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Freeing Children for Adoption within the Adoption and Safe Families Act Timeline:

Part 1 – The Numbers

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KEY FINDINGS

- States vary tremendously in both the proportion of children entering foster care who experience termination of parental rights (TPR) within five years of entry (ranging from nine percent to 44 percent) and in the proportion of TPRs that occur within 17 months (ranging from 16 percent to 89 percent). The 17-month time point approximates the requirement in federal law that child welfare agencies file a petition to terminate parental rights once a child has been in foster care 15 of the previous 22 months.
- Of children exiting before spending 17 months in foster care, 77 percent exit to a parent or relative's care (either with or without guardianship).
- After the 17-month point, 25 percent experience reunification or relative care exits, and 47 percent of exits are to adoptions.
- White and multiracial children are more likely than children of other races to experience TPR, while Asian and Hispanic children are most likely to have TPR occur within 17 months.

Permanency, that is ensuring children have long term, enduring connections to family or other caring adults, is one of the three primary goals of the child welfare system, along with safety and child well-being. Child welfare systems have long been concerned about permanency outcomes of children entering foster care because stability in relationships with caring adults form the basis for healthy child development (Wadell, et al 2004). Increases in the number of children entering care in recent years – in part due to the ongoing substance use crisis – have raised new concerns about how long children remain in temporary care. The number of children in foster care rose from 2013 to 2017 after more than a decade of consistent declines (ACF 2020a). In addition, achieving timely permanency for children is the federally monitored program outcome state child welfare agencies most consistently struggle to meet (ACF 2020b).

This research explores how frequently states make exceptions to the federal requirement that child welfare agencies initiate the legal process to terminate parents' rights once a child

has been in foster care for 15 of the previous 22 months, and highlights issues behind states' difficulties in achieving timely permanency for children. Three data sources are used to gain insights into these issues:

1. Quantitative federal analysis of administrative data from the Adoption and Foster Care Analysis and Reporting System (AFCARS)
2. Content analysis of monitoring reports and program improvement plans from the most recent round of Child and Family Services Reviews (CFSRs)
3. Interviews with state adoption officials and stakeholders in three states: Illinois, Utah and Wisconsin

This report highlights quantitative findings from AFCARS data. A companion report ([Freeing Children for Adoption within Adoption and Safe Families Act Timeline: Part 2, State Perspectives](#)), focuses on qualitative findings from CFSRs and key informant interviews.

The quantitative analyses follow a cohort of children who entered foster care in 2013, over 200,000 children in total, and track their exits through the end of 2017. Methodological details may be found at the end of this report. The analyses presented here relate to analyses of permanency featured in a recent Information Memorandum published by the Children's Bureau, ACYF-CB-IM-21-01, Achieving Permanency for the Well-being of Children and Youth (issued January 5, 2021). The analyses in the Information Memorandum focus on aggregate national findings. This report complements those in the Information Memorandum with an expanded focus on variation among the states and how those variations relate to policy and practice.

Background on Federal Termination of Parental Rights (TPR) Requirements

The Adoption and Safe Families Act (ASFA, P.L. 105-89) was enacted in 1997 and at the time represented the most significant overhaul of federal child welfare law since the establishment of the federal title IV-E (of the Social Security Act) foster care and adoption

Federal child welfare law requires that, as a condition of the title IV-E Foster Care Program, a state file or join a petition to terminate parental rights once a child has been in foster care for 15 of the previous 22 months. This is often referred to as the 15/22 rule. Exceptions are permitted in limited circumstances.

