

You Get What You Pay For: The Federal Government Should Stop Paying for Foster Care

Richard Wexler

For many years, Mary Callahan was a foster parent in Maine. When she realized that almost every child placed with her could have remained safely in her or his own home had their own parents gotten the financial support she was getting as a foster parent, she became an activist, fighting to reform the system. She wrote a book about her experiences called *Memoirs of a Babystealer*.¹

Callahan often tells a story about an executive for the private foster care agency she worked with. The executive told her, “We need 60 kids to make payroll, and we only have 61. We’re not talking adoption or reunification with anyone until we get our numbers up.”²

Rarely are the people who run what should properly be called the foster care–industrial complex that blunt. Most of the time, they rationalize taking away children needlessly and prolonging their time in foster care; they rationalize it even to themselves.

But whether they admit it or not, financial incentives matter. And in almost every state at almost every level of government, the financial incentives work against keeping families together.

You get what you pay for. If we want states to stop tearing apart families needlessly, the federal government should stop paying to tear apart families needlessly. The federal government should phase out all funding for foster care. The money should be redirected into community-based community-run support for families.

A Century of Incentives

In his 1991 book, *For Reasons of Poverty*, child welfare scholar Leroy Pelton traced the rise and fall of the foster care population through most of the 20th century. He found the number of children in foster care actually declined during the Great Depression—because Congress

passed what was then called Aid to Dependent Children (ADC), making it possible for more families to avoid having their children taken because of poverty.³ But in 1962, the law was changed, and ADC payments were allowed to follow a child into foster care.⁴ So, during the prosperous 1960s, foster care skyrocketed.

This paper explains the major financial incentives as they exist now, both for governments and for private agencies. It outlines how to change those incentives to promote safe, proven alternatives to tearing apart families.

Financial Incentives for Governments

There is a wide array of federal “funding streams” that either can be used to fund the family policing system or must be used only to fund it.⁵ There also are various state programs and, in some states, local funding as well. This section looks at some of the most important.

Although the incentives for the government do indeed push the government toward child removal and away from safe, proven alternatives, it is not the case that “governments make money on foster care.” When the discussion is oversimplified that way, it makes it easy for

¹ Callahan, Mary. *Memoirs of a Baby Stealer*. Pinewoods Press, 2003.

² Callahan, Mary. “Statement of Mary Callahan, foster and adoptive parent, founder, Maine Alliance for DHS Accountability and Reform.” July 20, 2010. <https://bit.ly/3uvljp3>

³ Pelton, Leroy H. *For Reasons of Poverty*. Praeger, 1989, p. 6.

⁴ For a full discussion of this change, and how it is related to racism in family policing, see Roberts, Dorothy. *Torn Apart*. Hachette, 2022.

⁵ For a list of these programs and a breakdown of how much is spent on each, see “Federal Appropriations for Youth and Families.” *The Imprint*, undated 2022 <https://imprintnews.org/wp-content/uploads/2022/03/Federal-Appropriations-Imprint-V2.pdf>

the foster-care industrial complex to discredit reform. It diverts attention from the actual incentives, which are plenty bad enough.

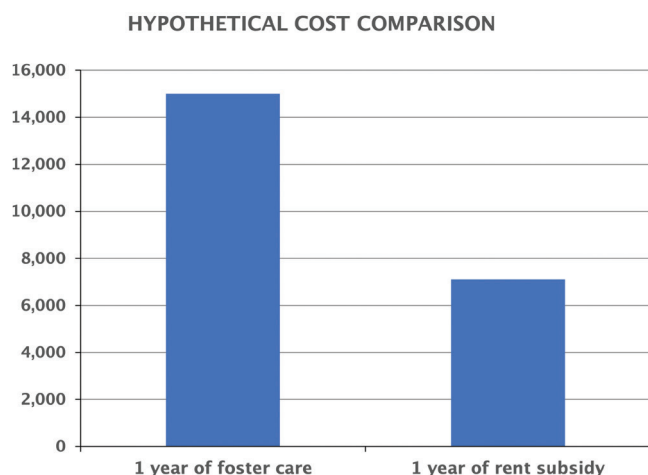
Governments don't make money on foster care because there is no state or locality anywhere in America for which another level of government pays 100 percent of the cost of foster care. There is no state-run system that gets 100 percent of its foster care costs reimbursed by the federal government, and there is no locally-run system that gets 100 percent of its foster care costs reimbursed by the state and federal governments combined—though there are places where it comes close.

But the financial incentives are still awful for two reasons:

- Foster care money from the federal government helps pay the salaries of thousands of people who keep the family policing system running, from the “cop on the beat” – the frontline caseworker – to the “police commissioner,” usually called a secretary of human services or something similar. Nobody wants to be out of a job.
- Financial incentives may reduce the cost of foster care for state and/or local governments to the point that it is a less expensive option than better alternatives.

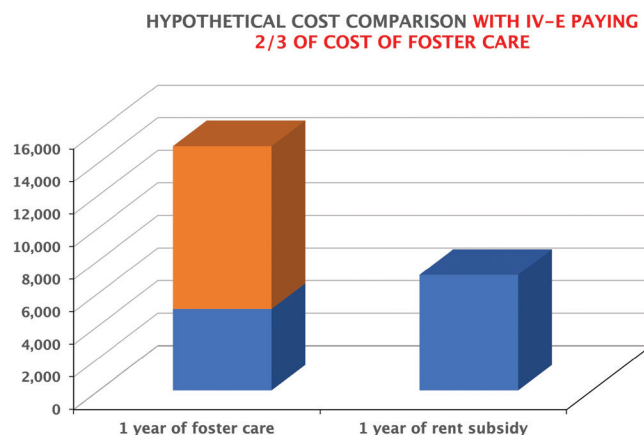
Consider a hypothetical example:

Hypothetical comparison: Total cost of foster care vs. total cost of a better alternative



Suppose in Community A, a mother and her child are living in unsafe housing. It costs \$15,000 to keep the child in foster care for a year, but a \$600-a-month rent subsidy would cost \$7,200 over the same period. The better alternative is cheaper.

