors present). Some apparently positive results have led to its widespread advocacy among child advocates, social workers, and health professionals.

The initiative included vestiges of Governor Wilson’s 1997–98 “Infant Health and Protection Initiative” (IHPI), which was not enacted. It was to include four elements. (1) All hospitals would have to apply a drug assessment protocol when a child is born; families with demonstrable substance abuse would be immediately referred to county CPS, which must perform an in-hospital response and consider petitioning juvenile court to remove the child, if appropriate. That decision would be guided by (2) a uniform child risk assessment tool for statewide use (and which might also apply to other CPS responses, for example, from mandated abuse reporters generally). (3) In five pilot counties, about 2,500 families identified by the drug screening protocol would be served by a three-year home visiting program to assure infant protection. (4) Drug and alcohol treatment services would be expanded to meet additional prenatal service needs.¹⁴⁷

The Healthy Beginnings program was intended to provide grants for local programs. The money would be used by community coalitions of businesses, churches, and nonprofits to support new parents in the proper care of their infants. Each community could determine the most beneficial approach. However, as with the IHPI Initiative, this program has not been implemented.

I. Other Recent Child Welfare Initiatives

1. Kinship Support Services

Consistent with the new kinship adoption support statute discussed above,¹⁴⁸ the 1998–99 budget provided \$28.6 million to implement kinship legislation effective on January 1, 1999 (Kin-GAP).¹⁴⁹ Most of this funding was federal, with just 30% of the total funding coming from the state general fund (see discussion above). The 2000–01 budget is \$32.7 million, with the 2001–02 budget at \$58 million, and a \$26 million increase to \$84 million proposed for 2002–03, all based on the caseload growth from 6,285 last year to 10,595 the current year and 15,309 as projected for 2002–03.

J. Recent Federal Tax/Budget Changes

1. Federal Tax Changes

The Small Business Job Protection Act of 1996 now provides a \$5,000 tax credit to families adopting a child, and \$6,000 where the child has special needs. However, the amount of the benefit and lack of aggressive marketing to prospective adoptive parents in general have limited the effect of this statute. More important has been the Adoption and Safe Families Act of 1997, discussed above.

2. Federal Spending for Abused/Neglected Children 1998–02, Proposed 2003

Although almost all federal funding is incorporated within the state accounts listed above, its separate federal packaging indicates the subprograms within those accounts dependent on federal funding and illuminates spending trends within state accounts. The major federal child welfare related programs have been funded as follows, with California's share generally from 10%–15% of these national totals. The Child Abuse State Grants, Child Abuse Discretionary Grants, and Community Based Family Resource accounts are all part of the federal Child Abuse Prevention and Treatment Act. The "Family Preservation and Support" entry below refers to the Safe & Stable Families Act (Title IV-B2). Unlike the entitlement structure of most of the four largest accounts of Table 8-J, these are essentially grant programs subject to federal discretion.

The big item accounts correspond to the state accounts of the same name or function listed above and provide the federal funding listed within them. These numbers are unadjusted and actual inflation, population adjusted totals would require a 5% increase to stay even as to California totals. The total federal funding is down as adjusted from fiscal 1998. Moreover, California's share of the critical social services Title XX block grant has been funded consistently at below 12% of the federal total, a figure below the state's national proportion of child abuse reports and foster care population.

Table 8-J presents major federal spending programs and trends for child related accounts. The numbers of Table 8-J are not adjusted for population or inflation. As applied to California in particular, most accounts have been cut from 1998 as adjusted. The major exception is Adoption Assistance. Adjusted Foster Care (IV-E) spending is up from 1998, but down over the last two years and as proposed. Most accounts are scheduled for static raw number spending, effectuating a 20% per child constant dollar spending from 1998 to the federal 2002 fiscal year, and 24% from 1998 to proposed fiscal 2003. The marriage incentive, prisoner children mentoring and voucher program for emancipating youth make up the major federal increases for 2003 as proposed.

	FY 1998 federal funding,	FY 1999 federal funding	FY 2000 federal funding	FY 2001 federal funding	FY 2002 federal funding	FY 2003 federal funding (proposed)
Foster Care (Title IV-E)	\$3,540	\$3,983	\$4,572	\$5,064	\$5,064	\$4,900
Social Services (Title XX)	\$2,299	\$1,909	\$1,775	\$1,725	\$1,725	\$1,975
Adoption Assistance (Title IV-E)	\$701	\$869	\$1,020	\$1,198	\$1,426	\$1,555
Child Welfare Services (Title IV-B)	\$291	\$292	\$292	\$292	\$292	\$292
Family Preservation and Support	\$255	\$275	\$295	\$305	\$375	\$575
Independent Living	\$70	\$70	\$140	\$140	\$140	\$200
Runaway and Homeless Youth	\$44	\$44	\$64	\$69	\$69	\$69
Community Based Family	\$33	\$33	\$33	\$33	\$33	\$33
Adoption Opportunities	\$23	\$25	\$28	\$27	\$27	\$27
Child Abuse State Grants	\$21	\$21	\$21	\$21	\$22	\$22
Runaway Youth Transitional Living	\$15	\$15	in above	\$0	\$0	\$0
Child Abuse Discretionary Grants	\$14	\$14	\$19	\$33	\$26	\$26
Abandoned Infants Assistance	\$12	\$12	\$12	\$12	\$12	\$12
Child Welfare Training	\$6	\$7	\$7	\$7	\$7	\$7

Dollars in millions.