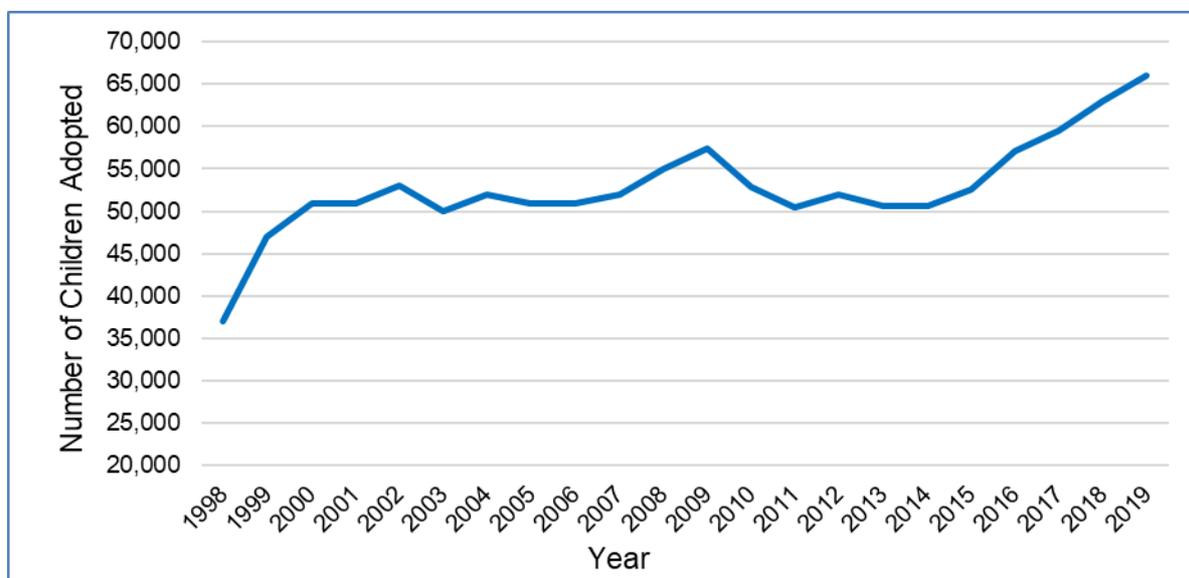
assistance programs in 1980. The law codified in federal statute the core child welfare system values of safety, permanency, and child well-being. The permanency goal was intended to ensure that children and youth achieve a permanent family connection, preferably with their birth families but with adoptive families if birth families cannot address safety issues within a reasonable period of time. ASFA addressed concerns that too many children drifted for long periods in the child welfare system without resolution of their cases and suffered emotionally and developmentally as a result (Spar and Shuman 2004). As involved observers have noted, at the time ASFA

was being considered a "broad group—members of Congress, the Clinton administration, and many outside observers—expressed concern about the growth in foster care caseloads, a pattern of children lingering in care too long, and the obstacles to adoption that prevented children who could never go home from ever achieving a place within a permanent family" (Golden and Macomber 2009, p. 9). Among the law's major provisions related to permanency is a requirement that, with limited exceptions, states must file a petition to terminate parental rights once a child has been in foster care for 15 of the previous 22 months. This is often referred to as the 15/22 rule. Termination of parental rights is necessary before another family may adopt the child. States may make exceptions to the timeline, that is, grant extensions, on an individual basis if the child is living with a relative, if

services intended to address the conditions that led to the child’s foster care placement have not been delivered, or if the state documents a “compelling reason” why termination of parental rights is not in the child’s best interests.

As shown in Figure 1, in the years immediately following ASFA’s enactment in 1997, the annual number of adoptions from foster care increased rapidly and then settled into a new equilibrium of between 50,000 and 60,000 adoptions per year. The numbers have been rising again since 2014 and topped 60,000 in both 2018 and 2019 (ACF 2020b). Today, there are more children who have been adopted from foster care and are receiving federal adoption assistance subsidies than there are children currently in foster care. The shift in the foster care and permanency program toward a predominance of children in adoptive homes has progressed steadily since ASFA was enacted (Rolock, et al. 2017). Wildeman and colleagues (2020) have estimated that approximately one percent of U.S. children experience TPR during childhood and that the likelihood of TPR doubled between 2000 (shortly after ASFA was enacted) and 2016.