Hypothetical comparison: STATE OR LOCAL of cost of foster care vs. cost of a better alternative



But what if the federal government reimburses two-thirds of the cost of the foster care and nothing for the rent subsidy? Then the state still is paying \$7,200 for the rent subsidy, but only \$5,000 for the foster care.

The Non-Financial Incentives Also Are Awful

Even when foster care doesn't cost less in total dollars, there are other incentives to misuse and overuse it.

For starters, as now has been exhaustively documented, the instinct to “take the child and run” comports with our biases about both race and class.⁶ And while a knee-jerk rush to take away children is not safer for children, it is safer for everyone else involved.

People who work in family policing systems often say: “We’re damned if we do and damned if we don’t.” That is not true.

I have followed issues involving “child welfare” systems for more than 46 years. In all of that

⁶ See generally Roberts, supra note 4.

time, I have never heard of anyone in the system, from caseworker to commissioner, who has ever been criminally prosecuted, fired, demoted, suspended, or even slapped on the wrist for taking away too many children. All of these things have happened to workers who left one child in a home where something went wrong.

When it comes to taking away children, the people who work in family policing are not damned if they do and damned if they don't. They're only damned if they don't.

Similarly, judges in New York City admitted to a blue-ribbon commission that they would rubber-stamp requests to remove children even when they felt the family policing agency had not made an adequate case because they were afraid of being on the front page if they refused such a request and something went wrong.⁷

So even when foster care still costs a state or locality money, financial incentives make it less painful for family police to do what they want to do anyway.

Financial Incentives for Private Agencies

There is another part of the family policing system, a part that is at least as important as the government that does make money on foster care: private agencies.

Most family policing systems are a mixture of private and public. Private agencies typically run the group homes and the institutions; sometimes, they oversee family foster care as well. These agencies typically are paid for every day they hold a child in foster care. Send the child home, and the reimbursement stops. That's why that private agency administrator in Maine told Mary Callahan no children in their "care" were going anywhere until they were sure they had enough to "make payroll."

Most of the time, however, they are not so honest, not even with themselves. They rationalize. They convince themselves that all those children are from profoundly "dysfunctional" families, leaving them with

intractable problems, so they absolutely must stay in "care" for a long, long time.

Illinois proved them wrong. By 1997, as a result of a foster-care panic—a sharp, sudden surge in removals of children from their homes in the wake of a high-profile child abuse tragedy⁸—Illinois had more than 50,000 children trapped in foster care on any given day.⁹ Then, although they did not change *per-diem* reimbursement, the state required that private agencies move 25 percent of the children in their care into permanent homes each year—and they measured foster care recidivism, the proportion of children who returned to foster care, to be sure agencies didn't simply dump the children.¹⁰

Lo and behold! The dysfunctional became functional, the intractable became tractable, and by 2004 the Illinois foster care census was under 20,000.¹¹ By 2017 it was down to 16,000.¹²

Then, and now, Illinois was operating under a class-action lawsuit consent decree. The decree calls for independent monitoring. The

⁷ Special Child Welfare Advisory Panel for New York City, *Advisory Report on Front Line and Supervisory Practice*. March 9, 2000, p.49. <https://eric.ed.gov/?id=ED439189>

⁸ For a discussion of this phenomenon, see National Coalition for Child Protection Reform, *NCCPR Issue Paper #2: Foster Care Panics*. Updated Nov. 21, 2021. <https://nccpr.org/nccpr-issue-paper-2-foster-care-panics/> and for a detailed discussion of the Illinois foster-care panic, see Wexler, Richard. "The Children's Crusade." *Chicago Reader*, March 23, 1995. <https://chicagoreader.com/news-politics/the-childrens-crusade-2/>.

⁹ Rolock, Nancy. *Trends in Illinois' Child Welfare System: A 25 Year Retrospective, 1985 to 2010*. University of Illinois at Chicago Jane Addams School of Social Work, Child Welfare Research Collaborative, July 2011, p. 4. <https://www.yumpu.com/en/document/read/34272395/trends-in-illinois-child-welfare-system-center-for-adoption-studies>

¹⁰ Personal communication, Jess McDonald, former director Illinois Department of Children and Family Services, April 11, 2022.

¹¹ Rolock, *supra* Note 9.

¹² U.S. Dept. of Health and Human Services, (HHS) Administration for Children and Families, "Numbers of Children in Foster Care on September 30th, by State, FY 2011 to FY 2020." <https://www.acf.hhs.gov/cb/report/trends-foster-care-adoption> (Scroll down to "State Data Tables.")

monitors found that, for well over a decade, as foster care declined, child safety improved.¹³

That changed, but not because of any change in financial incentives. Rather, according to the attorney who brought the suit,¹⁴ and the monitors,¹⁵ it was due to massive budget cuts. So, the cycle began again. There were more high-profile fatalities and another foster-care panic.

Now the number of children in foster care is up to 20,600.¹⁶ But that still is far lower than in 1997, suggesting that the change in financial incentives continues to have an effect.

Per diem reimbursement remains the norm, however, because private “child welfare” agencies are a powerful lobbying force. Their boards of directors often are larded with members of a community’s business, civic and religious elite. If there is a child abuse fatality and they choose to scapegoat efforts to keep families together, they have the ears of powerful politicians.

