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

Part 2 – State Perspectives

Authors: Laura Radel and Emily Madden

Staff at Mathematica conducted the state interviews described in this report and analyzed their content. Mathematica's team included Elizabeth Weigensberg, Allon Kalisher, Nuzhat Islam and Cassandra McClellan.

KEY FINDINGS

- **Perspectives vary about the competing values of preserving birth family ties versus creating permanency with a new family.** Child welfare agency staff and adoption stakeholders express a range of views about the federal timeline for terminating parental rights. It can be challenging to address serious parental problems within the federal time frame. However, many also believed that parents were given too many chances after not demonstrating significant progress, to children's detriment.
- **Practice issues are common causes of delays.** Monitoring reports identify a series of practice issues that underlie variation among states in the extent to which terminations of parental rights (TPRs) occur and occur timely. These include inconsistent case practices, lack of a process to track timelines, providing repeated extensions with weak justification, and high caseloads and turnover for caseworkers and lawyers who represent child welfare agencies.
- **Service shortages and court scheduling difficulties also produce delays.** Key informants in three states identify similar issues to the monitoring reports. Interview respondents placed greater emphasis on service shortages as a reason for delays as well as a lack of clarity regarding what progress must be demonstrated by a parent to achieve reunification.
- **Improvements to casework practice and the provision of services are needed.** Both could improve timely reunification and better target TPR exceptions so they may facilitate, rather than delay, desired permanency and well-being for children in foster care. This may include developing consistent expectations for caseworkers and judges about the interim milestones that would justify an extension and the conditions under which an extension is not warranted, as well as efforts to assess more clearly when a delay is likely to facilitate reunification rather than delay an adoption outcome.

Termination of parental rights is the most serious action a family court can take and has been called the death penalty of family law (in re Smith 77 Ohio App.3d 1). This action should never be taken lightly. However, children also have a right to their childhoods and to be raised in a safe family environment. In some families these rights come into tension and it is in this space that child welfare agencies and family courts operate. In 1997, The Adoption and Safe Families Act (ASFA) established the 15/22 rule to guide child welfare agencies and courts in considering this balance. It requires, with limited exceptions, that child welfare agencies seek termination of parental rights once a child has been in foster care for 15 of the previous 22 months. Lawmakers established that in most cases reunification is the expected outcome in the initial months of placement and a child's case plan should work toward that end. However, after a point, adoption or guardianship becomes preferable over extended temporary living situations if the child cannot return home. Permitted exceptions allow flexibility in cases for which there are compelling reasons for alternative decisions.

Achieving timely permanency has remained challenging in the years since the 15/22 rule was established. However, little research has been conducted to ascertain why meeting TPR requirements has been challenging. The only study identified through our literature search is a 2009 qualitative analysis of judges' attitudes toward terminating parental rights (Ellis, Malm, and Bishop 2009). That study found that many judges were reluctant to create legal orphans (that is, children whose legal ties to their birth parents have been terminated but no adoptive home has been secured) and so hesitated to terminate parental rights until an adoptive home was identified. Judges cited additional issues that make TPR challenging, including some older children's opposition to adoption, and the potential loss of ties to the birth family.

The research described in this report 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
3. Interviews with state adoption officials and stakeholders in three states: Illinois, Utah and Wisconsin

Methodological details may be found at the end of this report. This report focuses on the qualitative findings from CFSTRs and state key informant interviews. A companion report (titled [*Freeing Children for Adoption within the Adoption and Safe Families Act Timeline: Part 1. The Numbers*](#)) presents findings from the quantitative analysis of AFCARS data.

Insights from Federal Monitoring Visits and Program Improvement Plans

Approximately every five years since 2001, the Children's Bureau, which administers federal child welfare programs, has conducted monitoring visits to determine whether states are complying with federal laws and regulations governing these programs. During the monitoring visits, a series of outcomes and systemic factors are examined to determine whether the state was in substantial compliance with federal child welfare laws and regulations. During the monitoring process, a team of federal and state reviewers examine the state's child welfare data, review a sample of specific cases to determine whether

requirements were met, and interview stakeholders to gain their perspectives on the agency's performance.