Figure 1. Adoptions with Public Agency Involvement, 1998-2019

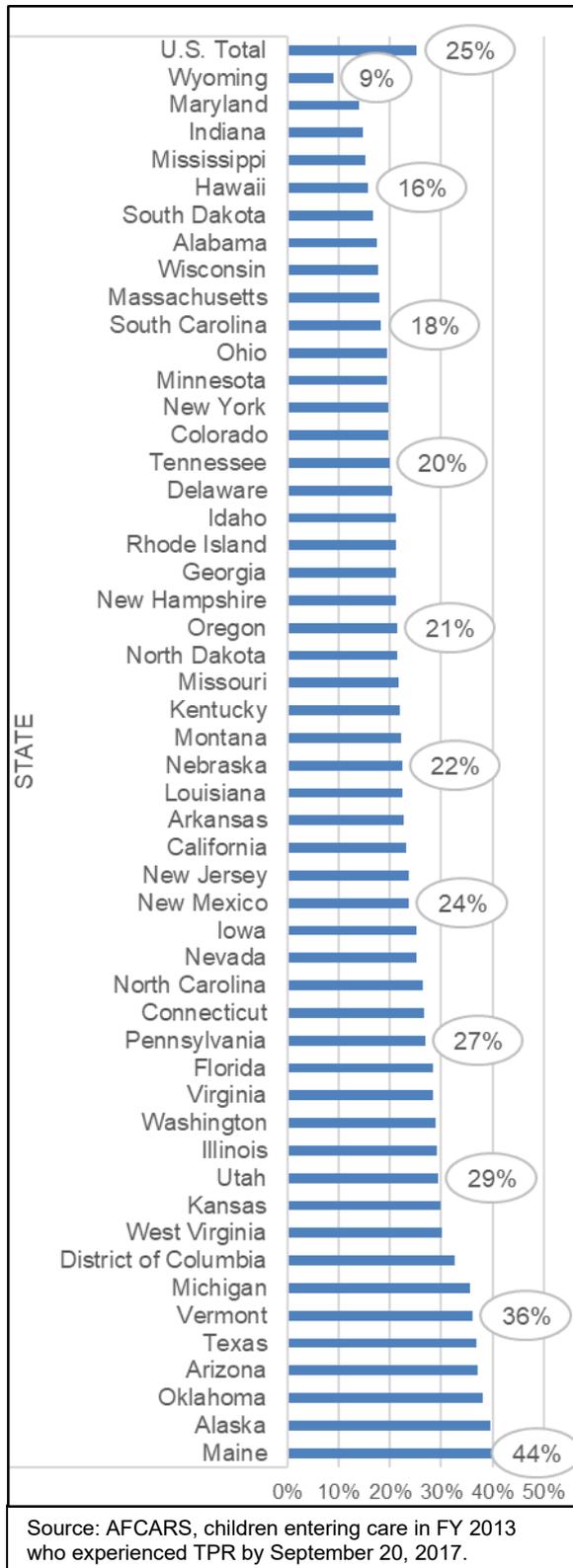


Source: AFCARS

While the number of adoptions grew following ASFA, states continued to struggle to achieve timely permanency for children. A Government Accountability Office (GAO) study in 2001 found that in most states that had data available to track the phenomenon, “the number of children exempted from the [15/22] provision greatly exceeded the number of children to whom it was applied” (GAO 2002). More recently, current results of ACF’s Child and Family Services Reviews (CFSRs) documented continuing challenges to timely adoption¹. In the round of reviews that ended in 2018, only seven states were rated as having a strength on the review item regarding timely TPRs (ACF 2020).

¹ Child and Family Services Reviews, conducted for each state roughly every five years, determine the extent to which states are in compliance with federal child welfare laws and regulations. States found not to be in substantial compliance are required to implement a Program Improvement Plan describing corrective actions they will take to improve performance. ACF completed its third round of CFSRs in 2018 and no state was determined to be in substantial compliance with all of the seven outcomes and seven systemic factors addressed in the reviews. More information on the CFSRs may be found at: <https://www.acf.hhs.gov/cb/monitoring/child-family-services-reviews/round3>

Figure 2. States vary in the proportion of children entering foster care who experience termination of parental rights



While there is widespread agreement on the importance of permanency in children’s lives, there is considerably more disagreement regarding whether the child welfare system inappropriately contributes to impermanence by taking too many children into foster care who could remain safely with their families and not doing enough to address families’ problems before seeking permanent alternatives. Some observers argue that further efforts are needed to terminate parental rights expeditiously, in some cases long in advance even of current ASFA timelines, and to move more children into adoptive homes as quickly as possible (Riley 2018; Zill 2011). As of 2011, 18 states had enacted state level TPR timelines shorter than those required in ASFA (Vesnecki 2011). For instance, Alabama expects the child welfare agency to request TPR once a child has been in care 12 months, Arizona may request TPR at nine months under some circumstances, and Oklahoma has a timeline of six of 22 months for children who were under the age of four at the time of placement (Child Welfare Information Gateway 2016). Other efforts to expedite adoptions have also been implemented in some states, such as streamlining the parental appeals process (Keith and Flango 2002). However, work by Wulczyn and colleagues (2016) finds that the existence of state adoption “fast track statutes” are not by themselves associated with higher adoption rates in practice. If those statutes are used infrequently, as is the norm where they exist, they have little practical effect. (For these and other key data used in this report, complete state-by-state statistics can be found in the appendix table.)

States Vary Widely in the Frequency and Timing of TPR

States vary in how frequently they terminate parental rights of children in foster care. As shown in Figure 2, the proportion of children who entered foster care in FY 2013 who experienced TPR by the end of FY 2017 ranged from a low of nine percent in Wyoming to a high of 44 percent in Maine². The median among states is 22 percent.