Some agencies will respond that they can’t be motivated by money because they are nonprofit organizations. When people say that, I tell a story from my early days in journalism when I worked for a nonprofit—a public television station. Twice, during pledge breaks in the midst of Sesame Street, someone from the station told the young viewers that they might have to take away Sesame Street if their parents didn’t send money.

This is why it would be a mistake to assume that these problems can be solved simply by banning explicitly for-profit corporations from the foster-care business. The will to survive can induce in nonprofits a form of greed that is as corrosive of common decency as the worst corporate behavior.

Into the Weeds: How the Government Incentives Work

As noted above, there are a vast number of different potential sources of government funds for the family policing system. Not every

state uses every source. I will focus here on the most important:

Title IV-E

Title IV-E is the primary source of federal funding for foster care and adoption. It also helps fund certain administrative costs connected to family policing.

Title IV-E is an entitlement. For every eligible child, IV-E pays at least half the cost of holding a child in foster care or subsidizing adoption. The amount varies from state to state. But for FY2023 the “base” reimbursement rate is projected to be between 50 cents and 78 cents on the dollar.¹⁷

But it gets worse.

Reimbursement for foster care is tied to a formula for reimbursement for Medicaid; 50 cents to 78 cents is based on something called the Federal Medical Assistance Percentage (FMAP). Whatever a state gets for Medicaid it gets for foster care.

This creates another bad incentive: whenever the federal government does something good: paying more of the cost of health insurance for poor people, it automatically does something bad: paying more of the cost of foster care.

The problem was illustrated by the COVID-19 pandemic. As part of the American Rescue Plan, the FMAP was increased by more than six percentage points in order to help cover the costs of health care for the poor. That is

¹³ Fuller, Tamara, et. al. Highlights from the *FY2018 Monitoring Report of the B.H. Consent Decree*. University of Illinois School of Social Work Children & Family Research Center. https://www.aclu-il.org/sites/default/files/field_documents/highlights_from_the_fy2018_monitoring_report_of_the_bh_consent_decree.pdf

¹⁴ Personal communication, Benjamin Wolf, Emeritus Legal Director, Illinois Branch, American Civil Liberties Union.

¹⁵ Fuller, supra note 13.

¹⁶ HHS, supra note 12.

¹⁷ Kaiser Family Foundation. *Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier: Timeframe: FY 2023*. <https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>

expected to remain in effect at least until the end of 2022.¹⁸

But as a result, the current foster care and adoption reimbursement rate is more like 56 cents to 84 cents on the dollar.

In at least 10 states, the local government runs family policing. In those states, federal reimbursement sometimes is supplemented by state reimbursement—so the proportion of reimbursed foster care and adoption costs may be even higher.

None of this applies to all children placed in foster care—only to those who meet a complex eligibility formula discussed below.

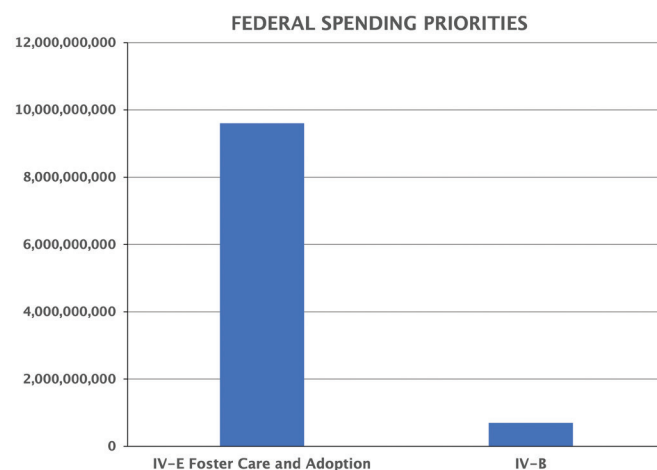
In Federal Fiscal Year 2022, the federal government is expected to spend \$5.8 billion on foster care through Title IV-E and another \$3.7 billion on adoption through Title IV-E.¹⁹ The Family First Act allows some IV-E funds to be used for prevention, but as is explained below, the amount is negligible.

One other part of IV-E is worth noting because it's the one part that can now do some real good. Folded into the foster care and adoption categories are reimbursement for "administrative costs." Unlike the rest of IV-E, reimbursement for administrative costs is not tied to the FMAP. Administrative costs are reimbursed at a flat 50 cents on the dollar. What makes administrative costs important is a change made in 2018. By changing a few words in a policy manual, the federal Children's Bureau made these funds available for lawyers and their support staff who represent families and children. That creates a modest incentive to embrace one of the most important reforms to curb family policing: high-quality defense counsel for families.²⁰

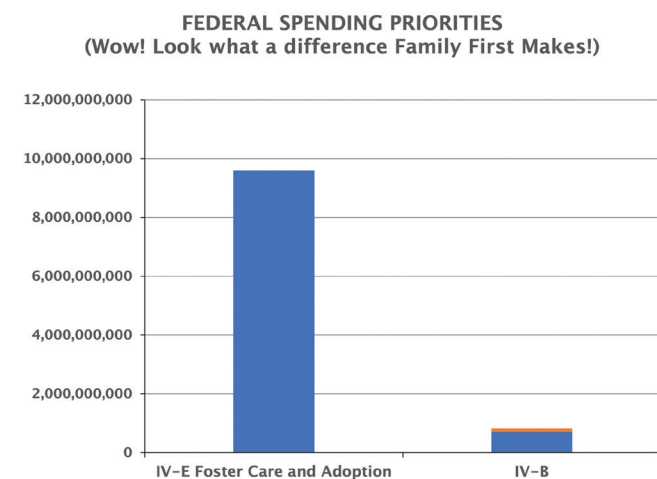
Title IV-B

Title-IVB is the primary source of prevention and family preservation funding. It is not an entitlement. When the money runs out, there's nothing more, no matter how great the need. And there's not much to begin with: about \$700 million per year.²¹ Even that figure is high since some IV-B money can be spent on adoption, foster care, and "training" family police.²²

The Family First Act Prevention Services Act, discussed below, may add another \$130 million in IV-E funds to the total for prevention.