The most recent round of federal child welfare monitoring visits was conducted between 2015 and 2018. One of the 36 items examined in the reviews relates to termination of parental rights. It is part of a series of factors that comprise a detailed look at the state's case review system. Among the 50 states and the District of Columbia, seven were rated as having a strength in their practices related to TPR, while 44 received a rating of "area needing improvement." Content of final monitoring reports for the third (most recent) round of CFSRs and Program Improvement Plans (PIPs) reveal both reasons cited for deficiencies in TPR practices as well as actions states planned to take to improve their performance in this area.

While there was variety among the reports' findings about the practices and policies noted as interfering with timely TPR filings or the documentation of exceptions, there were also several areas of convergence. The following were the top issues noted in these reports (individual states may appear in multiple categories):

- **Inconsistent practices** related to considering adoption as a case goal and filing for TPR were the most common problem noted with respect to timely TPR. These inconsistencies may have been among caseworkers or agency lawyers and may reflect differences across regions of the state. Reports of 13 states mentioned this issue and noted details such as a lack of guidelines for practice or that existing guidelines were not followed consistently.
- **Excessive or repeated extensions to permanency timelines** were noted in 10 states. This included providing parents with "too many chances" after not making significant progress in completing their case plans. Children remained in limbo as there was too little progress to be confident of safe reunification, yet parents remained engaged enough that caseworkers and/or judges were reluctant to terminate parental rights or could not meet statutory grounds to do so.
- **High caseloads or staff turnover** among child welfare staff may prevent familiarity with the complex processes involved in TPR. This issue was identified in nine states. For some without experience, the process of documenting adequate justification may seem onerous and is deferred, or simply takes longer to complete than timelines and caseloads allow for.
- **Lack of a process to track timelines** or inconsistent implementation of such a process was noted in eight states. If timelines are not tracked and workers are not provided reminders, deadlines are frequently missed.
- **Capacity of legal staff** representing the child welfare agency who must prepare the legal filings was an issue in seven states. In some states it was the lack of staff that was a problem, while in others, the issue was turnover and loss of experience in arguing these cases.
- **Reluctance among judges to terminate rights until an adoptive family was identified** was an important barrier to timely TPR in seven states. Judges may be wary of creating "legal orphans" until a family is identified who will adopt the child. In some cases, the TPR and the adoption by another family are handled in the same hearing.
- **Shortages in services for parents** was noted in five states. Service shortages may lead to judicial findings that reasonable efforts to reunify the family were inadequate and TPR cannot be granted.
- **Insufficient efforts to identify and engage fathers** was a frequent barrier to TPR discussed in reports on four states. Judges may reject a request for TPR if the father

has not been provided the opportunity to take an interest in and make steps toward parenting his child.

Monitoring reports and PIPs for nine states noted that TPRs were not conducted timely but described no specific barriers.

States' PIPs included strategies the child welfare agency and its partners committed to for the purpose of improving child welfare outcomes and correcting areas of noncompliance identified in the monitoring process. Not all PIPs addressed issues related to TPR and adoption, even if the area was identified as needing improvement. As with the identification of problems in monitoring reports, there were some areas of similarity in the types of actions states planned to engage in as program improvement strategies. Most frequently mentioned strategies included the following:

- **Improvements in procedures or the development of practice guidelines** around timely TPR filing is being implemented as part of PIPs in 10 states.
- **Better systems to track when TPR filings or exceptions are required** are being developed in nine states.
- **Specialty staffings or case reviews** are being implemented in five states for families in which progress is slow and timelines are likely to be triggered.
- **Training for judges or judicial aids such as bench cards** were planned in five states to improve the quality of hearings and the consistency of outcomes given similar case circumstances.
- **Non-specific efforts to improve collaboration with courts** are elements of PIPs in five states.
- **Caseworker or supervisor training on topics related to TPR** are noted in the PIPs of four states.

Overall, the issues identified in the round three CFSTRs are similar to those identified in previous monitoring visits ever since ASFA was enacted. The types of actions states committed to in PIPs is also familiar from earlier rounds. These are continuing issues child welfare agencies in most states have yet to resolve.

State Perspectives

In order to gain insight into the factors that may lie behind the differences among states in the frequency and pace of TPR actions and particularly the extent to which they are implemented within the ASFA timelines, the study included interviews with child welfare agency staff and stakeholders involved with the process of placing children for adoption in three states: Illinois, Utah and Wisconsin. The staff and stakeholders interviewed described their state's TPR process and discussed the factors and perspectives underlying decisions about TPR timelines and exceptions to the 15/22 month rule. These key informants expressed a range of opinions about the rule and the use of exceptions to it. All three states use administrative hearings and concurrent planning to assess parents' progress in addressing the issues that led to the child's placement and the appropriateness of various permanency options. Staff universally recognized the seriousness of terminating parental rights and the profound impact the action has on both children and parents. They also recognized the delicate balance between providing realistic opportunities for reunification and preventing children from languishing in foster care.