TABLE 8-J. Major Federal Child Welfare-Related Programs

3. New Federal Initiatives Approved in Fiscal 2001

Although five major statutory initiatives for abused children failed Congressional passage in 2000, three modest statutes were enacted by the Congress in 2001 as follows:

- ◆ Strengthening Abuse and Neglect Courts Act (SANCA), S. 2272 (P.L. 106-314) authorizes \$10 million over the next five years for grants to state and local courts to automate data collection and tracking of child abuse proceedings. It also authorizes another \$10 million over the next two years to reduce backlogs in those cases. And it authorizes \$5 million over the next two years to expand the CASA program in underserved areas (Court Appointed Special Advocates, often retired volunteers who help the court monitor the children subject to dependency court jurisdiction). However, note that a federal statute which “authorizes” an appropriation does not assure that funds will be part of the budget and expended. And the amounts here at issue are extremely marginal in relation to the problems they respectively address on the national scale.
- ◆ Intercountry Adoption Act, H.R. 2909 (P.L. 106-279) implements the International Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The international treaty was a part of the Hague Convention from 1993, only now being implemented in the United States. The statute designates the State Department as our “central authority”, provides for accreditation of those providing international adoption services, provides for recognition of adoptions pursuant to the Convention, and provides for penalties for adoption related fraud.
- ◆ Child Abuse and Prevention Enforcement Act (CAPE), H.R. 764 (P.L. 106-177) allows for state grants under the Crime Identification Technology Act of 1998 to improve timely criminal history information to child welfare agencies (important in foster care licensing, and placement of children with relatives). See discussion of intrastate California legislation to the same end above. The statute also allows state law enforcement grants (“Byrne Grants”) to be used in the enforcement of child abuse and neglect laws, the promotion of child abuse

prevention, and cooperation between law enforcement and the media in the identification and apprehension of those who commit crimes against children. It also amends the Victims of Crime Act of 1984 to increase the set-aside for child abuse victims.

In addition, the Centers for Disease Control in Atlanta was given \$3 million in 2001 to begin research on child maltreatment from a public health perspective.

The existing Child Abuse Prevention and Treatment Act (CAPTA) expired on October 1, 2001 and will be reauthorized at a similar spending level, as the related programs of Table 8-K indicate. The Bush administration has sponsored in 2001 a Younger Americans Act (S. 3085, H.R. 5250) to create a "comprehensive national policy for youth." The policy would ensure that all youth have access to: ongoing healthy relationships with adults, access to services to improve health, opportunities to acquire marketable skills, and for civic participation. The Act includes a \$500 million authorization and would increase each year to reach \$2 billion by Fiscal 2005. Approximately 90% of the funds would go to communities for comprehensive youth development activities. Resources would be targeted to high risk youth and would start with high federal percentage of 80% for the first two years, declining to 50% after the fifth year, with local or state sources providing the match. The interesting concept behind the Act is not to respond to a "problem," but to affirmatively seek to develop positive preconditions. Existing programs in education do not reach youth outside of school, existing employment programs prepare for a specific job, but not the broader competency needed for employment, and community service programs have limitations. This program would provide a broader range of preventive programs.

4. Federal Proposed Changes in 2002

During 2002, the Bush Administration proposed three new initiatives enacted into law in January 2002. All three were part of the Promoting Safe and Stable Families Amendments of 2001 (P.L. 107-133). The new initiatives include: (1) a \$130 million increase (of \$200 million originally proposed) to promote marriage and responsibility through grants for education and assistance projects; (2) \$25 million (appropriated, with \$67 million authorized) to finance a mentoring program for the children of prisoners (see above for discussion of this vulnerable population of children); and (3) \$60 million authorized and appropriated for the education of foster children who are emancipating out at age 18.

The first of these appropriations has spawned ridicule among Democrats, liberals and some child advocates. However, the underlying demographics of child poverty and abuse, and the regrettable lack of paternal responsibility for large numbers of children, commend efforts to address its subject matter (see the remarkable correlation between unwed births, lack of child support, evidence of the effects of paternal involvement, and other data discussed in Chapters 2 and 9).

The last of these three initiatives is not an earmarking of the existing \$140 million appropriated for the Foster Care Independence Act of 1999 discussed above. It would provide additional resources in the form of vouchers for up to \$5,000 limited to tuition for college or costs of vocational training. Although of some use, these funds will not be as important to California children as would room and board assistance. As discussed above, living costs in California compel immediate work and deter higher education for foster children removed from their shelter and board rather peremptorily at 18 years of age. California already offers relatively inexpensive community college and university tuition arrangements (see Chapter 7 presentation of tuition amounts). In addition, the amount assignable to California emancipated children would provide \$56 per month to a population facing median rents of \$400 to \$700 per month, utilities, costs of food and other necessities.

Note that overall federal spending for foster children has declined as adjusted for population (or numbers of foster children) and inflation. The announcement of program goals and raw number figures obscures a consistent failure to provide funding to scale. For example, the \$60 million for \$5,000 tuition vouchers proposed by the President to augment the Foster Care Independence Act of 1999 is the second largest increase proposed and likely to be enacted. While welcome, it is of marginal use to California youth as discussed above. If it were to be allowed for more needed room and board expenses or continuation of foster care payments so these youth can stay put until they finish a course of higher

education it would be of greater use, but would still lack the scale necessary to matter (see Emancipation discussion above).

III. SUMMARY AND RECOMMENDATIONS

A. Consequences

The number of abused and neglected children has soared over the past two decades, as has the apparent degree of abuse. Spending from the accounts devoted to child protection comes too late, only mitigating harm which should never have occurred. Enhancements to other public accounts could influence child abuse incidence. Chief among such abuse-preventing accounts are parenting education in public schools, nutrition assurance, and health and prenatal care, among others. But new resources have not been so committed. Within the child protection accounts, prevention spending has received low priority, as the account totals indicate.

The President's initiative to find ways to stimulate marriage and paternal commitment to children should be embraced by child advocates, not reflexively rejected as may be predicted. Drug use and child poverty correlate strongly with child neglect, and unwed births and lack of paternal commitment to children are so statistically central to child abuse and neglect that the evasion of this subject area is an abdication by Democrats and liberals paralleling the investment in children abdication of Republican policies over the past decade.

The post-incidence failures of the system are also momentous, with foster care drift, lack of compensation/training and supply of family foster care providers, impediments to adoption, excessive secrecy impeding progress for children subject to dependency court jurisdiction, and a continuing failure to provide a fair chance for foster care children, who are unfortunate enough to have the state as their parent—an inconsistent parent at best, and a neglectful one all too commonly.

The consequences of child abuse and neglect are momentous. Some of the results are indicated in Chapter 9, which documents the increasing costs of the juvenile justice system. Even though some foster care children have a positive experience because of dedicated foster parents, and most become responsible citizens, foster care—and foster care drift incidence—correlate highly with adult incarceration, now consuming an increasing and record high percentage of state discretionary spending.

B. California Children's Budget Recommendations

Recommendation #1. Family foster care compensation rates should be increased by 20% and tied to the Consumer Necessities Index without budgetary discretion to waive. Compensation should be increased where providers are certified through additional education and qualification, and additional compensation should be provided for any foster care child qualifying for an IEP under the federal IDEA statute. Estimated cost: \$200 million with offsetting savings of \$350 million within ten years.

