THERE’S NO PLACE LIKE HOME – THE LOST CHILDREN OF FOSTER CARE

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I. Introduction

Imagine you are a young child again. You have just been taken from your family. You do not know why or for how long. All you know is that the people taking you away from your family are not other relatives, but strangers. They claim that taking you away from your parents will be for your best interests and safety. You are confused and scared. The things that went on at home were thought to be part of a normal lifestyle. However, the reality is that you were the victim of abuse and neglect. Your lifestyle which you thought was so normal actually involved parents who were more concerned with themselves, rather than their own children. The little money that the family owns is spent on furthering their habits instead of clothes, food, or schooling for their children. These people who removed you from your home are employed by Child Protective Services, and they are concerned only with placing you in a new and better home.

Even though this is just a hypothetical scenario, events like this one take place all over the country. Many children are raised by parents that are unable to adequately provide a safe and healthy environment. The factors could involve many reasons
ranging from poverty to malnourishment. When situations like this one arise, Child Protective Services steps in. Then, whether you like it or not, your next destination is foster care.

The main analysis of this paper centers around the foster care system and the effects of foster care on the children who are thrust into it. The jurisdiction will be focused on the United States as a whole, with some State comparison. In Part II, a general description of foster care will be looked at. Part III distinguishes the two different types of foster care, kinship and non-relative foster care. Part IV contains discussions dealing with the process generally, and what leads children to foster care. Following that section, Part V extensively deals with the effects on the children, including any psychological, social, and physical effects. Later on in Part VI, additional recommendations on how to improve the foster care system will be looked into. Finally, an overall conclusion will try to summarize things and put them into perspective.

II. Foster Care Generally

The Adoption and Foster Care Analysis and Reporting System conducted a study in 2008 which showed that there were an estimated 463,000 children in foster care throughout the United
States. The same study showed that only nineteen percent children were adopted across the United States. Taking these numbers as they are means that about two out of ten children who go into foster care will be adopted. This shocking statistic can be attributed to the inefficiency of the foster care system as a whole. The good news is that, in states such as New York, the number of children in foster care “has decreased from 53,902 children in 1995 to 25,878 in 2008.” A safe assumption would be that due to this drop in numbers, the foster care system is working, at least in New York.

A common definition of foster care is “a child welfare service which provides substitute family care for a planned period for a child when his own family cannot care for him for a temporary or extended period, and when adoption is neither desirable nor possible.” Out of all the children who enter the foster care system, many of them enter due to abuse, neglect, or voluntary placement because their parents do not have the sufficient funds or housing. This shows that the link between poverty and foster care may not be as strong as many imagined. Many people may

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2 Id. at 5.
4 Daniel Pollack & Gary L. Popham, Jr., "Wrongful Death" of Children in Foster Care, 31 U. La Verne L. Rev. 25, 31 (2009).
5 Barbara A. Brown, Foster Care as a Family Service, 5 Del. Law. 38, 39 (1986).
assume that the sole reason for foster care is due to a family lacking the funds needed to raise their children. Poverty does not appear to be the leading reason for foster care. Some people may think that because a family is living in poverty, then that must mean the parents do not work, but instead are addicted to drugs or alcohol. One study showed that in over half of the low income families there is a full time working parent, and that the main cause for poverty is single parenthood.\textsuperscript{6} There are also indirect effects such as abuse or neglect which may be incidental as a result of poverty affecting a family. However, as will be discussed later, poverty indeed plays a big role in the foster care system.

To an outsider looking in, foster care may seem like a system focusing on bettering the lives of the children through finding suitable foster parents. The real goal of the foster care system aims to “provide a stable, nurturing, non-institutionalized environment for the child while the [biological] parent or caretaker attempts to remedy the problems which precipitated the child’s removal or, if parental rights have been terminated, until suitable adoptive parents are found.”\textsuperscript{7} This definition exemplifies the foster care system as

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\textsuperscript{7} Brown, supra n. 5.
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one that also aids the children involved, rather than only focusing on finding new parents.