To provide context, Table 2 shows for each of the three states whose staff were interviewed the proportion of children entering foster care who experience TPR as well as the proportion

of TPRs that occur within 17 months of the child’s entry into foster care. Nearly 18 percent of children entering foster care in Wisconsin and 29 percent of such children in both Illinois and Utah experienced TPR within five years of their foster care entry. The timeliness of those TPRs varied considerably. While Illinois and Utah had similar portions of children who experienced TPR, in Utah nearly 88 percent of those TPRs occurred within 17 months while in Illinois only less than 16 percent occurred in that time frame. Wisconsin had fewer TPRs and about one-third of those occurred within the ASFA time frame.

Table 2. TPRs in the states participating in key informant interviews

State	Proportion of Children Entering Foster Care in 2013 Who Experienced TPR within 5 Years	Proportion of TPRs that Occurred within 17 Months
Illinois	29.1%	15.6%
Utah	29.4%	87.8%
Wisconsin	17.7%	31.7%

Variations in Policy and Practice

Among the three states, there were significant variations in attitudes and practices with respect to filing for and carrying out TPRs. Table 3 describes key factors that differentiate the policies and practices of the states included in the study.

“Yes, there are timelines. Do I think they’re followed? No. I think if we had any foster parents read what the timeline or...federal guidelines are, every one of them would say, “Wow, that is not my knowledge of this and that has never been my experience in this.”

- Child welfare practitioner

The relevance of ASFA timelines to case decision making varied. Differences among states were driven by state laws, administrative practices, and court processing of TPR filings. Respondents in both Wisconsin and Utah described considering the ASFA timeline in making permanency decisions. Staff in Illinois, by contrast, said the timelines generally are not an important factor in their decision process.

Time in care alone may provide insufficient legal basis for TPR. Another issue that came up in interviews was mismatches between the federal

requirement to file for TPR and whether a case met the statutory grounds for granting a TPR petition, which are laid out in state law. Typically, time in foster care alone is insufficient grounds for termination of parental rights. If caseworkers have not documented sufficient grounds for TPR according to the state’s criteria, petitions will not be approved. In addition, while some states had expedited TPR provisions in their laws, child welfare staff we spoke with consistently reported that the expedited processes were rarely used in practice. Other researchers have similarly found that expedited adoption provisions have little impact in practice because of their infrequent use (Wulczyn, et al. 2017).

Table 3. Key Differences in TPR Policies and Practices among States in Which Interviews Were Conducted

	Illinois	Wisconsin	Utah
Site selection considerations	<ul style="list-style-type: none"> • Relatively high rates of TPR • Low percentage of cases with TPR occurring by ASFA timeline • Long length of stay in foster care • Relatively high use of relative foster care placements 	<ul style="list-style-type: none"> • Relatively low percentage of cases with TPR occurring by ASFA timeline • State currently considering new policy to shorten TPR timelines • Relatively high use of relative foster care placements 	<ul style="list-style-type: none"> • Met CFSR standard for TPR • Relatively high rates of TPR • High percentage of cases with TPR occurring before ASFA timeline
TPR laws, policies, and practice	<ul style="list-style-type: none"> • Court requires overwhelming evidence, based on the case’s length of time and failure to comply with service plans, to demonstrate parent’s inability to achieve reunification • Child’s preferences regarding TPR are considered after age 12 • Parental presence in court is required for TPR decision 	<ul style="list-style-type: none"> • TPR process can vary across counties • Child’s preferences regarding TPR are considered for older children • Child welfare agency, legal representatives, and courts prioritize permanency and TPR cases, but this can vary by county • Training is available, but written guidance or standards for workers are limited 	<ul style="list-style-type: none"> • State implemented a guideline for achieving reunification in 12 months • Prioritize permanency and timelines
Case process, timelines, and exceptions	<ul style="list-style-type: none"> • Adjudication hearing is supposed to be conducted within 90 days of temporary custody or shelter care hearing, but these are often delayed • Within 30 days of adjudication, the dispositional hearing decides whether the child returns home, stays in foster care, or pursues an alternate guardianship; court may delay hearing • Discussions regarding TPR typically begin at 9 months following the dispositional hearing • Administrative case review (ACR) review is conducted every 6 months • ACR review discusses ASFA exception if TPR is not pursued by the 15 of 22 months timeline • Re-entry into foster care restarts the TPR timeline • There is no written process for seeking exceptions to TPR timelines, which can vary locally 	<ul style="list-style-type: none"> • Concurrent goal is identified within 6 months • Permanency plan is submitted during administrative reviews or court hearings every 6 months • Child’s pre-adoptive resource is prepared within 9 months and permanency conversation held at 12 months • ASFA exception in permanency plan is documented if child is in care for 15 out of 22 months • County generally files for TPRs within 15 months, but this timeline may vary across counties • Identify TPR exception at second or third permanency plan review • Reentry into foster care does not restart the TPR timelines since they consider the cumulative period of child’s out-of-home placement 	<ul style="list-style-type: none"> • Court reviews are conducted at least every 6 months, with a permanency review at 12 months • No fixed date to file for TPR • TPR or extension is considered after reaching 12 months • Two extensions are allowed; up to 3 months for each extension • First timeline extension is requested in court at the 12-month permanency review • After first extension, a 90-day review is set, at which point either a second extension is requested or they proceed with the TPR process • Exception is requested at first or second court hearing