The proposed 20% increase in family foster care rates would be offset by substantial state savings. It would stimulate supply and enhance quality choices for placement—reducing the number being placed in group homes at four times such an enhanced family foster care rate. The California Family Foster Care Association contends that such an increase still would not meet the out-of-pocket cost of children, particularly given the increased incidence of disability. But it would mean those who take on such a momentous task can do so without as much of a sacrifice for their other children or their own post-retirement plans. In so doing, the pool of possible candidates would be increased, allowing more choice where these children go, rather than permitting the few willing and able to afford such a sacrifice to pick among the children.

The certification augmentation is recommended to enhance the status of the foster care function, and to increase the competence of providers. Parenting is difficult work, particularly where children have been abused seriously, and when they enter adolescence. There are transmittable skills and lessons which can much improve parenting skills, particularly where special problems are encountered.

The augmentation where there is special education status provides an incentive to foster care providers to test children for qualification, and compensates them for the general additional work such children entail. This additional cost is recommended above and beyond current limited special needs augmentation (e.g., for seriously physically disabled children).

Many of these recommendations are contained in AB 1330 (Steinberg), pending in the California Legislature.¹⁵⁰

Recommendation #2. Adoption assistance should be allocated without regard to parental income for special needs/hard-to-place children. Estimated cost: \$10 million

Pursuant to federal rules and sound policy, the commitment to care for a child with special needs until adulthood is a momentous gain for the child and society. The small additional sum available should be provided so that financial sacrifice is moderated in making such a decision. This sum does not represent a public benefit appropriate only for the indigent. California has 22,000 foster children eligible for and seeking adoptive parents. There has been insufficient success in placing them.

The most difficult to place are those eligible for adoption assistance—those with special needs, minorities, or with siblings who should ideally be adopted together. For objectors who point to the need for pure motivation (which they contend financial sacrifice assures), there is a practical answer. In this matter, love is not seeing an adorable puppy in the window. Unplaced children are older, difficult, hostile, suspicious, and frightened. Love, trust, and healing come with time. The lasting bonds are not bought with an increased incentive, but it buys that needed time for nature to take its often constructive course.

The recent legislative change and order by federal district court discussed above is an important improvement over prior law, but a bright line disregard of income is appropriate for any parent assuming the task of raising a child with special needs. The costs entailed in the raising of such a child should be provided by the state so that a parent performing this work does so at no additional financial cost, whatever their income. It is anomalous for California to give over 100,000 grants to kids who do well on the STAR examination regardless of need, and then deny the out-of-pocket cost of caring for a special needs child for ten to twenty years (with no compensation for countless hours expended) because such persons “do not need it.”

Recommendation #3. Family foster care supply and quality must be enhanced through (1) creation of an Office of Foster Care Supply and public campaigns to generate applicants, (2) removal of racial barriers to adoption, and (3) diminution of dependency court confidentiality. Estimated cost: \$16 million

The creation of a state Office on Family Foster Care Supply will focus efforts on the enhancement of placement choices for foster children. Since over three-fourths of all adoptions of foster children come from family foster care providers, it will also stimulate adoptions and permanency. The office can launch public campaigns and educate the public. That effort can be assisted by the lessening of dependency court confidentiality. Allegedly imposed for the protection of the child victims, it does not serve their interests. While dogs in need of homes are advertised on television, the 120,000 children in foster care are not exposed to public discussion or consciousness. Hence, qualified parents unable to conceive spend substantial money on artificial implantation and surrogate parent strategies, or adopt children in Romania or Brazil. Meanwhile, over one hundred thousand California children remain in foster care drift year after year.

About 70% of foster children are minorities, but minority parents matching their ethnic background are rarely found. The result tends to be relative placement, or foster care drift (often with Caucasian foster parents). Although not publicly discussed often, child advocates are well aware of the strong bias of many welfare workers—particularly those who are minorities—to resist Caucasian parent adoption of minority children. Whatever the advantages of matching ethnicity, the reality of foster care drift and its consequences do not compare with any race-related problems from parent-child mismatch. The research on the subject makes clear the relatively benign consequences of ethnicity variation between children and adoptive parents. The current bias is deep and widespread, and its elimination will require aggressive policy changes, including the dismissal of social workers who insist on personal notions of racial purity over the interests of involved children.

Recommendation #4. Adoption assistance should be broadened to include non-special needs/difficult-to-place adoptions at a reduced rate. Estimated cost: \$40 million

The Adoptions Assistance Account should be broadened, with increases in foster care compensation matched to maintain an incentive to adopt (or to reduce the disincentive to do so). Further, compensation should be increased substantially over current levels where adoptions of special needs children occur.

This broadening could be retracted when and if the pool of children needing adoption is reduced to zero, with a substantial supply of prospective families wishing to adopt. Until that occurs, those who adopt any child should be rewarded by a society which values such a contribution to children in need.

The advantage of a personal, solid, predictable relationship with two parents over abusive families or the foster care system is profound and clear from the literature and our own intuition. A social worker system of interviewing, reporting, cataloguing, advising, and counseling—where children are “cases” in files handed back and forth, and where each social worker has a narrow territory—means ten to fifty adults interacting with a child. All of them combined will not impart what two attentive parents can provide. The social work system is properly viewed as necessary mitigation of a larger failure, not as the aspirational solution.

There is no “village” in California to raise children. And if there were one, it would not consist of local departments of social services, health services, school administrators, counselors, probation officers, etc. The data overwhelmingly support the thesis of social conservatives: The optimum environment for a child is a stable family. Our priorities should place finding new parents ahead of back-end foster care services. Instead, we have spent less on providing families to nurture children, and more on maintenance.

Recommendation #5. Foster care children reaching 18 years of age should be assisted into employment and independence to age 23, including full tuition and room and board while a student in good standing at a vocational school or college. Estimated Cost: \$90 million

The state serves as the parent of foster care children. They have been abused, and it is incumbent on the state to perform not as a neglectful parent itself. A responsible and loving parent does not kick his son or daughter out of the house at 18 years of age. The recent “reforms” discussed above give dispensation for another year or two for continued foster care assistance, allow medical coverage to continue, or qualify such children for mental health services. But such gestures do not grasp the responsibility of a parent. That obligation commonly involves keeping a child at home when that home is needed for additional years, helping to pay for college or schooling, help with that first job, even that first house down payment. The state has taken these children from parents and now serves that function; it should be setting an example, not shirking the same duties it has sanctioned others for avoiding. Accordingly, foster care assistance to those providing parental services should continue until the youth is 23 years of age if necessary. The age should be raised if special needs of the child require it, again,

as we would expect of any devoted parent. Every child who is working toward employment and self advancement, and is in training or school and remains in good standing, should receive \$10,000 per year in living expenses if not living with assisted foster care providers, \$3,000 per annum if they are and their room and shelter needs are met, and tuition, fees and book expenses. Such assistance is not a handout—it is the investment in our children we all properly make, one most of our parents made in us.