Parents who find themselves at the mercy of the foster care system need to realize that the system is there for their own benefit. The system acts as a temporary home to protect and nurture those children who cannot live in their own homes.⁸ There are only two options for children in foster care. Children will either find themselves living with kin or with parents who are not related. However, sometimes the sad scenario occurs when a foster child has lost contact with their biological parents and is subjected to frequent movements from home to home.⁹ This problem in the foster care system has been identified as “foster care drift.”¹⁰ If there could be a choice every time, a lot of families would probably prefer having a close relative take care of their child. The next section will discuss the details of both kinship foster care and non-relative foster care.

III. Kinship Versus Non-relative Foster Care

In the foster care system, children are faced with two scenarios: be cared for by relatives or be placed with non-related foster parents. Many people would probably prefer having

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¹⁰ Id.
a relative take care of their children. During 2006, around 24% of the kids in the foster care system wound up being placed with related foster parents. However, some families may not have the option or prefer relying on a family member. The difference in having a non-related verses related foster parent could have a significant impact on the children themselves. Each scenario, non-related care and kinship care, offers different pros and cons for the prospective parents.

Non-related foster parents are just that, parents who have no biological connection to the child. While there are benefits to both types of parenting, related foster parents face many obstacles when it comes to raising foster children such as financial problems, conflicts with the parents, and even health problems. Despite the obstacles, kinship foster care, or living with a relative, tends to provide a more stable environment and lead to less home placements. When comparing the amount of home placements for each option, fifty-nine percent of children who were placed with non-relatives had only a single home placement. On the other hand, eighty-three percent of children

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14 Naomi R. Cahn, Children’s Interests in a Familial Context: Poverty, Foster Care, and Adoption, 60 Ohio St. L.J. 1189, 1219 (1999).
had only a single home placement with kin.\textsuperscript{15} When the foster care system is forced to place children with non-related parents, significant relationship bonds are broken and must be restructured with complete strangers. It is not to say that non-related foster care breaks these bonds for good, but single or few home placements are needed for the relationships to truly be developed.\textsuperscript{16}

When people think of kinship, usually the idea of family comes to mind. Technically the term kinship care refers to “any form of residential caregiving provided to children by kin, whether full-time or part-time, temporary or permanent, and whether initiated by private family agreement or under custodial supervision of a state child welfare agency.”\textsuperscript{17} Basically, kinship care boils down to having an individual who will provide care for a child to whom they are related, as long as there is some type of set agreement. One of the easiest examples to think of would be a grandparent taking care of one of their own grandchildren. Not only would kinship foster care provide benefits for the children themselves, but these types of arrangements are usually made between families themselves

\textsuperscript{15} Id.
\textsuperscript{16} Id. at 1220.
\textsuperscript{17} Megan M. O'Laughlin, \textit{A Theory of Relativity: Kinship Foster Care May be the Key to Stopping the Pendulum of Terminations vs. Reunification}, 51 Vand. L. Rev. 1427, 1447 (Oct. 1998).
without any need for state involvement. Other benefits for the children include, not experiencing multiple placements; keeping all of the siblings together, and lessening trauma involved when the state intervenes. With just these benefits, it is easy to see why kinship foster care is the fastest growing option.

With each of the types of foster care, there are options available which aim to benefit prospective parents. For example, with non-related foster care, one of the popular methods is open adoption, sometimes called adoption with contact. One of the biggest concerns would be the amount of parental rights available to the biological parent if they were to have their child moved to another family. The availability of open adoption allows the biological parent and child to keep contact even if the child is adopted. By having the choice of an open adoption, the foster care system encourages the parents to do what is best for their children when adequate care is impossible. Parents would likely be persuaded to give up their child more willingly if they know that constant contact will not

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19 O’Laughlin, supra n. 17, at 1448.
20 Id. at 1448.
21 See Annette Ruth Appell, Reflections on the Movement Toward a More Child-Centered Adoption, 32 W. New Eng. L. Rev. 1, 5 (2010)(explaining the two types of regulatory schemes that sanction and enforce post-adoption contact).
23 Id.
24 Id. at 1221.
be disrupted by the whole process. The bond between a mother and her child is significant, and to think that the child could be taken away without a legal fight is irrational. At least with open adoption, parents will be more willing to listen to the alternative as long as they could be guaranteed contact.