Source: Interviews with adoption staff and stakeholders in each state. Information was not independently verified.

Practice and attitudes related to voluntary relinquishment varied. Respondents reported significant differences with respect to the attitudes of child welfare caseworkers and judges toward voluntary terminations of parental rights. In some places, options counseling early in a case led some parents to voluntarily relinquish parental rights after recognizing they were unable to parent their child. By contrast, staff in Illinois reported that judges routinely rejected voluntary relinquishment requests from parents in order to ensure that reunification efforts were universally provided.

In all three states, staff reported that parents’ progress toward case plan goals and determinations about children’s best interests drive their decisions about delaying TPR filings. Staff in Illinois and Wisconsin said that the preferences of older children were also an important factor in TPR decision making. Staff also reported differences in how the three states approach the issue of parents who were making progress but had not resolved their issues by the time the timeline for filing for TPR was upon them. Several respondents

“The decisions around whether or not to seek and document an exception to the TPR process happen with our counties in the process of completing their permanency plans during their...permanency hearing or administrative review. And so when workers are documenting those plans, that is where they're asked about ASFA exceptions. All that is documented within their plan that they submit to the court if it's a court review or if it's an administrative hearing to the panel.”

– Child welfare administrator

spoke about clients with substance use disorders in this category, noting that recovery from an SUD takes a great deal of time and may not happen within the ASFA time frames. In these cases, staff reported that they review whether statutory grounds for TPR had been met and services were provided to the parents to demonstrate that the agency made reasonable efforts to reunify the family. Generally, they reported that if parents were making significant progress toward recovery at least one extension would be provided, typically for an additional 6-month period. However, delays in engaging parents in SUD treatment or other services can prevent them from demonstrating progress before permanency discussions begin taking shape.

In these states, the timeliness of TPRs corresponded to the typical processes by which decision making is approached. Utah has a formal process for seeking an exception to its timeline, whereas neither Wisconsin nor Illinois had written guidance on the subject. Utah’s statute requires that a decision on a TPR petition be made within 18 months after a child’s removal from the home. Any exceptions to this timeline are addressed in court. In both Wisconsin and Illinois, these processes are devolved to the local level. In Wisconsin, once a child has been in care 15 out of 22 months, the state’s child welfare information system generates a prompt for the caseworker to enter and document a reason for the exception in the child’s permanency plan, which is then considered at the next administrative review or court hearing. But respondents reported considerable variation among local jurisdictions in whether a TPR petition was filed timely. Localities also differed on issues such as preferences among permanency options (for example, an emphasis on kin guardianships) or whether delays were requested or granted because necessary services were unavailable. Staff in Illinois reported that federal timelines are not generally a priority and noted that judicial variation was a significant factor in the emphasis (or not) on timely permanency.

“I would definitely say, if a parent is making an active effort to change, we're going to know that and I would never terminate on a parent that's been making a great deal of effort.”