The enactment of AB 1119 (Hertzberg) provides a framework for this assistance. However, the age limit should be lifted to 23, and the \$18 million amount increased by \$90 million to \$108 million in total. These funds would easily provide the 20% match to garner the state's maximum share of John Chafee (Foster Care Independence Act of 1999) federal money of \$20 million. In addition, if the President follows through on his promise of education related funding, California's \$8 million share would produce a total of \$136 million. Some of this sum should be used for foster care youth from 15 to 18 to prepare for emancipation, including help in preparing for college entrance tests or vocational school requirements. At least \$120 million should be available room and board subsidies for all emancipating youth for at least two years, and for full room and board and tuition for any youth who is a student in good standing at an accredited institution making progress toward a degree, credential or employable skill. Such a sum should afford youth not seeking higher education \$500 per month for rent until they reach 20. Those who seek higher education would receive \$900 per month plus tuition, books and fees. In the alternative, such youth could receive \$300 per month, and their foster care providers continue to receive the payment levels extant when they were 17 if they remain (assuming a federal waiver could be obtained to allow such AFDC-FC extension).

Recommendation #6. Prevention spending should be substantially enhanced, including “Healthy Beginnings” and early intervention, education during pregnancy, and other initiatives. Estimated cost: \$60 million for Healthy Beginnings and education during pregnancy; funding for other prevention programs is included in other chapters

Spending for “Healthy Beginnings” should be increased by \$60 million for 2002–03. Governor Davis should resurrect Governor Wilson's promising 1997–98 “Infant Health and Protection Initiative” (IHPI). As discussed above, it was to include a drug assessment protocol when a child is born, immediate referral of families with demonstrable substance abuse to county CPS, in-hospital response, juvenile court petition if appropriate, a uniform child risk assessment tool for statewide use, five pilot counties (with 2,500 families identified by the drug screening protocol served by a three-year home visiting program to assure infant protection), and expansion of drug and alcohol treatment services. This imaginative proposal should be funded as originally intended, at \$58.5 million.

Other prevention-based spending likely to affect child abuse and neglect—in addition to spending listed above—is included in other chapters; those recommendations most likely to have an impact include:

- ◆ The media campaign to persuade people that children have a right to be intended by two parents (Chapter 2);
- ◆ Parenting education in grades six through twelve, including developmental information ranging from the consequences of shaking a baby to the 18 years of child support obligation for an unintended child (Chapters 2 and 7);
- ◆ Assurance of a minimum safety net to preclude involuntary neglect (Chapter 2);
- ◆ Minimum wage increase and adjustment of regressive taxation through a state Earned Income Tax Credit to provide a bridge toward self-sufficiency and as a reward for work (Chapter 2);
- ◆ Enhanced standards for child care, with a “child development” emphasis—so children learn and grow when not with their parents (Chapter 6);

- ◆ Intervention among prospective delinquents (Orange County’s “8% Solution” discussed in Chapter 9, to supplement Healthy Beginnings intervention with new parents); and
- ◆ Substantial investment in higher education to allow more families to escape poverty, secure jobs, and develop a stake in California’s future (Chapter 7).

Finally, as recommended above, President Bush’s marriage incentive investment should be strongly supported and California should actively participate, suggesting ways to accomplish the important goals enunciated, and paying attention to the results from other states.

Chapter 8

ENDNOTES

1. California Department of Social Services, Child Welfare Services/Case Management System, *Comprehensive Children's Report: Characteristics of Children Receiving Child Welfare Services in California* (Sacramento, CA; April 2001) (hereinafter "*Comprehensive Children's Report*") at 9. California Department of Social Services, *Caseload Trends by Service Components for Children in California* (Sacramento, CA; July 2000) at 3 (hereinafter "*Caseload Trends*"); California Department of Social Services, *Preplacement Preventive Services for Children in California* (Sacramento, CA; September 1996) at 1 (hereinafter "*Preplacement Preventive Services*"). This publication and many other DSS publications are available via the Internet at <http://www.dss.cahwnet.gov>. See also Little Hoover Commission, *Now In Our Hands: Caring for California's Abused & Neglected Children* (Sacramento, CA; August 1999) at 5 (hereinafter "*Now In Our Hands*").
2. California Department of Social Services, *Emergency Response Caseload Trends and Characteristics* (Sacramento, CA; October 2000) at 4.
3. *Id.*
4. *Comprehensive Children's Report*, *supra* note 1, at 12.
5. Legislative Analyst's Office, *Child Abuse and Neglect in California* (Sacramento, CA; January 1996) at 13 (hereinafter "*Child Abuse and Neglect in California*").
6. *Comprehensive Children's Report*, *supra* note 1, at 9.
7. See, e.g. "...the rate of child abuse and neglect appears to be diminishing. For example, the rate of child victimization from abuse and neglect declined from highs of more than 15 for every 1,000 children in ...(1992-94) to a decade low rate of 11.8% in 1999. However, the severity of cases associated with reports of abuse and neglect has not changed, and the level of harm may actually have increased. For example, fatalities from child maltreatment, though rare, remain at relatively stable rates.... Moreover, national studies ... have shown a significant rise in the incidence of seriously injured children..." Rosemary Chakl, Alison Gibbons, and Harriet J. Scarupa, *The Multiple Dimensions of Child Abuse and Neglect: New Insights into and Old Problem*, Child Trends Research Brief (Washington, D.C.; May 2002) at 2–3 (see <http://www.childtrends.org>).
8. See California Department of Social Services, *California DSS Manual CWS* at 9 (ER service definition), quoting the stated elements contained in CAL. WELF. & INST. CODE § 16501(f).
9. U.S. General Accounting Office, *Child Welfare: Complex Needs Strain Capacity to Provide Services* (Washington, D.C.; September 1995) at 11.
10. William A. Vega, Ph.D., Bohdan Kolody, Ph.D., Jimmy Hwang, Ph.D., and Amanda Noble, Ph.D., *Prevalence and Magnitude of Perinatal Substance Exposures in California*, 329:12 NEW ENG. J. MED. 850, at 853 (Sept. 16, 1993).
11. *Id.* at 852–54.
12. Robert Mathias, National Institute on Drug Abuse, *NIDA Survey Provides First National Data on Drug Use During Pregnancy*, NIDA NOTES (Bethesda, MD; January/February 1995).
13. *Id.*
14. See *Use of Alcohol Linked to Rise in Fetal Illness*, N.Y. TIMES, Apr. 7, 1995, at A27.
15. American Speech-Language-Hearing Association, *Fetal Alcohol Syndrome* (1996).
16. *Id.*
17. Drug Strategies, *California Profile: Alcohol, Tobacco & Drugs* (Washington, D.C.; September 1995) at 20. Current research shows that drug-exposed infants have serious developmental and physical delays which can be remedied with appropriate early intervention. Ellen Franck, *Prenatally Drug-Exposed Children in Out-of-Home Care: Are We Looking at the Whole Picture?* LXXV:1 CHILD WELFARE (January/February 1996) at 19.
18. Children's Defense Fund, *California: Children in the States 2001* (Washington, D.C. 2001).