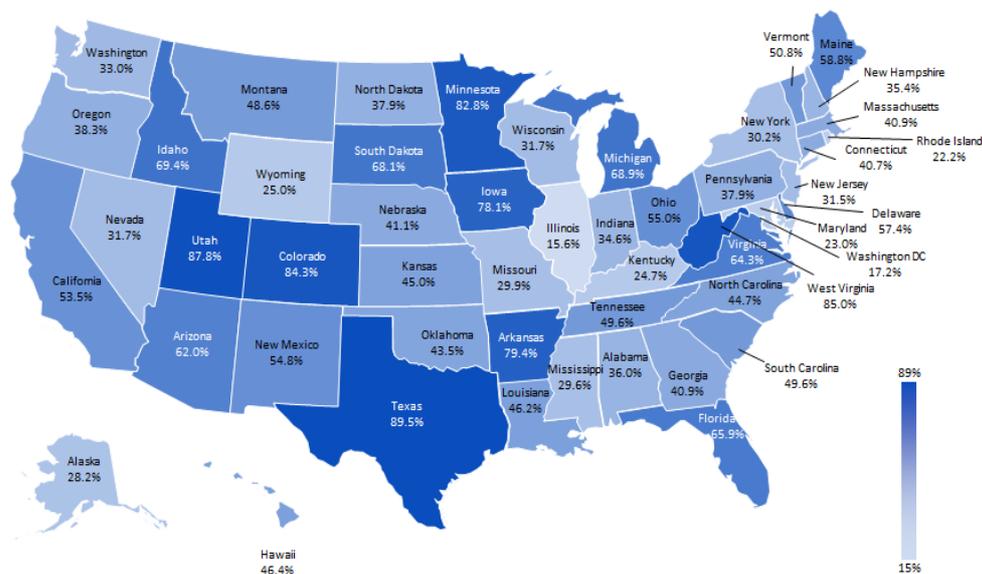
² Specific statistics for each state may be found in the appendix table.

Twelve states had TPR rates below 20 percent, and seven states had rates over 35 percent.

Myriad factors may be involved in the variations among states. Several hypotheses may be posed to explain the range among states in the likelihood of TPR. States that bring into care only the most seriously endangered children may be less able to reunify families and thus conduct more TPRs. States with fewer service resources may have more difficulty addressing the family problems that led to the child’s entry. State child welfare agencies and judges may vary in the extent to which they value both reunifications and other relative placements in relation to adoptions when children remain in care for extended periods. The age distribution of states’ foster care populations may also be a factor, since younger children are more likely than older children to experience TPR. States that serve a disproportionate number of older youth in foster care will likely have lower rates of TPR, and those whose foster care populations include a disproportionate number of infants will likely have higher rates of TPR. The age distribution of a state’s foster care population relates to policy factors such as the extent to which the state uses its child welfare system to serve mentally ill or delinquent youth and the extent to which it makes efforts to serve drug exposed infants while in their parents’ care rather than routinely placing those infants in foster care. No research has tested any of these possible explanations of differing TPR rates among states.

Timeliness of terminations of parental rights also vary substantially. Figure 3 shows the proportion of TPRs that occurred within 17 months of the child’s foster care entry in each state, that is, approximately in line with the ASFA timeline. States shown in lighter shades of blue had lower proportions of children whose TPRs were timely, while those in darker shades of blue had larger proportions of timely TPRs. Nationally, 54 percent of TPRs occur timely. However, states vary substantially in the percentage of TPRs that occur according to federal timeframes. In seven states, 70 percent or more of TPRs happened within 17 months. On the other end of the distribution, in seven states and DC, more than 70 percent of TPRs took place more than 17 months after entry. AFCARS data do not include information on whether specific exceptions to the TPR requirements are documented for children who remain in care without TPR. Whether exceptions are documented or not, clearly many children are de facto exempted from the timelines, and the volume of these exceptions vary among the states.

Figure 3. Over half of TPRs nationally (54 percent) occur within 17 months of foster care entry but rates vary widely among states