– Child welfare practitioner

Respondents in all three states reported that judges typically will not proceed with TPR until an adoptive family has been identified for the child. Indeed, this was a requirement for TPR in Wisconsin. Staff in Wisconsin reported that the lack of an identified adoptive family is among the more common reasons for delays in TPR. In all three states, most children adopted from foster care are adopted by their foster family, a relative, or someone else in the child's existing network. Adoptions by persons previously unknown to the child are rare.

Stakeholders in the Decision-Making Processes and Factors Influencing Decisions

A number of parties all must collaborate in making TPR decisions and in granting exceptions to federal timelines. Decisions about moving forward with adoption or guardianship for a child are individualized and state respondents consistently reported that numerous stakeholders are involved. Breakdowns in teamwork can cause delays, whether the root issue is staff inexperience, differing perspectives and priorities, or large caseloads. Child welfare workers and supervisors, parents and other family members, attorneys for the various parties, as well as judges and court personnel, all have a hand in the decision making, though requests for exceptions usually originate with the parents' attorneys or the child's guardian ad litem. If parents are actively engaged and the attachment with their child

"Some counties in my region...have been moving very quickly and then some...do not. And really I think that's more specifically to not what our agency does but...with the tone of the court house is and what the perception of the judge and the attorney staff is."

– Child welfare administrator

is significant, exceptions are typically granted for at least one six-month period beyond the 15/22 point. The judge presiding over the case is the ultimate decision maker regarding TPR actions, and states reported that judges' attitudes about TPR play a significant role in whether these actions occur timely.

Working on TPRs requires a specialized set of knowledge and skills. Staff experience in conducting TPRs, as well as related staff capacity and turnover issues, were frequently cited as obstacles for meeting federal timelines. Because TPRs are complex legal processes, experience is

helpful in keeping cases on track. When workloads are excessive and turnover is high, TPR cases may suffer delays. In addition, not all states ensure that workers and families are familiar with the federal timelines and keep those front and center as cases progress. This was particularly true in Illinois, where an experienced local child welfare administrator told us that she was unaware of the TPR timeline requirements and exceptions processes until recently. Another Illinois child welfare practitioner noted that "if we had any foster parents read what the...federal guidelines are, every one of them would say, 'Wow, that is not my knowledge of this and that has never been my experience in this.'" A child welfare administrator in another state noted that case details were far more relevant than the federal timelines in making TPR decisions. Some respondents in Wisconsin and Illinois believed that some judges also appeared unaware of ASFA's timelines. By contrast, in Utah court hearings regularly hold the child welfare agency accountable for both state and federal adoption timelines. Utah state law includes timelines that are even swifter than the federal requirements. Staff at all levels in Utah described a clear focus and structured practice of filing TPRs within 12 months and for considering exceptions.

"I have worked for this agency for 25 years, and until I did the CFSSR a couple years ago, I didn't realize that the court was supposed to be filing a termination petition...No wonder we're never going to meet our goals because we don't even know what they are and the court doesn't either."

– Child welfare administrator

Frequent delays were a common frustration. Many respondents expressed the belief that timeline exceptions are granted too frequently based on little progress toward resolving the issues that led to the child's placement. This was particularly true in states that more frequently granted exceptions. Respondents found it difficult to generalize about whether providing extensions helps to promote reunification, typically noting that it depends on the particular circumstances of each case. They noted that judges were more likely than child welfare agency staff to promote repeated extensions, requiring overwhelming evidence before proceeding with TPR, particularly in Illinois.

Key Issues Leading to Delays

Several issues were cited repeatedly by practitioners in these three states as causing delays in timely permanency where they occurred. In large part these echoed issues identified in the study component that analyzed the content of state monitoring visit reports. Interview respondents described:

- **Shortages in services necessary to address the issues that led to placement.** These problems were reported by several respondents to lead to repeated and protracted continuances before TPR is sought. This was especially the case in Illinois.
- **Lack of clarity regarding what progress must be demonstrated by a parent to achieve reunification.** Caseworkers and administrators reported that unclear and shifting expectations for parental progress frequently led to delays in permanency.
- **TPR is a complex legal process.** High rates of turnover among caseworkers and agency lawyers responsible for the filing mean that there is often inexperience with this process among those who are responsible for it, creating delays.
- **Court scheduling delays.** Delays often result from court processes and difficulties getting all the parties and attorneys together for a thorough review of the case. Respondents thought this was particularly an issue in rural areas.