19. Children's Defense Fund, *The State of American's Children, Yearbook 1996* (Washington, D.C.; 1996) at 90.
20. Ira Chasnoff, M.D., *Silent Violence: Is Prevention a Moral Obligation?*, PEDIATRICS 1998 (July 1998), at 145-148.
21. The Children's Advocacy Institute has operated a clinic in San Diego Dependency Court since 1992, with students paired with attorneys who represent children removed from their home and subject to court jurisdiction. Our clinic reviews substantial numbers of cases before the court and our count places substance abuse as seriously involved in dependency court cases at above an 80% rate. It is not merely the use of intoxicants, altered consciousness or the economic demands of substance abuse here at issue – rather, the self-absorption attending such abuse alters normal human maternal/paternal instincts in ways not comprehensible to those viewing the family from the outside. See also IJ Chasnoff, A. Anson, KM Iaukea, *Understanding the Drug Exposed Child; Approaches to Behavior and Learning*, Imprint Publications (Chicago, IL.; 1998) passim.
22. Chapter 5 lists some of the research regarding Fetal Alcohol Syndrome damage, focusing on that contaminant because of its physical implications and disability evidence. For studies of illicit drug use, see: B.M. Lester, M.J. Corwin, C. Sepkoski, R. Seifer, M. Peucher, S. S. McLaughlin, H.L. Golum, *Neurobehavioral syndromes in Cocaine-exposed Newborn Infants*, CHILD DEVELOPMENT, Vol. 62 (1991) at 694-705; see also L.T. Singer, R. Garber, R. Kliegman, *Neurobehavioral Sequelae of Fetal Cocaine Exposure*, JOURNAL OF PEDIATRICS, Vol 139 (1991) at 667-672; see also L.N. Eisen, T.M. Field, E.S. Bandstra, J.P. Roberts, C. Morrow, S.K. Larson, B.M. Steele. *Perinatal Cocaine Effects on Neonatal Stress Behavior and Performance on the Brazelton Scale*, PEDIATRICS, Vol. 88 (1991) at 477-480.; see also A. Ornoy, V. Michailovskaya, I Lukashov, R. Bar-Hamburger, S. Harel, *The Developmental Outcome of Children Born to Heroin-Dependent Mothers, Raised at Home or Adopted*, CANADIAN MEDICAL ASSOCIATION JOURNAL OF MEDICINE, Vol; 151 (1994) at 1591-1597.
23. U.S. Department of Health and Human Services, *Child Maltreatment 1999: Reports from the States to the National Child Abuse and Neglect Data System* (Washington, D.C.;2001) (see www.calib.com).
24. Andrea J. Sedlak, Diane D. Broadhurst, U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, *Third National Incidence Study of Child Abuse and Neglect* (Washington, D.C.; September 1996) at v-vi (Executive Summary).
25. Department of Health and Human Services, *Blending Perspectives and Building Common Ground, A Report to Congress on Substance Abuse and Child Protection* (Washington, D.C.; April 1999) at Chapter 4.
26. Judicial Council of California, Administrative Office of the Courts, *Foundation for a New Century: 2000 Judicial Council Annual Report*: (San Francisco, CA; 2000) at 11.
27. *Id.*
28. *Id.*
29. See the Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 42 U.S.C. § 620 *et seq.*
30. Previously, federal contribution was thought to be limited to services supporting the "reunification" of children who had been removed—and requiring state or local financing of in-home options. Some jurisdictions argued that they were forced to remove children well served at home in order to qualify for these federal dollars. Beginning in 1994–95, federal money was used in larger measure to supplement the program.
31. See George Peacher, Jr., California Department of Social Services, *Response to Data Request of the Children's Advocacy Institute* (Sacramento, CA; September 9, 1996) at attachment II (hereinafter "*Response to Data Request*").
32. *Preplacement Preventive Services*, *supra* note 1, at 6–11.
33. *Child Abuse and Neglect in California*, *supra* note 5, at 12.
34. California Department of Social Services, Information Services Bureau, *Preplacement Preventive Services Characteristics Survey of Cases Closed in January 1993* (Sacramento, CA; 1993) at 7–11.
35. Richard P. Barth, Center for the Future of Children, The David and Lucile Packard Foundation, *The Juvenile Court and Dependency Cases*, in 6:3 THE FUTURE OF CHILDREN: THE JUVENILE COURT (Richard E. Behrman, M.D., ed.) (Los Angeles, CA; Winter 1996) 100, 103.
36. *Id.*