Perhaps if a mother knew her child would be in the hands of a relative, then she would be more willing to assist throughout the process. One of the major boosts for kinship foster care was the Adoption and Safe Families Act. This act was specifically designed to promote the adoption of children in foster care.\textsuperscript{25} Eventually the goals of the act were aimed to focus on both family reunification and encouraging foster families to adopt.\textsuperscript{26} The Adoption and Safe Families Act “clarifies” the requirement to reunite children back with their families.\textsuperscript{27} Initially, the Adoption Assistance and Child Welfare Act of 1980 stated that the requirements to reunite children with their family must be “reasonable efforts.”\textsuperscript{28} The Adoption and Safe Families Act makes it known that the child’s protection and safety is above all

\textsuperscript{27} O’Laughlin, \textit{supra} n. 17, at 1429.
else. However, the Act has a downside. With this clarification also came provisions which require states to terminate parental rights if a child has been in foster care for fifteen of the past twenty-two months. Both non-related and kinship foster care provide their own ups and downs, but in my opinion it seems that the better way to go would be to take the kinship foster care route. With a general understanding of both types of foster care, it is now important to know what exactly sends children to the path of foster care.

IV. The Path to Foster Care

The foster care system depends on a complex and cooperative effort between the child welfare agency and the courts. The foster care adoption process can be broken down into five steps: entry, permanency planning, termination of parental rights, adoptive placement, and post-adoption. Many of the children who enter the foster care system do so because of abuse or neglect, sadly this same abuse will occur even in once the children enter...

30 O’Laughlin, supra n. 17, at 1429.
32 Id. at 5.
the system. Depending on one’s perspective, this can be seen as rescuing the child from danger or forcibly removing a child from his or her family. Regardless of the outlook, the process is the same. The foster care adoption all begins with the entry stage.

The entry stage is the initial step into the foster care system. After the child is removed from his or her home, the child welfare agency must then determine a placement best suited. At the same time the agency determines a placement, the court attempts to make a finding of abuse or neglect. Even at the very beginning of the process, one can see how cooperation between the agencies and the courts is essential in order to keep the process moving in a timely fashion. The goal of the agency is to reunite the child with the family. However, if this looks not to be possible, then placement probably would be with a family already looking to adopt.

Once the child has been placed in a home, the child welfare agency then begins looking for permanent measures for the child. If the option of reunifying the child with his family is

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34 Id.
35 Id.
37 Id.
38 Id.
39 Id.
not possible, then other options are explored. These options can include providing a legal guardian, permanent placement with relatives, or adoption. A common problem the agency runs into here is finding enough homes for the children, but sometimes private agencies will be approached in order to recruit and train parents who want to adopt. Usually these problems involve finding homes for special-needs children, or even homes to reflect the ethnic and racial diversity of the children. Once again cooperation is essential because while the agency explores these options, the court must hold a permanency hearing within twelve months from the time the child enters the foster care system. Just with these first two stages, the court could stall for up to one year until the permanency hearing. This hearing does not necessarily complete everything because the main focus of the hearing is merely to discuss the goals with the child and order any supporting actions. The hearing’s main focus is to analyze the foster parent’s ability to care for the child’s health and security. Even when this is completed, the process is far from over.

40 Id.  
41 Barbara Fedders, Race and Market Values in Domestic Infant Adoption, 88 N.C.L. Rev. 1687, 1691 (2009).  
42 Id.  
44 Macomber, supra n. 31.  
As if the foster care process was not sensitive enough, the termination of parental rights will for sure take everything to a whole new level. This stage will only begin though if the agency seeks a family for adoption. Federal law requires that the state attempt to reunify the children with their original families through “reasonable efforts” before attempting to provide the child with an adoptive family. Even with this federal requirement, the reasonable efforts must not put the health and safety of the child at risk and keep the reunification the “paramount concern”. This “reasonable efforts” standard can sometimes be excused when the parent is presumed unfit. For example, the law in New York lays out various obligations which act almost as guidelines for being a “fit parent.” Courts tend to define these obligations as ranging from visitation, future planning, working with the agency, to drug, health, or financial problems. When this