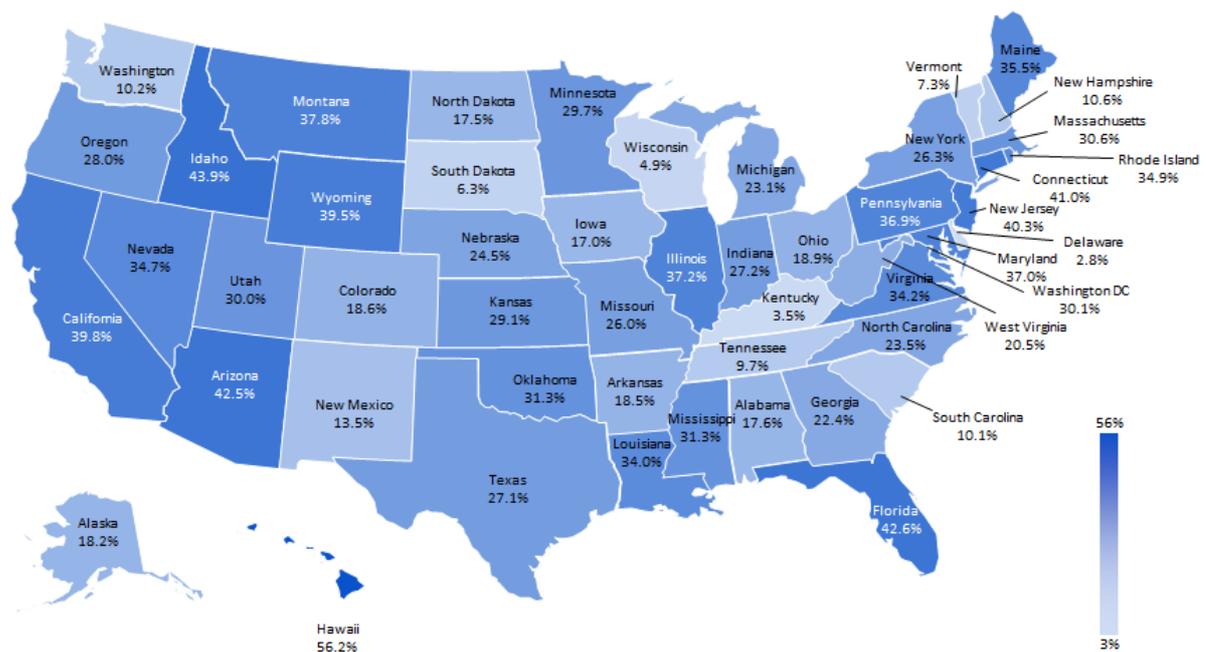


Source: AFCARS, proportion of children experiencing TPR within 17 months among children entering care in FY 2013

Many parents face substantial barriers to reunification and find it difficult to accomplish the requirements of their case plans within the ASFA timelines. Many note that parents with substance use disorders (SUDs) are particularly hard pressed to demonstrate recovery to caseworkers' and judges' satisfaction within the timelines (DHHS, 1999; Rockhill et al. 2008). Berger and colleagues (2010) found that families with caseworker-perceived alcohol or drug problems were more likely to experience TPR, though differences disappeared after controlling for other factors. Hong and colleagues (2014) found that mothers with "mixed" progress in SUD treatment were less likely to experience TPR than those who made no significant progress. There has also been some reluctance to terminate parental rights when a parent's incarceration rather than maltreatment is the primary impediment to reunification and the parent expects to resume parenting upon release sometime after the 15-month point (Zavez 2008; Gentry 1998). However, some states' child welfare statutes specifically address length of parental incarceration as grounds for TPR. For instance, Ohio's statute permits TPR if the parent is unable to care for the child for more than 18 months due to incarceration. A similar provision in Iowa's law specifies TPR should occur if a parent is to be incarcerated for at least five years (Child Welfare Information Gateway 2016).

The law provides potential exceptions for children living with relatives. One of the permitted exceptions to TPR at the 15 of 22 months point is if the child is living with a relative. While reasons for exceptions are not documented in AFCARS, our analysis examined how frequently children who remained in care were living with relatives and thus would have been potentially eligible for this exception. Nationally, 30 percent of children in care beyond 17 months and who have not experienced TPR were living in relative foster homes. However, as with so many aspects of child welfare practice, the proportion living in relative foster homes at the point the 15/22 rule should have been invoked varies widely by state. Figure 4 shows this variation. States with higher proportions of children living in relative care are shown in darker shades of blue. In six states, fewer than 10 percent of children in foster care beyond 17 months were living with relatives. On the other end of the distribution, in seven states 40 percent or more lived with relatives.

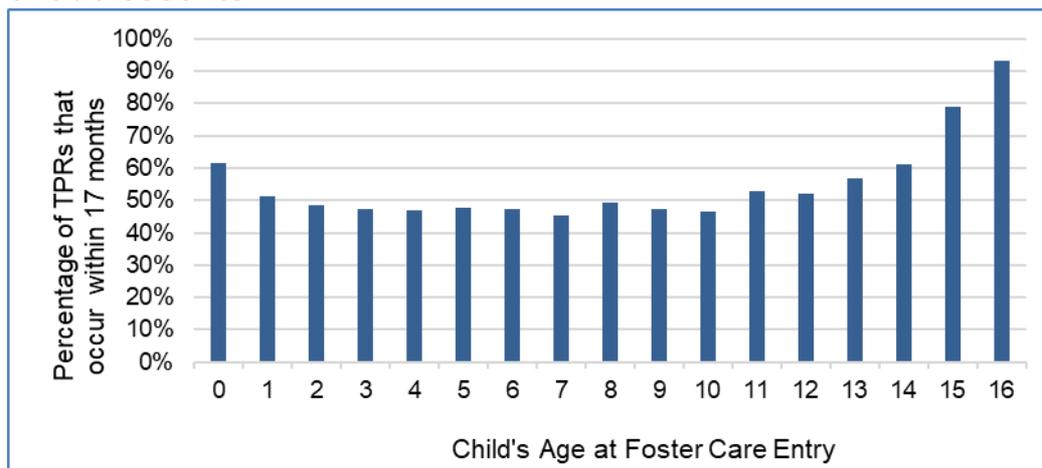
Figure 4. Nationally, 30 percent of children in foster care without TPR after 17 months are living with relatives