37. *Id.* at 104.
38. See *Santosky v. Kramer*, 455 U.S. 755 (1982); see also *Cynthia D. v. Superior Court*, 5 Cal. 4th 242 (1993).
39. Judicial Council of California, *Court Statistics Report: Statewide Caseload Trends, 1990–1991 through 1999–2000* (San Francisco, CA; 2001) at 56.2; Judicial Council of California, *Court Statistics Report: Statewide Caseload Trends* (San Francisco, CA; 2000) at 56; Judicial Council of California, *Court Statistics Report: Annual Report 1998* (San Francisco, CA; 1998) at 134; Judicial Council of California, *Invested in Justice: 1999 Judicial Council Annual Report* (San Francisco, CA; 1999) at 17.
40. Judicial Council of California, Administrative Office of the Courts, *State Court Outlook: California Courts in Crisis* (San Francisco, CA; 1996) at 17–18.
41. See, e.g., Tracy Weber, *Caretakers Routinely Drug Foster Children*, L.A. TIMES, May 17, 1998, at A-1. See also Tracy Weber, *Despair of the "System Kids"*, L.A. TIMES, May 21, 1998, at A-1; *Dependency Court: Lives in the Balance*, L.A. TIMES, May 22, 1998, at A-1, A-28 (two-part series) (hereinafter "*Lives in the Balance*").
42. California Department of Social Services, *Report to the Legislature on Investigation of Complaints Against Certified Family Homes and Foster Family Agencies* (Sacramento, CA; June 2001) at ii.
43. Center for Social Services Research, University of California, Berkeley, *California Children's Services Archive: Child Welfare Placement Stability* (July 2001).
44. Department of Social Services, *CWS/CMS2 – December 2001, Child in Out-of-Home Care Characteristics for California* (Sacramento, CA; 2001) (hereinafter "*Out of Home Dec. 2001*") (see www.dss.cahwnet.gov/research).
45. Office of the Governor, *Governor's Budget 2002–03* (Sacramento, CA; Jan. 2002) at HHS-153.
46. California Department of Social Services, *Public Assistance Selected Statistics, FY 1980 through 1996* (Sacramento, CA; November 1996) at Table 8.
47. *Governor's Budget 2002–03*, *supra* note 45, at HHS 150; California Department of Social Services, *Aid to Families with Dependent Children Foster Care Caseload Movement and Expenditures Report* (Sacramento, CA; January 2002).
48. *Now In Our Hands*, *supra* note 1, at 122
49. See, e.g., Institute for Research on Women and Families, Center for California Studies, California State University at Sacramento, *Code Blue: Health Services for Children in Foster Care* (Sacramento, CA; March 1998) at 1.
50. For this further breakdown, see *Out of Home*, *supra* note 44.
51. Center for Social Services Research, *California Children's Services Archive: Child Welfare Length of Stay from CWS/CMS* (Sacramento, CA; July 2001) at 1.
52. *Response to Data Request*, *supra* note 31, at Attachment V; DSS places average length of stay in foster care as follows, using FCI-520 forms as source:
- | | |
|------------|-------------|
| FY 1990–91 | 36.9 months |
| FY 1991–92 | 38.8 months |
| FY 1993–94 | 40.5 months |
| FY 1994–95 | 39.7 months |
- The 1996–1998 data maintain a similar rate of number terminated each year in relation to the population as a whole, indicating the continuation of these average length of stay numbers.
53. *Out of Home Dec. 2001*, *supra* note 44.
54. Barbara Needell, Danial Webster, Richard Barth, and Michael Armijo, Child Welfare Research Center, University of California at Berkeley, School of Social Welfare, *Performance Indicators for Child Welfare Services in California: 1995, Selected Findings* (Berkeley, CA; 1997) at 28. See also Legislative Analyst's Office, *California Counties: A Look at Performance* (Sacramento, CA; May 1998) at 10–11 (a 16% figure during 1993–96).

55. Heather N. Taussig, PhD, Robert B. Clyman, MD, and John Landsverk PhD., *Children Who Return Home From Foster Care: A 6-Year Prospective Study of Behavioral Health Outcomes in Adolescence*, PEDIATRICS Vol. 108 No. 1 July 2001, p. e10
56. The percentage placed with relatives has increased dramatically over the past twenty years, from less than 20% of all placements in 1985 to almost 50% today. See *id.* at 31.
57. *Performance Indicators for Child Welfare Services*, *supra* note 54.
58. *Child Abuse and Neglect in California*, *supra* note 5, at 45.
59. Legislative Analyst's Office, *Analysis of the 2001–02 Budget Bill* (Sacramento, CA; 2001) at C-202.
60. *Id.*
61. *Id.* at C-203.
62. Center for Social Services Research, University of California, Berkeley, *California Children's Services Archive: Exits From Foster Care* (April 2001).
63. *Lives in the Balance*, *supra* note 41, at A-1, A-28.
64. California Department of Social Services, *Characteristics of Children in Foster Care Status as of the End of Three Consecutive Years (For the Month of August 1998)* (Sacramento, CA; 1998) at 2 (Probation Table) (hereinafter "Selected Characteristics of Children in Foster Care—August 1998").
65. California Department of Social Services, *Licensing of Facilities for Children, Monthly Statistical Report* (Sacramento, CA; December 2001) at 1.
66. *Id.*
67. Sandra Boelter, California Foster Care Parents Association, *Foster Care Reimbursement Rate Resolution Findings* (1995) at 1.
68. David Hasemyer, *Lax Licensing Laws Beleaguer Foster Care*, THE SAN DIEGO UNION-TRIBUNE, April 26, 1999, at A-1.
69. California Department of Finance, *A Performance Review: California's Child Welfare System* (Sacramento, CA; April 1997) at 12 (Table 1-8).
70. Department of Social Services, Administration Division, *Public Assistance Programs: Comparison of Average Monthly Grants* (Sacramento, CA; May 1999); see also *Response to Data Request*, *supra* note 27, at Attachment III (Foster Care and Adoption Assistance Program Expenditures); California Department of Social Services, *Public Assistance Facts and Figures January 1998* (Sacramento, CA; April 17, 1998) at 1.
71. See John G. Orme, Cheryl Buehler, and Kathryn Rhodes, Casey Family Program Foster Parent Project, *Foster Family Retention* (Knoxville, TN; December 1999) at 1-5 (Executive Summary).
72. California Department of Social Services, *The Characteristics of Children, Birth Parent and Adoptive Parents Involved in Agency Adoptions in California July 1993 Through June 1994* (Sacramento, CA; 1994). Note that the tables in these reports use medians rather than other types of averages.
73. California Department of Social Services, *Adoptions in California: Agency, Independent, Intercounty, Annual Statistical Report July 1994–June 1995* (Sacramento, CA; 1997) at Tables 1 and 2.
74. *Id.* at Tables 1 and 4.
75. See Heitzi Epstein, National Association of Child Advocates, *FY 1999 Adoption Opportunities Grants*, CHILD WELFARE UPDATE (October 15, 1999) at 3 (www.hhs.gov).
76. See, e.g., Associated Press, *137 Children Find Homes on Adoption Day*, SAN DIEGO UNION TRIBUNE (November 29, 1999) at A-3.