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46 Id.
49 Kelli Lane, supra n. 47.
51 Id. at S-85-S-87.
occurs, then the state must push for termination of parental rights.\textsuperscript{52}

Another instance of excusing the standard involves the length of time the child has been in foster care. If the child has been in the foster care system for fifteen of the past twenty two months, then the state must move for termination of parental rights.\textsuperscript{53} A total of forty-eight states report this stage as being one of the main barriers to the adoption process.\textsuperscript{54} Usually, the courts are hesitant to terminate the rights of parents in situations where there is no identified adoptive family, or where parents are still trying to put their life back together through recovery methods.\textsuperscript{55} In some situations, the parent could voluntarily relinquish their rights, thus helping avoid any unneeded obstacles.\textsuperscript{56} Situations involving a parent who voluntarily relinquishes their child would seem to be rare, considering many parents would probably fight tooth and nail throughout the process to keep as many rights as possible.

Many people may wonder about the father of the child and what happens with his parental rights if he is not married to the mother. A court’s determination of custody is still largely based on what is in the “best interests” of the child; however,

\textsuperscript{52} Kelli Lane, \textit{supra} n. 47.
\textsuperscript{53} \textit{Id.}
\textsuperscript{54} Macomber, \textit{supra} n. 31, at 9.
\textsuperscript{55} \textit{Id.}
\textsuperscript{56} \textit{Id.} at 5.
some courts have expanded the idea of who all may be looked at to care for the child.⁵⁷ In 1972, the case Stanley v. Illinois expanded the rights of unmarried fathers and allowed them to receive a hearing that would determine if they were fit to be a parent or not.⁵⁸ Peter Stanley lived with his three children and their mother for a period of eighteen years.⁵⁹ This was a living arrangement that was more on and off rather than a continuous time period.⁶⁰ Upon the mother’s death, the children were taken by the state and placed with appointed guardians.⁶¹ No hearing was provided for Stanley to even determine if he was considered to be a fit parent and what rights he may have.⁶² Stanley brought a claim that this action violated his Equal Protection and Due Process rights under the Fourteenth Amendment.⁶³ The Supreme Court of the United States agreed.⁶⁴ A few years later, another United States Supreme Court case refined this holding to the point that “mere existence of a biological link does not merit equivalent constitutional protection.”⁶⁵ The father must now also put forth some effort in order to build on his relationship with

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⁵⁷ Melinda Coolidge, Adoption and Foster Care, 8 Geo. J. Gender & L. 583, 591 (2007).
⁵⁹ Id. at 646.
⁶⁰ Id.
⁶¹ Id.
⁶² Id.
⁶³ Id. at 647.
⁶⁴ Id. at 658.
the child.\textsuperscript{66} However, in states like Alabama, courts do not require unwed mothers to present the same amount of commitment that an unwed father must show in order to receive parental rights.\textsuperscript{67}

Next, is the adoptive placement stage. This stage basically involves the selecting of a family to adopt the child.\textsuperscript{68} After the agency helps locate what they deem to be a suitable family, the court issues adoption proceedings to finalize the adoption and set up small assistance for care expenses if needed.\textsuperscript{69} The timing of this stage can vary. Some state agencies will begin this search immediately while others may wait until the termination of the parental rights is finalized.\textsuperscript{70} With the possibilities of appealing court decisions, it is easy to see how the process can be drawn out so dramatically. Even if all the stages are followed efficiently, the speed at which children are adopted could still be very slow.\textsuperscript{71}

Lastly, the foster care adoption process is concluded by the post-adoption stage. In this stage, the state relinquishes control of the child to the adoptive foster family.\textsuperscript{72} If things go to plan, then the child will eventually be reunited with

\textsuperscript{66} \textit{Id.} at 262.
\textsuperscript{67} \textit{Coolidge, supra n. 57,} at 592.
\textsuperscript{68} \textit{Macomber, supra n. 31,} at 9.
\textsuperscript{69} \textit{Id.}
\textsuperscript{70} \textit{Id.}
\textsuperscript{71} \textit{Id. at 9.}
\textsuperscript{72} \textit{Id. at 5.}
their biological parents. However, if this option is unavailable then the next best choice would be having the child adopted by well equipped foster parents.