Permanency Innovations in Studied States

Participants in our key informant interviews described a number of approaches they are trying to improve permanency timelines. Some of these are reminiscent of approaches described in the earlier analysis of state PIPs. Because little research evidence is available to assess the effectiveness of these approaches, they serve to illustrate several types of innovations being tried around the country rather than as pointers to practices known to be effective. These include:

- **Permanency consultants** are used in Wisconsin as specialty workers to help caseworkers strategize when reunification seems uncertain and children have remained in care beyond federal timelines. The permanency consultant helps facilitate conversations regarding permanency options with families and enforces the timelines as a trigger for moving toward those options. A Wisconsin child welfare administrator explained that the permanency consultant “encourages us to have those conversations with families, whether we’re going to do guardianship versus adoption...and laying out the difference between each one.” The administrator expressed how beneficial and helpful the permanency consultant was and admitted that without the support of the permanency consultant “we don’t do a great job of explaining” what is associated with the two permanency routes. Utah has a similar

role with kinship specialists, who meet with families to discuss reunification, custody and guardianship, adoption, and any related supports and services.

- **Judicial training and aids** such as bench cards help judges to process TPR requests thoughtfully and thoroughly. Administrators from Utah and Illinois discussed specific efforts to support judges in making permanency decisions. The agency in Utah, in conjunction with its Court Improvement Process team, created a judge's bench card on permanency that included questions for discussion in court. This aids all partners during the 12-month permanency hearings and helps move the process forward with targeted conversations. In Illinois, one county implemented a special training that supported judges in setting permanency goals at the 12-month hearing, including asking targeted questions at every hearing, which occur every three months. Questions related to both TPR and whether it was safe to return the child home. The judge supported the cases by making sure there were active efforts to achieve the permanency goal in 12 months or adjusted the goal if progress was stalling.
- **The Road to Reunification** court program in Wisconsin ensures potential TPR cases get frequent check-ins to ensure progress is being made toward permanency. Developed under the state's Court Improvement Program, Road to Reunification has implemented strategies to help expedite timelines. This includes having potential TPR cases reviewed more often and allowing for short term goals to be set so families feel they are making progress quickly and prevents families and parents from feeling that the reunification goals are insurmountable. The more frequent meetings encourage team-wide communication and give the parents a platform to talk about their progress, successes, and barriers to meeting the conditions for return. Meetings on each case take place every six weeks and staff report that the approach has been particularly instrumental in cases involving drug use. An administrator described a common scenario where children would be removed following a drug incident, and the case would be delayed by the parent denying a drug problem. Court dates may also be postponed, pushing back judicial review. The delays have implications for the permanency plan because the family would not be back in court until the six-month mark. In the meantime, the parents could be difficult to contact, making it challenging to facilitate services for them. More frequent meetings potentially prevent months of wasted time before reunification efforts can begin in earnest.

"I would say I have never in my 13 years gotten to the 15 out of 22 month mark and not had a plan of either we started the termination process and it's in process, or, you know, we are looking at reunification in the very near future."

– Child welfare practitioner

Conclusion

This research has sought to bring together several data sources to shed light on state child welfare practice with respect to TPR and the use of exceptions in federal law establishing timelines under which states are expected to terminate parental rights for children in foster care before placing them in new permanent families. The companion brief to this one found considerable variation among states in the rate at which TPRs are conducted, and in the timing of those that occur. In this brief, analysis of monitoring reports and program improvement plans for all states, and interviews with adoption staff and stakeholders in three states, confirm differences in practice and describe a series of issues that impede states' compliance with federal requirements.

Variations in the frequency and pace of termination of parental rights actions are rooted in differences in how states balance the rights of parents with the developmental needs of their children for permanent families in which to grow up. In addition, states vary substantially in whether they have established systems to track federal timelines, whether caseworkers, attorneys and judges are trained in the requirements, and whether they are organized to provide treatment services promptly so that parents can demonstrate progress towards reunification before decisions on permanency must be made.