77. Of approximately 100,000 children in foster care, 10,000–15,000 children are reunified each year, and approximately 46,000 are living with relatives. Of the 39,000–44,000 children remaining in foster care, only 2,000–2,300 are adopted each year. See Table 8-A.
78. *Performance Indicators for Child Welfare Services*, *supra* note 54, at 30.
79. See Pub. L. No. 104-188.
80. Mark Nadel, *Foster Care: Challenges Faced in Implementing the Multiethnic Placement Act*, General Accounting Office, GAO/T-HEHS-98-241 (September 15, 1998).
81. *Id.* at 6.
82. See the summary of research briefly listed by Hillary Rodham Clinton, *First Lady Announces New Efforts to Support Transitioning Foster Care Youth* (Washington, D.C.; January 1999). See Chapter 9 for discussion of foster care relationship to delinquency and crime.
83. See Westat 1991 study, Courtney and Piliavin 1998 study and Barth 1990 San Francisco study summarized and discussed in Cynthia Fagnoni, Director of Education, *Foster Care: Challenges in Helping Youths Live Independently*, General Accounting Office, GAO/T-HEHS-99-121 (May 13, 1999) at 1–5.
84. State Auditor, Bureau of State Audits, *Los Angeles County: The Department of Children and Family Services Can Improve Its Processes to Protect Children from Abuse and Neglect* (Sacramento, CA; October 1996).
85. *Id.* at 3.
86. See James Rainey and Sonia Nazario, *Child Abuse Reports Swamp County System*, L.A. TIMES (Jan. 11, 1998) at A-1, A-18, A-19.
87. See also Matea Gold, *All Their Many Children*, L.A. TIMES, July 13, 1999, at B-1, contending that the problem remained during 1999.
88. *Id.*
89. See e.g., Caitlin Liu, *County Foster Care System 'Broken', Grand Jury Reports*, L.A. TIMES, July 1, 2000, at B-1.
90. See e.g., Cheryl Romo and Megan Webb, *Foster Care System Founders Despite Task-Force Guidance*, L.A. DAILY JOURNAL, August 24, 2001, at 1.
91. See discussion of the problem in Cheryl Romo and Megan Webb, *System's Youth Face Claims Maze*, L.A. DAILY JOURNAL, August 24, 2001, at 12.
92. Cheryl Romo, *State Controller Orders Audits of LA Foster Care*, L.A. DAILY JOURNAL, July 27, 2001, at 1.
93. Chapter 785, Statutes of 1998.
94. See calculations of Frank Mecca, *Estimated Staff Reductions Related to the May Revision Cuts*, May 15, 2002, at Table 1.
95. Margie Gentzel, *Which California Agencies Are Responsible for Children Whose Parents Are Incarcerated?* CAPITOL WEEKLY, May 15, 2000, at 1.
96. *Id.* at 1, 11.
97. *Id.*
98. See discussion of pending Congressional legislation to address this issue, *Judges Are Told to Aid Children Who Immigrate to U.S. Alone*, N.Y. TIMES, June 6, 2002.
99. The enacted version was based on a compromise between H.R. 867 and the Senate's SAFE and PASS Acts. However, it omitted a number of important provisions sought by child advocates, including more money for permanency services and training for child protection case workers. The child protection system depends critically upon the professional

judgment of social workers employed by county child protection agencies (working within county departments of social services). An incompetent or strongly biased social worker can influence decisions affecting the health, safety, and future of children. Child advocates contend that the competence and expertise of this group is uneven. Civil service protection makes weeding out those who consistently manifest bad judgment difficult.

100. H.R. 3443, P.L. 106-169; note that the pre-existing federal independent living program is renamed by this statute in honor of the late Senator John Chafee of Rhode Island.
101. AB 1544 (Assembly Committee on Human Services) (Chapter 793, Statutes of 1997).
102. Chapter 1055, Statutes of 1998; see Welfare & Inst. Code §§ 11360–70, as amended by AB 1111 (Chapter 147, Statutes of 1999).
103. *Governor's Budget 2002–03*, *supra* note 45, at HHS 150.
104. Chapter 785, Statutes of 1998.
105. Chapter 450, Statutes of 2000.
106. Chapter 824, Statutes of 2000, see also AB 1764 (Maddox).
107. Women who give birth to children they do not want or cannot provide for often abandon the infants immediately after birth. A “Garden of Angels” in Los Angeles has the bodies of 38 such infants collected within two years and given dignified burial by loving hands. This measure will give such women an option to the benefit of their newborns—the right to avoid prosecution for child neglect which would otherwise apply, if they leave their babies in an emergency room or in other specified locations, no questions asked.
108. Chapter 921, Statutes of 2000.
109. For further description and veto message detail, see Children’s Advocacy Institute, *Children’s Legislative Report Card 1999–2000* (San Diego, CA; 1999) at 13–14 (available at www.acusd.edu/childreissues).
110. Office of the Governor, *Governor’s May Revise 2002–03* (Sacramento, CA; May 2002) at 54.
111. *Warren v. Saenz*, SF Sup. Ct. #317487, filed December 18, 2000.
112. See Greg Lucas quoting the DSS position in *State to be Sued Over Care in Kids’ Shelters*, S.F. CHRONICLE, December 18, 2000.
113. June Gibbs Brown, Office of Inspector General, *Audit of Protections Provided to Foster Care Children through the Juvenile Justice System in California* (Department of Health and Human Services, A-09-99-00057; December 2000) at i-ii.
114. *Id.* at i.
115. General Accounting Office, *Foster Care: Effectiveness of Independent Living Services Unknown* (GAO #HEHS-00-13; November 1999) *passim*. The national study included a sample from Contra Costa County and found particularly deficient assistance in California *vis-a-vis* other states, including deficiencies in special education services, employment services, daily living skills training, and specific financial assistance. See at 24, 26, 28, and 30.
116. See *e.g.*, Sonia Krishnan, *California Scrambles to Improve Foster Care*, L.A. TIMES, March 6, 2001.
117. See *e.g.*, *Federal Probe to Look at California’s Troubled Foster Care*, Associated Press, February 17, 2002 (see www.safate.com).
118. Orr is quoted in Mareeva Brown, *U.S. Is Forcing State to Change Foster Care*, SAC. BEE, March 25, 2002, at 1.
119. These funds must not be used for services to children or families with incomes below 200% of poverty.
120. TANF funds transferred to the Social Services Block Grant are not subject to this provision.