With all of the stages associated with foster care adoption, it is easy to see that this is no simple and quick procedure. Case load management is one barrier which could slow the entire process.\textsuperscript{73} The longer the process drags out, the child has less and less of a chance to be adopted.\textsuperscript{74} The high number of children entering the system means an equally high number of cases that must be handled for each child. The child welfare agencies and courts have both been reported as having problems with the way they manage their high case load and the way they transfer their cases back and forth.\textsuperscript{75} Also, little things like mishandling cases can turn into bigger problems when children are seemingly left stuck waiting. These delays will only keep these children waiting in this limbo-like status until they are placed with a permanent foster family or reunited with their biological parent. The foster care process already takes a toll on the children involved, and the longer the process lasts; the more

\textsuperscript{73} Id. at 9.


\textsuperscript{75} Id.
the children are less likely to be returned to their original home or adopted.\textsuperscript{76}

V. Effects the Foster Care System has on the Children Involved

As you can tell thus far, the foster care system is a complex process that is anything but easy. A common perception to the general public may be that abuse is the leading cause for children entering foster care, but really, the vast majority of foster children are brought into the system due to neglect.\textsuperscript{77} All states have enacted some type of neglect statute.\textsuperscript{78} In conjunction with these statutes, the term “neglect” usually refers to a type of minimum standard.\textsuperscript{79} Under federal law, the Federal Child Abuse Prevention and Treatment Act defines child abuse and neglect together as “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or an act or failure to act which presents an imminent risk of serious harm.”\textsuperscript{80} The parent-child relationship plays a role in how the child will develop over time. The mere

\textsuperscript{76} John Specia, Crisis in Foster Care, 55 Tex. B.J. 490, 490 (1992).
\textsuperscript{78} Harry D. Krause, Child Welfare, Parental Responsibility, and the State, 6 Fam. L.Q. 377, 393 (1972).
\textsuperscript{79} Id.
memories of the parent-child relationship could be the source of many problems affecting the child throughout the whole foster care process, and even after it has concluded.\textsuperscript{81} When compared to children not in foster care, studies have shown that the children in the foster care system suffer more from psychological, health, and even educational deficiencies.\textsuperscript{82}

a. Psychological Effects

With all of the moving around in the foster care system, it is easy to see how children would experience attachment problems to their original family. One example of a psychological effect on a child in foster care could include the trauma of being separated from your biological family and constantly moved around.\textsuperscript{83} One of the biggest challenges is separating the parent-child relationship when it must be done for the benefit of the child.

A child cannot be forced to forget his biological parents. The memories of the child’s life before foster care will remain with him or her forever. This is where the age of the child becomes significant. Infants and toddlers in the foster care system are “extremely vulnerable” to the abuse and neglect which may be

\textsuperscript{81} Garrison, supra n. 9, 472.
exposed to them.\textsuperscript{84} On the other hand, it would seem the older the child is when he enters foster care, the harder it is for the child to overcome leaving his family and past life behind. One thing that is certain is that regardless of age, the effects of maltreatment will have long lasting impacts on a child if they are not addressed early on.\textsuperscript{85} The foster care system is supposed to be a quick fix while parents get their lives back in order.\textsuperscript{86} However, the longer the process takes, the more eroded the relationship between the biological parent and child may become. Adoption into a loving family will not be enough to wash away all of the harsh memories experienced, but perhaps the foster care system itself will do all of the work.\textsuperscript{87} Some bonds may need to be broken, and in some instances the foster care system has done its job by creating a new relationship for a child.