Source: AFCARS, proportion of children living with relatives in the first report after reaching 17 months in care

Timeliness of TPR varies by the age at which the child entered care. As shown in figure 5, timely TPRs are most likely for children who enter care as infants (under age one) and adolescents (age 14 and over). Some states have established more aggressive TPR timelines for infants. These shorter timelines are justified on the basis of young children’s developmental needs, particularly with respect to developing attachment to a caregiver. States also find it easier to recruit adoptive parents for infants than for children at even somewhat older ages. For the oldest youth in foster care, TPRs either happened rapidly, or not at all because they emancipated before being adopted.

Figure 5. TPRs are most timely for children entering foster care as infants or adolescents



Source: AFCARS

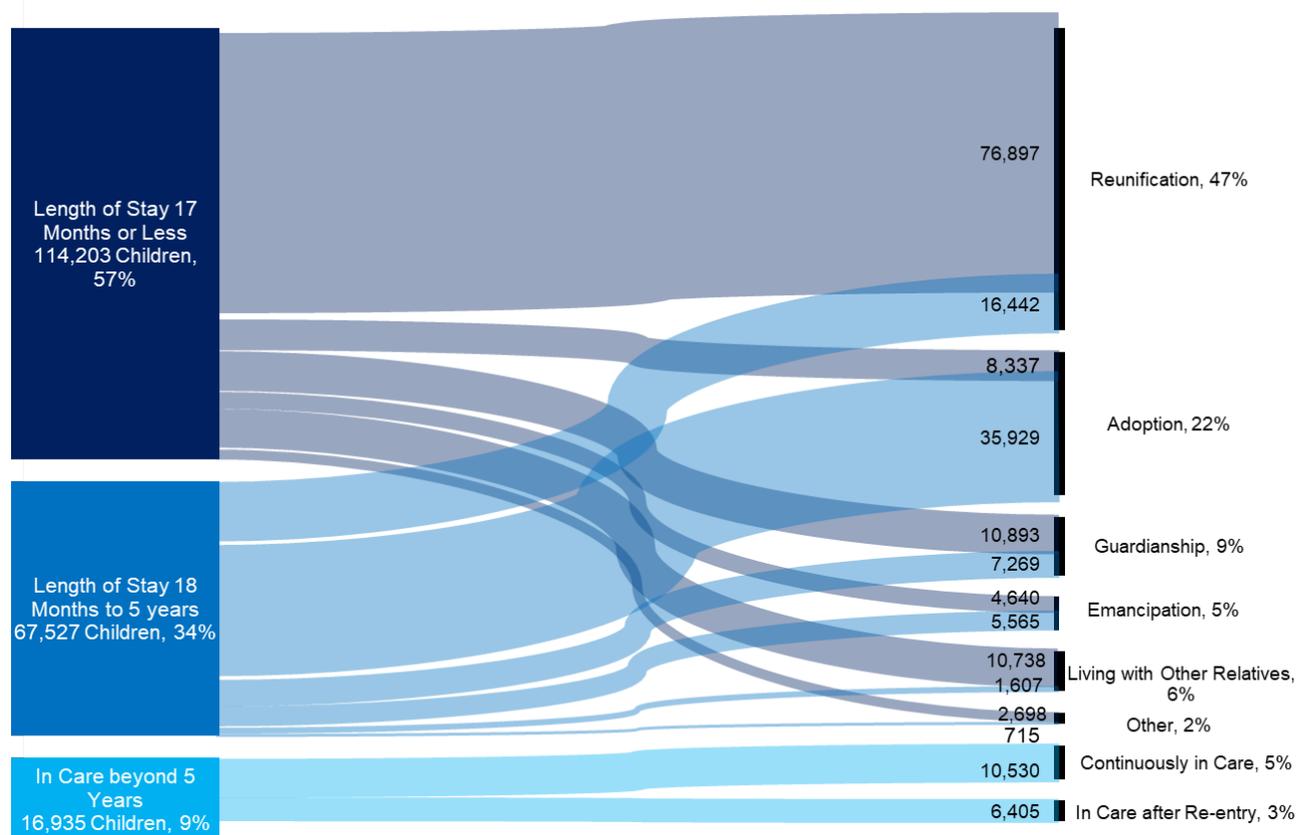
TPR is most likely for White and multiracial children and least likely for Asian and Hispanic children. With respect to race and ethnicity, multiracial and White children are more likely than children of other races to experience TPR. Data for children of all races is shown in Table 1. Over 30 percent of multiracial children and more than one-quarter of White children who entered foster care (27.1 percent) had parental rights terminated within the five-year observation window, as compared with 22.7 percent of American Indian children, 21.5 percent of Black children, 17.9 percent of Hispanic children, and 16.2 percent of Asian children who entered care. Differences by race and ethnicity are also seen in the timeliness of TPR. TPRs were most likely to be timely for Asian and Hispanic children (67.3 percent and 58.6 percent, respectively) and least likely to be timely for American Indian children (40.8 percent).