121. California Department of Social Services, *Supplemental Security Income/State Supplementary Payment (SSI/SSP): Questions and Answers* (Sacramento, CA; April 14, 1998) at 3 (see www.dss.cahwnet.gov).
122. For an interesting discussion of the issue, see David Lash, *Cease Fire*, L.A. DAILY JOURNAL, Jan. 22, 1998, at 6.
123. However, note that legislation is pending in California which would carve out an exception for persons who are in rehabilitation, *et al.*
124. Rutledge Hutson, *Red Flags: Research Raises Concerns About the Impact of "Welfare Reform" on Child Maltreatment*, Center for Law and Social Policy (Washington D.C., Oct. 2001).
125. Citing K. Shook, *Does the Loss of Welfare Income Increase the Risk of Involvement with the Child Welfare System?*, *Children and Youth Services Review*, Vol. 21, Nos. 9-10. (1999) at 781-814
126. Citing K. Wells and S. Guo, *The Impact of Welfare Reform on Foster Care and Child Welfare: A Case Study of Reunification of Foster Children in the First Entry Cohort*, *Children and Youth Services Review* (2002).
127. Note the studies cited in Chapter 2 concerning recent evidence of the neglect of adolescents who do not receive child care (now assured only to age 11). The CLASP Report cites C. Faxson and J. Waldfogel, *Welfare Reforms, Family Resources, and Child Maltreatment, in The Incentives of Government Programs and the Well Being of Families*, 2001 and available at www.jcpr.org/book; see also C. Paxson and J. Waldfogel, *Work, Welfare and Child Maltreatment*, *Journal of Labor Economics* (2002, in press).
128. Citing H. Goldberg and L. Schott, *A Compliance-Oriented Approach to Sanctions in State and County TANF Programs*, Center on Budget and Policy Priorities (Washington, D.C.; Oct. 2000) (see www.cbpp.org), noting that sanctioned families frequently have barriers to employment.
129. *Governor's Budget 2002–03*, *supra* note 45, at HHS 150.
130. See CAL. WELF. & INST. CODE § 11401.
131. In an attempt to force counties to control the cost of AFDC-FC placements, the Legislature realigned spending for AFDC-FC in 1991. Prior to realignment, the state paid 95% of the cost of non-federally-eligible children, and counties paid 5% of the cost out of county general fund revenues. After realignment in 1991, the state transferred funds generated from vehicle license fees and sales taxes for deposit in local revenue funds. The county share of AFDC-FC for non-federally-eligible children rose to 60%, while the state share decreased to 40%. For federally-eligible children, the federal government currently pays 50%, the state pays 20%, and the county pays 30% of the total cost. Legislative Analyst's Office, *The 1992–93 Budget: Perspectives and Issues* (Sacramento, CA; 1992) at 107.
132. From 1989 to 1995, the number of children placed in family foster homes rose by 22%. The number of children placed in group homes rose by 43%. As noted by the Legislative Analyst's Office, while group homes comprised about 25% of the AFDC-FC caseload, their share of expenditures accounted for 65% of total foster care spending. *Child Abuse and Neglect in California*, *supra* note 5, at 39.
133. CAL. WELF. & INST. CODE § 16500 *et seq.*
134. *Id.* at § 16501.
135. Legislative Analyst's Office, *Analysis of the 1993–94 Budget Bill* (Sacramento, CA; 1993) at C-140 (hereinafter "LAO 1993–94"); see also CAL. WELF. & INST. CODE § 16500.5.
136. Due to the realignment of child welfare services dollars in 1991–92, it is necessary to add together three different fund sources from the Governor's Budget to get an accurate picture of spending for these services. In 1991–92, the Legislature approved a change in cost share between the county and state for child welfare services: It became a 70%-30% state-county split. These dollars were part of the "social services subaccount," which contained a portion of sales tax revenues set aside by statute for child welfare services and other social services programs included in Realignment I. Office of the Governor, *Governor's Budget 1995–96* (1995) at HW -131 (hereinafter "Governor's Budget 1995–96").
137. Chapter 785, Statutes of 1998.
138. *May Revise 2002–03*, *supra* at 110; see also Office of the Governor, *Governor's Budget Summary 2001–02* (Sacramento, CA; January 2001) at 177–78.

139. See calculations of Frank Mecca, *Estimated Staff Reductions Related to the May Revision Cuts* (May 15, 2002) at Table 1.
140. CAL. WELF. & INST. CODE § 16120.
141. *Id.*
142. LAO 1993–94, *supra* note 135, at C-139.
143. *Governor’s Budget 1995–96*, *supra* note 136, at HW -114.
144. Legislative Analyst’s Office, *Analysis of the 1996–97 Budget Bill* (Sacramento, CA; 1996) at C-139.
145. To see text, go to <http://www.courtinfo.ca.gov/rules/2002/titlefive/1400-98-51.htm#TopOfPage>
146. For example, one rule proposal would cut attorney caseload down to below 200 cases per attorney. Many counties have an “attorney-investigator” team model which allows counsel for the child to have a professional investigator/expert/witness assist him or her, at a price of a somewhat higher caseload. The result of a mechanical imposition of a low attorney - child caseload could be the dismissal of investigators, the hiring of only attorneys, and the payment of low salaries— resulting in high attorney turnover and the loss of investigative assistance as well. A preferable policy is to have a sliding scale of maximum caseloads which turn on (a) investigators exclusively assigned to counsel, and (b) experience level of counsel. Accordingly, a caseload of 100 may be appropriate with no investigators and no attorneys with more than five years of child representation experience, but a 250 caseload may be appropriate with assigned investigators and minimum experience levels. Such a “flex” system allows different models to function.
147. Office of the Governor, *Governor’s Budget Summary 1997–98* (Sacramento, CA; 1997) at 29.
148. See Chapter 794, Statutes of 1997.
149. Chapter 1055, Statutes of 1998.
150. Modeled after 2000’s SB 949 (Speier), sponsored by the Children’s Advocacy Institute.