Here's how it all breaks down:



each year, the federal government spends more than 10 times more on foster care and

¹⁸ Guth, Madeline, et. al. *Federal Medicaid Outlays During the COVID-19 Pandemic*. Kaiser Family Foundation, April 27, 2021. <https://www.kff.org/coronavirus-covid-19/issue-brief/federal-medicaid-outlays-during-the-covid-19-pandemic/#:~:text=The%20American%20Rescue%20Plan%20Act,new%20adoption%20of%20the%20ACA>

¹⁹ "Federal Appropriations..." supra, note 5.

²⁰ Wexler, Richard. "1 Change in Federal Policy Manual May Do More for Children, Families Than Entire Family First Act." *Youth Today*, Feb. 18, 2019. <https://youthtoday.org/2019/02/1-change-in-federal-policy-manual-may-do-more-for-children-families-than-entire-family-first-act/>

²¹ "Federal Appropriations..." supra, note 5.

²² Child Trends. *Title IV-B Spending by Child Welfare Agencies in SFY 2018*. March 2021. https://www.childtrends.org/wp-content/uploads/2021/01/Title_IVB_SF2018.pdf

adoption than on programs to keep children safely out of foster care. It spends at least \$9.6 billion on foster care and adoption. It spends, at most, \$700 million to \$830 million on preventing needless foster care.

Family First Changes Almost Nothing

The Family First Prevention Services Act (Family First) has been called “revolutionary”.²³ It’s been called a landmark.²⁴ It’s been called the law that will “change foster care as we know it.”²⁵ It’s been called “a huge overhaul of foster care.”²⁶

It is none of those things. The law allows some IV-E foster care money to be used for prevention—but it is so full of limits that it is almost meaningless.²⁷

You can’t use Family First for what families need most: concrete help such as housing assistance and childcare. You can only use it for three specific types of services, two of which are likely to be largely worthless. Indeed, the law reinforces the “medical model” that has sent child welfare in the wrong direction for more than half a century.

The medical model postulates that child abuse and neglect are the faults of parents who, while not necessarily evil, are certainly sick. Thus, it is in no way the fault of the larger society; it is strictly something wrong with the parent.²⁸

So, while Family First allows funding for one service that is genuinely useful, drug treatment, the only other services it will fund are mental health treatment and home-based treatment emphasizing the system’s old standbys: counseling and parent education.

While there are times such services can be genuinely useful, often they become just one more hoop a family has to jump through; so they can actually make a family’s situation worse.

That’s because the foster care-industrial complex tends to confuse cause and effect. The stresses of poverty may lead to substance abuse and mental illness. Instead of increasing

the stress by adding all those hoops, states should focus on alleviating the poverty. And if that isn’t enough to ameliorate the substance abuse or mental illness, then the solution is still money—so poor people can treat their substance use and mental health issues the way rich people do: by purchasing the help they need. Multiple studies have demonstrated the transformative power of cash in reducing what family policing agencies label “neglect.”²⁹ Claims by defenders of the *status quo* that children are not torn from their homes because of poverty “alone” are irrelevant. If the solution is money, the problem is poverty.

One of the few truly valuable programs approved for funding under Family First is a program called Homebuilders, which combines counseling with concrete help and does both in ways directed by the family instead of imposed by the therapist. To the extent that states and localities embrace this program, it will make Family First more valuable. And Homebuilders meets the other key criterion to be eligible for

²³ Wogan, J.B. “The Revolutionary Foster Care Law Buried in February’s Federal Spending Deal.” *Governing*, May 13, 2018. <https://www.governing.com/archive/gov-family-first-foster-care-child-welfare-congress.html>

²⁴ *Every Kid Needs a Family, About This Project* (National Center for State Courts, Undated.) <https://www.ncsc.org/everykid>

²⁵ Wiltz, Teresa. “This New Federal Law Will Change Foster Care As We Know It.” *Stateline*, May 2, 2018. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/05/02/this-new-federal-law-will-change-foster-care-as-we-know-it>

²⁶ *Ibid.*

²⁷ For an overview, see Wexler, Richard. “Family First Act Institutionalizes Institutions, Sets Up Prevention to Fail.” *The Imprint*, June 30, 2016. <https://imprintnews.org/opinion/family-first-institutionalizes-institutions-sets-prevention-fail/19342>. See also Wexler, Richard. “Don’t believe the hype. The Family First Act is a step backwards for child welfare finance reform,” *NCCPR Child Welfare Blog*, Feb. 9, 2018. <https://www.nccprblog.org/2018/02/dont-believe-hype-family-first-act-is.html>

²⁸ For a detailed discussion, see Wexler, Richard. “Child abuse is not a public health problem, it’s a social justice problem.” Presentation to the Kempe Center International Virtual Conference:

A Call to Action to Change Child Welfare, Oct. 6, 2020. <https://www.nccprblog.org/2020/10/child-abuse-is-not-public-health.html>

²⁹ For further discussion and links to some of these studies see Wexler, Richard, “Want to Prevent Child Abuse? Behold the Transformative Power Of Cash,” *Youth Today*, Aug. 14, 2019.

funding under Family First, it's considered sufficiently "evidence-based."³⁰ The standards for this are extremely strict. That, in itself, illustrates the hypocrisy of the family policing system.