Table 1. TPR Experiences by Race/Ethnicity

Race/Ethnicity	Proportion of Children Who Experienced TPR within 5 Years	Proportion of TPRs that Occurred within 17 Months
White	27.1%	55.6%
American Indian	22.7%	40.8%
Black	21.5%	49.7%
Hispanic	17.9%	58.6%
Asian	16.2%	67.3%
Multiracial	30.4%	53.0%

Figure 6 describes exit reasons for children in the study cohort. On the left of the chart, children are divided into three groups based on their length of stay in foster care: children who exited in less than 17 months, children who exited between 18 months and 5 years, and those still in care after 5 years. On the right side, children are divided according to their exit types. The lines flowing from left to right reflect the number of children from each length of stay group exiting to each exit type—reunification, living with other relatives, adoption, emancipation, guardianship and other (which includes transfer to another agency and death of the child). TPR is required only for adoption exits. For all other exit types the parental relationship remains intact legally, though custody is transferred.

Figure 6: Reunifications predominate among foster care exits prior to 17 months while adoptions are more common for those in care longer



Source: AFCARS, exit type for children who entered foster care in FY 2013 and had exited by September 30, 2017.

Reunification becomes substantially less frequent after the 17-month mark. Overall, 47 percent of children exited to reunification, with four in five reunifications occurring before 17 months had passed. Adoptions were the exit type for 22 percent of children, and one in five of those exits occurred before 17 months. Guardianships occurred in more equal numbers in the two time periods, while exits to live with relatives without guardianships mostly occurred in the early months. While reunifications may still occur after the point at which a child has spent 17 months in care, they are greatly reduced compared to earlier in a child’s foster care stay. Of children who exit foster care before the 17-month point, 67 percent reunify with parent(s) and 10 percent exit to relative care. Of children in care beyond 17 months, 23 percent reunify and two percent exit to relative care. Also, seven percent of exits prior to 17 months and 49 percent of exits after 17 months are to adoptions. At the end of the study’s 5-year observation period nearly 17,000 children (eight percent of the total cohort) were still in

care, including five percent of the cohort who had been in care continuously and four percent who had left care at some point and re-entered.

Conclusion

Over 20 years after ASFA's passage, many states still struggle with permanency decisions for children who remain in foster care longer than 15 months. These analyses have demonstrated that there is considerable variation in the frequency with which states ultimately terminate the parental rights of children in foster care and move them to adoptive homes, as well as the timelines on which they do so. These numbers tell the "what" about the frequency and timing of children's exits from foster care to permanency and the extent to which they experience TPR. However, numerical data do not explain the mechanisms behind decision-making and delays or how and why states' practices differ.

Some argue that child welfare agencies separate families unnecessarily, fail to address the issues that led to separation, and then terminate parental rights for too many children for insufficiently good reason. They believe the federal requirement that states seek to terminate parental rights after a child has been in foster care for 15 of the previous 22 months is arbitrary and unfairly deprives children of their birth families. Others believe caseworkers, their supervisors, and judges insufficiently value children's safety and well-being, and press for even shorter timelines to determine children's permanent family associations. After many years of struggling with the balance between children's needs and parents' rights, child welfare agencies continue to be buffeted by these discordant views on current practice, both among their leadership and staff as well as from outside stakeholders.

Exceptions to the ASFA timelines were intended by Congress to provide more time to parents in cases where reunification is possible within a reasonable timeframe. Yet in three of four cases in which exceptions are used, either explicitly or implicitly, permanency is delayed without enabling a family reunification outcome. In the end, TPR and adoption occurs, or the child remains in care indefinitely (in this analysis, for at least five years). Neither delayed adoption nor long term foster care and possible emancipation without permanency are preferred outcomes for children. This suggests improvements to practice are needed both to improve timely reunification and to better target exceptions so they may be used to facilitate, rather than delay, desired permanency and well-being for children in foster care.

Existing administrative data allows us to track whether a TPR happened for children in foster care and when it occurred. However, these data do not provide insights into whether this most serious of actions a family court can take was necessary or could have been avoided, or what the consequences of TPR are for children, their birth families, or their adoptive families.