As described in [Part 1](#) of this report, 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. The perspectives documented in monitoring reports and key informant interviews suggest that casework practice and the provision of services could be improved. Without prompt service provision and consistent efforts to assess progress toward case plan goals, permanency is likely to be delayed. In addition, states seeking to bring more consistency and reduce potential bias in decision making about TPR may find it helpful to develop more consistent expectations for caseworkers and judges about the interim milestones that would justify an extension and the conditions under which an extension is not warranted. Efforts to assess more clearly when a delay is likely to facilitate reunification rather than delay an adoption outcome may also improve the use of TPR exceptions as a strategic tool to achieve permanency.

The number of months a child has been separated from his or her family can be easily observed, and Congress mandated that it be a key factor in decisions. Exceptions are provided in the law, but according to monitoring reports are not consistently documented in many states. The poor track record of states in conducting TPRs timely raises questions about whether delays occur because systems are not in place to generate the outcomes the law is set up to obtain, or whether delays reflect workers' and judges' ambivalence about the requirements. Establishing the relative values of preserving birth family connections versus establishing new legal family relationships is complex and likely differs among communities. If institutional and individual stakeholders disagree with the requirements as written, they may not be followed. Alternatively, systems may not be set up to meet the requirements, whether participants in the process agree with them or not.

Possible explanations for the variations we observe in practice related to TPRs remain hypotheses and have not been examined rigorously through research. Similarly, the innovations being implemented through program improvement plans and other means have not been tested to determine their effectiveness. An unanswered question is whether exceptions to the 15/22 rule facilitate additional reunifications or simply keep children in limbo longer before adoption or non-permanency exits occur. We observe that many children remain in care beyond 17 months, and of those, only 25 percent of them exit to a parent or relative's care by the time five years has passed. Many more go on to adoption and some remain in care until they emancipate. It remains an open question whether it would have been possible for additional children to return home safely or whether those whose adoptions occur later should have been possible more quickly.

Child welfare practices related to permanency are rooted in competing values. It is unlikely these disagreements will be resolved easily, and case practice will continue to vary. However, it is also clear that too many children continue to spend significant periods in foster care before their family situations are resolved. Too often, the delays are not purposeful and do not result in desired outcomes. Recent child welfare innovations focused on preventing foster care placements are important and should reduce the need for foster care. Yet for the foreseeable future, there remains a large population of children in out of home care whose likelihood of timely permanency must also be pursued.

Methods

This paper describes results from two distinct analyses:

Summary of Monitoring Reports and Program Improvement Plans. For each state's round 3 final CFSR report, we identified whether item 23, which relates to timeliness of TPR, was rated as a "strength" or an "area needing improvement." Any reasons provided for state shortfalls in TPR timeliness were noted and summarized in categories. Similarly, content related to timely TPR from states' Program Improvement Plans, which describe actions taken to address weaknesses identified in the CFSR, was identified and summarized.

Interviews with State Adoption Officials and Stakeholders. To gain insight into the factors that may lie behind the differences among states in the frequency and pace of TPR actions and particularly the extent to which they are implemented within the ASFA timelines, the study included interviews with child welfare agency staff and stakeholders involved with the process of placing children for adoption in three states: Illinois, Utah and Wisconsin. These states were chosen purposefully and differ both in the proportion of children entering foster care who experience TPR and, especially, in the proportion of TPRs that occur timely (and thus in the proportion of children who either explicitly or de facto receive exceptions to the ASFA timelines). It is not possible to generalize the experiences of these states to the nation as a whole, nor are the experiences and opinions of the several knowledgeable staff we spoke with necessarily representative of the entire state. However, some of the themes and issues that emerge from the interviews may be familiar to those in other locations and may point toward issues that should be explored further.

Staff from Mathematica conducted the key informant interviews and analyzed the resulting qualitative data. Interviews were conducted in April-May 2020. Interviews were conducted in each site with a state-level child welfare administrator plus additional interviews with professionals from a local site within the state. The professionals included (1) child welfare administrators and caseworkers, (2) judges and other legal representatives, and (3) other professionals involved in the TPR process. Across the three sites, Mathematica conducted a total of 11 individual interviews: two interviews with professionals from Utah, four with professionals from Wisconsin, and five with professionals from Illinois. Mathematica also conducted two telephone interviews (one individual interview and one small group interview) with persons who had personal experience with the TPR process. These included foster parents and young adults formerly in foster care. These individuals were recruited from the consultant pool of the Capacity Building Center for States (a technical assistance contractor to the Children's Bureau) and were not recruited based on geographic location. NVivo qualitative analysis software was used to identify themes and findings from the interviews.

References

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