Foster care is not evidence-based—on the contrary, the evidence is that it's harmful.³¹ Residential treatment? Same thing.³² What about that most sacred cow in child welfare, Court-Appointed Special Advocates (CASA)? A review of every study the researchers could find turned up zero evidence that would make CASA evidence based—indeed there is considerable evidence that it does harm.³³ But we keep throwing money at it.

Only when the topic is keeping children out of foster care, do we demand that proponents dot every 'i' and cross every 't' in multiple studies to prove a given program's worth beyond the shadow of a doubt.

The bottom line for Family First is this: very few programs will be allowed to address very few problems.

That's why, in 2016, the Congressional Budget Office estimated that an average of \$130 million per year in IV-E funds would wind up going to prevention thanks to Family First³⁴—that's the \$130 million mentioned above. That will raise the prevention total to all of \$830 million—still dwarfed by the \$9.6 billion spent on foster care and adoption. Or, to put it another way, the \$130 million in new prevention funding equals less than two percent of what's lavished on foster care and adoption.

Waivers Were Better

Family First did damage in still another way. It replaced a better option: waivers.

Beginning in 2006 and expanding considerably by 2012, states were allowed to apply for IV-E waivers. If a state or locality received a waiver, it would take all or part of its IV-E entitlement as a flat grant. The amount was based on a projection of what the state was likely to receive under the entitlement, with an adjustment for inflation. States or localities would be free to spend the money on foster care but also on

better options. States that reduced foster care could keep the savings as long as the money was plowed back into child welfare. But if they took too many children, they had to pay for those additional placements themselves.

Unfortunately, few places sought big waivers to cover all of their IV-E funding. Most opted for small-scale projects. (It didn't help that the federal official who issued "guidelines" for the waivers took an approach that undermined their purpose.)³⁵ But Florida went big. During the first years of the waiver, when leadership was committed to safely reducing foster care, independent evaluations found that the waiver did exactly that.³⁶ And, much as in Illinois, when subsequent leaders succumbed to a media-fueled foster-care panic,³⁷ the increase in entries was not nearly as great as it was

³⁰ For a detailed discussion of Homebuilders, see Wexler, Richard. "Inclusion of Homebuilders Model Makes Family First Act a Much More Useful Law." *Youth Today*, May 26, 2020. <https://youthtoday.org/2020/05/inclusion-of-homebuilders-makes-family-first-act-a-much-more-useful-law/>

³¹ For a summary of some of that evidence, see "NCCPR Issue Paper #1. Foster Care vs. Family Preservation: The Track Record for Safety and Well-being." Updated Feb. 23, 2022. <https://nccpr.org/nccpr-issue-paper-1-foster-care-vs-family-preservation-the-track-record-for-safety-and-well-being/>

³² For a summary of some of the evidence, see, National Coalition for Child Protection Reform. *Residential Treatment: What the Research Tells Us*. Updated April 18, 2011. <https://bit.ly/3oro05o>

³³ For a summary of some of the evidence, see: Wexler, Richard. "The Case Against CASA." Presentation to the Kempe Center International Virtual Conference: A Call to Action to Change Child Welfare, Oct. 6, 2021. <https://www.nccprblog.org/2021/10/nccpr-at-kempe-center-conference-case.html>

³⁴ Congressional Budget Office *Cost Estimate: HR 5456 Family First Prevention Services Act of 2016*, June 21, 2016. <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr5456.pdf>

³⁵ Wexler, Richard. "Foster care in America: Rutledge Q. Hutson is gloating – and that's never good news for children." *NCCPR Child Welfare Blog* June 18, 2012. <https://www.nccprblog.org/2012/06/foster-care-in-america-rutledge-q.html>

³⁶ Armstrong, M.I., et. al. *Florida's IV-E Waiver Demonstration Project: Evaluation Summary Brief*. Department of Child & Family Studies Louis de la Parte Florida Mental Health Institute USF College of Behavioral & Community Sciences, May 30, 2012. <https://bit.ly/3jCivWW>

³⁷ For a full discussion of this panic, see NCCPR's Florida Blog: <https://heraldvsfacts.blogspot.com/p/our-full-response-to-innocents-lost.html>

following a similar panic in 1998, before the waiver.³⁸

From the beginning, the family policing establishment, including groups like the Children's Defense Fund and the Center for Law and Social Policy, were hostile to waivers.³⁹ Why would they oppose waivers and support Family First? Because Family First is an add-on—that is, the prevention funding comes on top of the existing open-ended entitlement, waivers ended the entitlement in those states that accepted them. And, as will be discussed further below, nothing is more sacrosanct to the family policing establishment than the foster-care entitlement.

The Importance of “The Lookback”

Earlier, I noted that IV-E reimbursement is available only for eligible cases. What makes a case eligible?

When Title IV-E was established, foster care funds were made available if the child's own family was poor enough at the time to qualify for welfare—that is, Aid for Families with Dependent Children (AFDC). Since family policing targets poor people, that was a lot of families.

But AFDC no longer exists. It was replaced in 1996 by Temporary Assistance for Needy Families (TANF), something discussed further below. But the rule linking IV-E eligibility to AFDC 1996 income limits was never changed—and there has been no adjustment for inflation.

Again, consider a hypothetical case:

Suppose in state x, back in 1996, you could only get AFDC if family income was less than \$10,000 per year. That means IV-E would pay for foster care only if the child came from a family earning less than \$10,000 per year.

But it's been 26 years since AFDC was abolished. Adjusting for inflation, \$10,000 then is more than \$18,219 today.^[40] But the rule still stands: In state x, a child is eligible only if his own family, his *real* family, has less than \$10,000 in income.