To explore the how's and why's of TPR delays beyond ASFA timelines, this research also explored monitoring reports and interviewed adoption practitioners and stakeholders in three states. Findings from that portion of the study may be found in the companion report to this one entitled, [*Freeing Children for Adoption within Adoption and Safe Families Act Timelines: Part 2 – State Perspectives.*](#)

Methods

Data from the Administration for Children and Families' Adoption and Foster Care Analysis and Reporting System (AFCARS) were used to document permanency outcomes and timelines for a cohort of children who entered foster care for the first time during Fiscal Year (FY) 2013. Children's placements and discharges were followed for approximately five years, through the end of FY 2017. By that point 92 percent of the children had exited foster care. The cohort totals 205,674 children, of whom 25 percent experienced termination of parental rights (TPR) during the period of observation.

A cutoff of 17 months was used to look at whether TPRs were conducted timely. This is the same standard ACF uses in CFSTRs to determine whether TPRs are occurring timely and takes into account determinations of when foster care officially begins. While the ASFA timeline refers to when the TPR petition must be filed, AFCARS data specify only the date on which TPR is completed. Thus, our measure of whether the TPR complies with the ASFA timeline is inexact. Federal rules do not make requirements for how quickly a judge is to act on the TPR petition once filed and there may be weeks or months of difference between the filing of the petition and the judicial action to complete it. AFCARS data was also used to determine whether children in foster care were living with relatives at the time they reached the 15 of 22 months mark. The first recorded placement after the child had been in foster care for 17 months was used to make this determination.

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Appendix 1: Key Statistics on Termination of Parental Rights, By State

State	Proportion of children entering foster care in 2013 who experienced TPR within 5 years of entry	Proportion of TPRs that occurred before 17 months	Proportion of children without TPR at 17 months who were living with relatives
Alabama	17.4%	36.0%	17.6%
Alaska	39.7%	28.2%	18.2%
Arizona	37.1%	62.0%	42.5%
Arkansas	22.6%	79.4%	18.5%
California	23.3%	53.5%	39.8%
Colorado	19.8%	84.3%	18.6%
Connecticut	26.8%	40.7%	41.0%
Delaware	20.4%	57.4%	2.8%
District of Columbia	32.7%	17.2%	20.5%
Florida	28.3%	65.9%	42.6%
Georgia	21.3%	40.9%	22.4%
Hawaii	15.8%	46.4%	56.2%
Idaho	21.2%	69.4%	43.9%
Illinois	29.1%	15.6%	37.2%
Indiana	14.6%	34.6%	27.2%
Iowa	25.1%	78.1%	17.0%
Kansas	29.8%	45.0%	29.1%
Kentucky	21.8%	24.7%	3.5%
Louisiana	22.4%	46.2%	34.0%
Maine	44.2%	58.8%	35.5%
Maryland	14.0%	23.0%	37.0%
Massachusetts	18.0%	40.9%	30.6%
Michigan	35.6%	68.9%	23.1%
Minnesota	19.4%	82.8%	29.7%
Mississippi	15.1%	29.6%	31.3%
Missouri	21.8%	29.9%	26.0%
Montana	22.3%	48.6%	37.8%
Nebraska	22.3%	41.1%	24.5%
Nevada	25.3%	31.7%	34.7%
New Hampshire	21.3%	35.4%	10.6%
New Jersey	23.6%	31.5%	40.3%
New Mexico	23.7%	54.8%	13.5%
New York	19.8%	30.2%	26.3%
North Carolina	26.4%	44.7%	23.5%
North Dakota	21.5%	37.9%	17.5%
Ohio	19.3%	55.0%	18.9%
Oklahoma	38.2%	43.5%	31.3%
Oregon	21.4%	38.3%	28.0%
Pennsylvania	26.9%	37.9%	36.9%
Rhode Island	21.2%	22.2%	27.7%
South Carolina	18.3%	49.6%	34.9%

State	Proportion of children entering foster care in 2013 who experienced TPR within 5 years of entry	Proportion of TPRs that occurred before 17 months	Proportion of children without TPR at 17 months who were living with relatives
South Dakota	16.8%	68.1%	10.1%
Tennessee	19.9%	49.6%	6.3%
Texas	36.9%	89.5%	9.7%
Utah	29.4%	87.8%	27.1%
Vermont	36.2%	50.8%	30.0%
Virginia	28.5%	64.3%	7.3%
Washington	28.9%	33.0%	34.2%
West Virginia	30.1%	85.0%	10.2%
Wisconsin	17.7%	31.7%	30.1%
Wyoming	8.9%	25.0%	4.9%
US Total	25.2%	54.4%	42.3%