This is bizarre, it is confusing, it is clumsy to administer—and it is *wonderful*. Simply because of inflation, the number of families with less than that hypothetical \$10,000 per year almost always is decreasing. That doesn't mean poverty is decreasing, but because there's no inflation adjustment, the number of cases eligible for reimbursement is likely to decline ever so slightly year after year after year.

According to one estimate, in 2000, four years after AFDC was abolished, 58 percent of all cases were eligible,⁴¹ by 2018, it probably was about 46 percent.⁴²

This means that, in theory, if absolutely nothing changes, in roughly 31 years, the federal government won't be funding foster care anymore! That's probably optimistic. Another estimate found that the proportion of eligible cases was already down to 45 percent by 2006⁴³—suggesting that, if nothing changes, the federal government will keep paying for a lot of foster care for a very long time. But all this also means there is at least one upside to the current high rate of inflation.

There also is a shorter-term benefit. Every year this continues, the pressure on states to

³⁸ For entry data concerning the current Florida foster-care panic, which started in 2014, see HHS, *supra*, note 12. Earlier entry data are no longer readily available online, but are available from NCCPR. See also NCCPR's reports on Florida child welfare, beginning with *Shadow on the Sunshine State*, in 2000: <https://nccpr.org/nccpr-florida-reports/>

³⁹ Wexler, Richard. “Foster care finance reform: The charge of the ‘Yes, but...’ brigade.” *NCCPR Child Welfare Blog*. <https://www.nccprblog.org/2010/07/foster-care-finance-reform-charge-of.html>

⁴⁰ U.S. Bureau of Labor Statistics CPI Inflation Calculator https://www.bls.gov/data/inflation_calculator.htm

⁴¹ Scarcella, Cynthia Andrews, et. al. *The Cost of Protecting Vulnerable Children V: Understanding State Variation in Child Welfare Financing*. The Urban Institute, May 2006. <https://www.urban.org/sites/default/files/publication/50536/311314-The-Cost-of-Protecting-Vulnerable-Children-V.PDF>

⁴² Rosinsky, Kristina. “Child Welfare Financing SFY 2018: A survey of federal, state, and local expenditures.” *ChildTrends*, March 2021. https://www.childtrends.org/wp-content/uploads/2021/03/ChildWelfareFinancingReport_ChildTrends_March2021.pdf

⁴³ Child Welfare League of America, *Ten Years of Leaving Foster Children Behind*, July, 2006. https://thehill.com/sites/default/files/TENYEARS...TheReport_0.pdf

accept better alternatives to the current IV-E entitlement grows.

Of course, the foster care-industrial complex is desperate to get rid of the lookback. They crave what they call “delinking” the way Homer Simpson craves donuts. And both are bad for children.

In 2006, the Child Welfare League of America, a trade association for public and private family policing agencies, justified its craving this way: “It is often said that the nation’s foster care and child welfare system is ‘broken.’ In reality, it isn’t broken so much as it has never been fully supported and empowered to function effectively.”⁴⁴

The danger that Congress might be suckered into delinking is real: the foster care industrial complex already achieved “delinking”—a phase-out of the lookback—for adoption subsidies. For most adoptions, it no longer applies. That creates another bad incentive. A case for which a state can’t get IV-E reimbursement while the child is in foster care might be eligible for reimbursement if the state terminates children’s rights to their parents (a more accurate description than “termination of parental rights”) and those same foster parents adopt the child. (This incentive is in addition to the adoption bounties discussed below.)

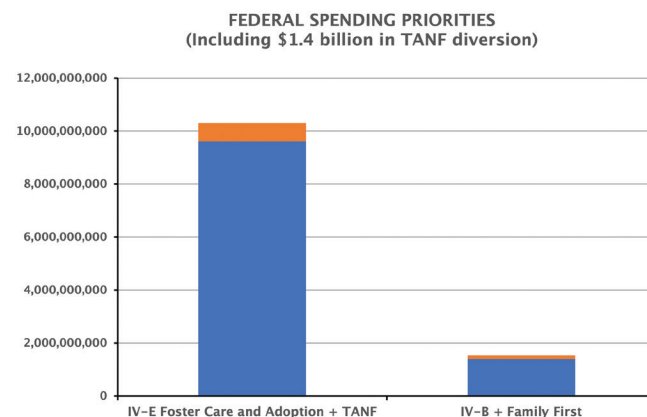
TANF: The Child Welfare Slush Fund

All this still underestimates the extent to which the funding deck is stacked against families. Because there is one more huge pot of money many states can use for foster care, and in some ways, this is the most immoral perverse incentive of all—TANF.

As noted above, TANF replaced AFDC—“welfare as we knew it.” TANF is not an entitlement—so states can build surpluses by cutting people off. The surpluses are supposed to be used to help poor families become self-sufficient. But for many states, there is a loophole that allows them to divert TANF money to foster care, child abuse investigations, and adoption subsidies. In 2020 states [poured more than \\$2.6 billion](#) through that loophole.⁴⁵

That’s in addition to the \$9.6 billion spent on foster care and adoption under IV-E.

Not all of this money is necessarily misspent.



Sometimes TANF money goes to pay relatives for providing kinship foster care. But, at most, that’s 20 percent of the TANF money spent on child welfare.⁴⁶

Another \$884 million goes to family support, preservation and reunification. But almost all of that can simply be used to displace state spending, and some states have done just that. In other words, poor people are forced to fund their own family preservation/reunification services.⁴⁷

But even if you accept all that spending as legitimate, that still leaves \$1.4 billion taken out of poor people’s pockets to fund things like foster care payments to strangers, adoption, and child abuse investigations. Money that should have been used to provide low-income child care can be diverted to investigate an impoverished family on a “lack of supervision” charge—because they don’t have child care.

In Arizona, the state which probably is the worst offender, a ProPublica story put it this way:

⁴⁴ Ibid.

⁴⁵ Administration for Children and Families, Office of Family Assistance. “OFA Releases FY 2020 TANF and MOE Financial Data.” Oct. 13, 2021. <https://www.acf.hhs.gov/ofa/news/ofa-releases-fy-2020-tanf-and-moe-financial-data#:~:text=In%20FY%202020%2C%20combined%20federal,education%2C%20and%20training%20activities%3B%20and>

⁴⁶ Ibid.

⁴⁷ Ibid.

“... Arizona spends only 13% of its welfare funding on welfare itself, and none on child care or pre-K. Meanwhile, it diverts 61% of the dollars to the state’s child protective services system, which amounts to more than \$150 million repurposed in this way every year, a ProPublica review of budget documents shows.

In other words, welfare in Arizona largely goes not to helping poor parents financially but rather to the state’s Department of Child Safety — an agency that investigates many of these same parents, and that sometimes takes their kids away for reasons arising from the poverty that they were seeking help with in the first place.”⁴⁸

Other Bad Incentives

Adoption bounties. Under the Adoption and Safe Families Act, for every finalized adoption over a baseline number, states get anywhere from \$5,000 to \$10,000.⁴⁹ The federal government calls these bonuses. A more appropriate term is bounties.

If an adoption fails, the state doesn’t have to give the money back. In fact, the state can place the same child again and, if the baseline is exceeded, collect another bounty.

The incentive is obvious: rush to terminate children’s rights to their parents and make quick-and-dirty, slipshod placements. In Kentucky, in 2006, local newspapers and NBC News exposed a scandal in which the state was doing just that.⁵⁰

Six years later, a Washington State report found that “Permanency initiatives are often ‘numbers driven’ and ‘time specific’ which can adversely affect both practice and placement outcomes. When the driving force behind permanency initiatives is numbers, rushed and inadequate placements, adoption disruptions, multiple moves and longer stays in care result.”⁵¹

One small bit of good news: bounties now also go to guardianships, which usually means placement with relatives—though those are limited to \$4,000.⁵² This, too, illustrates the misplaced priorities of the system: adoption, which is more likely to be with a stranger, literally pays off better for a state than guardianship with a relative.

Something David Sanders, now executive vice president of systems improvement at Casey Family Programs, said in 2003 when he was director of the Los Angeles County Department of Children and Family Services, still holds true today:

“What you have now is an incentive to initially remove the child and an incentive to adopt them out. I think when you put these two together, there is a problem.”⁵³

Stealing foster children’s money. It’s estimated that on any given day, 10 percent of foster youth, about 40,000 children, are entitled to either Social Security Disability Benefits or Social Security Survivor Benefits. But in most states, family policing agencies go to great lengths to swipe that money and keep it for themselves before the children ever get it.⁵⁴ It’s legal, but it’s about as ethical as and more harmful than stealing candy from a baby.

In an excellent example of how the family policing establishment and its allies put their own interests ahead of the children when legislation first was proposed in Congress to stop the theft, both the Child Welfare League of America and the Children’s Defense Fund opposed it. Their rationale: it would deprive these wonderful agencies of some small fraction of the billions they get every year to do their wonderful work “helping” children.

⁴⁸ Hager, Eli. “A Mother Needed Welfare. Instead, the State Used Welfare Funds to Take Her Son.” *ProPublica*, Dec. 23, 2021. <https://www.propublica.org/article/a-mother-needed-welfare-instead-the-state-used-welfare-funds-to-take-her-son>

⁴⁹ Kelly, John. “How The New Adoption Incentives Would Work.” *The Imprint*, July 8, 2014. <https://imprintnews.org/analysis/how-the-new-adoption-incentives-would-work/7437>

⁵⁰ Thompson, Lea. “Increasing adoptions: A good idea gone wrong?” *NBC Nightly News*, June 13, 2006. <https://www.nbcnews.com/id/wbna13304867>

⁵¹ Patrick Dowd, Office of the Family and & Children’s Ombudsman. *Severe Abuse of Adopted Children Committee Report*, September, 2012.

⁵² Kelly, supra note 49.

⁵³ Anderson, Troy. “Government Bonuses Accelerate Adoptions,” *Daily News of Los Angeles*, Dec. 8, 2003,

⁵⁴ Hager, Eli and Shapiro, Joseph. “State Foster Care Agencies Take Millions Of Dollars Owed To Children In Their Care.” *The Marshall Project* and NPR, April 22, 2021. <https://www.npr.org/2021/04/22/988806806/state-foster-care-agencies-take-millions-of-dollars-owed-to-children-in-their-ca>

In the years since, and particularly after the practice was exposed in 2021 by NPR and *The Marshall Project*, some states and localities have moved to curb it.

Ransom. Many family policing systems actually require parents to “reimburse” them for part of the cost of their children’s foster care. Sometimes the failure to make these payments can, itself, prolong foster care. And when a family is reunified, they still may have to pay off the debt, driving them deeper into the poverty that often causes the removal of children in the first place. Even if one can get past the fact that the practice is morally reprehensible, it doesn’t even save money. On the contrary, the cost of collection—and prolonged foster care—is greater than the money squeezed out of families.

Although some states say, such collections are required under federal law, in fact that law is flexible. Any state that doesn’t want to engage in this practice can stop.⁵⁵

States refer to these payments as “child support.” But when someone takes a child from her or his parents and then forces the parents to pay money to get the child back, the only proper term for the payment is ransom.

Better Alternatives

Many ideas have been proposed for changing these incentives. Any of these would help; this list runs from least to most helpful:

The Biden plan. The Biden Administration has proposed modest but significant reforms. Under their plan, the amount of money reimbursed under Title-IVE for every foster care placement would be increased by ten percentage points if the placement is in the least harmful form of foster care, kinship foster care with a relative or close family friend. It would be decreased by five percentage points for the worst placements—in group homes and institutions.

For example, a state that now gets 60 cents on the dollar for placing an eligible child in any form of foster care would get 70 cents if the placement is with a relative and 55 cents if the placement is in a group home or institution.

The plan also would increase the reimbursement rate for preventive services under Family First and add some flexibility to the process for determining which programs are eligible for Family First reimbursement.⁵⁶

Waivers for all. The George W. Bush Administration floated an idea that amounts to taking the waiver process, which was complex and required a specific application and various case-by-case approvals, and making it simple: let any state trade-in the open-ended IV-E entitlement for a flexible flat grant. For five years, states would get the same amount they had been getting through the IV-E entitlement as a flat grant. It would be adjusted for inflation. As with waivers, if states took fewer children, they could keep the savings if the money was plowed back into child welfare. If states took more children, they’d have to pay for those additional placements themselves.

The plan was strictly voluntary.

But the child welfare establishment, particularly groups on the Left like the Children’s Defense Fund (CDF), rose up in demagogic fury. CDF declared that this voluntary plan would “dismantle ... foster care.”⁵⁷ The attacks were successful, the plan went nowhere. The Trump Administration tried to revive it; again, it went nowhere.⁵⁸

It died again even though the opposition by CDF to the Bush Administration plan not only was bad for children; it was bad for states’ bottom lines. Five years after the plan was first proposed, the Congressional Research

⁵⁵ Shapiro, Joseph. “States send kids to foster care and their parents the bill — often one too big to pay.” NPR, December 23, 2021.

⁵⁶ Kelly, John. “Biden Proposes Major Spending Shifts to Prioritize Kin, Foster Care Prevention.” *The Imprint*, March 28, 2022. <https://imprintnews.org/youth-services-insider/biden-prioritize-kin-foster-care-prevention/63821>

⁵⁷ Children’s Defense Fund. “It’s Time for New Voices for New Choices Which Truly Leave No Child Behind” Feb. 26, 2003, p.2.

⁵⁸ Kelly, John. “Trump 2019 Budget: Flexibility Beyond Family First Act, But with a Catch.” *The Imprint*, Feb. 16, 2018. <https://imprintnews.org/youth-services-insider/trump-budget-flexibility-beyond-family-first-act-with-catch/29973>

Service calculated⁵⁹ how much states would have gotten had it become law and had every state accepted it. The answer: five billion more over five years than they got after CDF, the Child Welfare League of America and the rest of the child welfare establishment killed the reform and forced states to stick with the entitlement.⁶⁰

Since even the voluntary model failed, there was no hope for a more far-reaching plan offered at about the same time by then-Rep. Wally Herger (R-California). His version would have worked the same way—but it wouldn't have been voluntary. Even that wouldn't have been enough. Even these plans would have simply neutralized the bad financial incentives. But because of all the non-financial incentives, the pressure to needlessly tear apart families would have remained enormous.

We need something far more radical. Something like this:

Start with the Herger plan. But then, the following year, require that at least 10 percent of the total grant be transferred out of foster care and into safe, proven alternatives; ideally, these would be community-based and community run. (Prof. Anna Arons' paper on New York City's "unintended abolition" describes an excellent model.)⁶¹ The next year it would be 20 percent, then 30 percent, and so on.

After 10 years the federal government would be out of the foster care and adoption funding business entirely—but states would have over \$9 billion more, plus an inflation adjustment, to spend on better alternatives.

For example: suppose state x received \$100 million in IV-E foster care reimbursement last year. Under this plan the state would get \$100 million this year and no more. But the state would be free to spend that money on foster care and adoption and/or on better alternatives. Next year it would be \$100 million again (plus an inflation adjustment) but no more than \$90 million of it could go to foster care and adoption. The year after only \$80 million could go to foster care and adoption. After 10 years the entire \$100 million would have to go to better alternatives.

That does not mean there would be no foster care and no adoption. It would mean only that if a state or local government wanted to tear apart a family that state and/or local government would have to pick up the entire tab.

Other urgent reforms include:

- Ban *per diem* reimbursement for private agencies. The federal government should bar states from paying private agencies based on each day they hold a child in "care."
- Eliminate the adoption bounties under ASFA and replace them with payments only for reunification and guardianships. The reunification payments would be contingent on no long-term increase in foster-care recidivism—children returned to foster care after reunification.
- Prohibit states from taking foster youths' Social Security benefits.
- Prohibit states from making parents pay ransom.
- Prohibit the use of TANF money as a child welfare slush fund.

Even all this doesn't guarantee success because it doesn't deal with all those other non-financial incentives mentioned earlier.

But there are good people involved in these issues, both outside advocates and those who want to change family policing from within. We can see that because we saw a few courageous leaders accept waivers. And we can see it now when a state or local government manages to significantly reduce entries into care in spite of the current incentives.

Reversing federal financial incentives and ending *per-diem* reimbursement to private agencies will allow these good people to swim with the tide instead of against it.

⁵⁹ Stoltzfus, Emilie. "Child Welfare Funding Proposed by the Child SAFE Act (H.R. 4856 – 108th Congress) Compared to Actual and/or Projected Funding, FY2005–FY2010." Congressional Research Service, Feb. 26, 2008.

⁶⁰ Wexler, Richard. "The \$5 billion blunder." *Youth Today*, Dec. 2, 2010. <https://youthtoday.org/2010/12/the-5-billion-blunder/>