Many of the mental health effects experienced by children going through the foster care system are attributed to the system itself. During their time in foster care, the children are influenced by the caregivers and even the repetitive jumping

\textsuperscript{85} Id.
\textsuperscript{86} Douglas J. Besharov, The Misuse of Foster Care: When the Desire to Help Children Outruns the Ability to Improve Parental Functioning, 20 Fam. L.Q. 213, 220 (1986).
\textsuperscript{87} Garrison, supra n. 9, at 471.
from placement to placement.\textsuperscript{88} This continual moving from home to home can take a toll on a child.\textsuperscript{89} With each movement, the child must get reacquainted with a new parent or parents. There seem to be very few benefits coming out of the multiple home placements. The only beneficial way would be to succeed in finding a good adoptive family for the child on the first try. The foster homes themselves are usually overcrowded, and there is little the caretakers can do about it.\textsuperscript{90} At times, it is found that these very caretakers are abusing the kids in foster care.\textsuperscript{91} These caretakers may not personally abuse the children in their care, but sometimes these children are put back in homes with known sex offenders, drug addicts, or extremely abusive parents.\textsuperscript{92} For a child to enjoy a healthy and normal life, the two aspects needed the most are permanency and continuity.\textsuperscript{93} It is easy to see that by having a permanent placement will help a child’s lifestyle. However, no matter if a child has to go through the separation anxiety, multiple home placements, or


\textsuperscript{91} Id.

\textsuperscript{92} Kelsi B. Corkran, \textit{Principal-Agent Obstacles to Foster Care Contracting}, 2 J.L. Econ. & Pol'y. 29, 29 (2006).

abuse at the foster home; the child subjected to this experience is bound to be affected forever.

One of the greatest fears for child welfare workers in the foster care system would be suggesting suitable foster care parents, but only to find out they have been involved with a history of abuse. In the case of the children D.R., I.R., and J.R., they have been adopted by foster parents thinking they were being placed in a suitable home.94 The respondents in this case are the foster parents themselves, contesting the termination of their parental rights.95 Initially, the Department of Social Services took the children into their custody based on the parents creating an environment “injurious to their welfare.”96 While under the care of social services, the children began admitting to various sexual abuses that were being carried out at the hands of other children in the foster home.97 When these things were said to the foster parents themselves, the children were punished and nothing was done to stop the abuse from happening in the future.98 No child should be forced to live in a house where they may be subjected to the same abuse that they could be facing with their biological parents before

95 Id.
96 Id.
97 Id.
98 Id.
removal. The termination of the parental rights was upheld, but the effects could be everlasting.\footnote{Id. at 9.}

More than likely these children will be put back into the foster care system. They will be placed once again in a home that is determined to be suitable for them. The trauma associated with this could be carried over to other foster homes. As seen with any type of sexual abuse, there is always some sort of after effects that weigh on the victim. Even though this is just one example, there are still those families who are good enough for these children. This case is not to say that a few bad seeds can ruin a system, but there still must be improvements made to prevent this type of abuse from happening.

b. Social Effects

Research shows that most foster care children have some variation of psycho-social, emotional, and health problems that can cause additional problems to the family.\footnote{Roger J.R. Levesque, The Failure of Foster Care Reform: Revolutionizing the Most Radical Blueprint, 6 Md. J. Contemp. Legal Issues 1, 24 (1995).} Aside from psychological aspects, children in the foster care system can sometimes be affected socially as well. When mixed in with other children who have not gone through the same experiences, interaction could become difficult and cause problems to arise.
Many kids in the foster care system struggle with the hardships involved with receiving an education from schools.\textsuperscript{101}

In some cases, economic problems such as poverty can be closely linked to the negative care which the child may receive from his family.\textsuperscript{102} Odds are that if a child goes through the foster care system, the child will be left with a life of poverty.\textsuperscript{103} Based on one study, one-third of children in foster homes are living in poverty.\textsuperscript{104} While foster care can be one result of poverty, it is not the only factor. In some cases, the child welfare workers must make findings of instances other than poverty alone in order to remove a child from his or her home.\textsuperscript{105}

Deficiencies in school can be seen in those children who go through the foster care system. Most children involved in the foster care system, rarely participate in any extracurricular activities at school.\textsuperscript{106} One study showed the lack of participation in school was attributed to the “high risk” parenting the child was associated with in the foster home.\textsuperscript{107} According to another study taken, twenty-eight percent of

\textsuperscript{101} See Tina Amberboy, Helping the Child Left Behind: Improving Education for Foster Children, 73 Tex. B.J. 754 (2010)(explaining how the trauma of foster care and constant mobility takes a toll on a child).
\textsuperscript{102} Besharov, supra n. 86, at 222.
\textsuperscript{104} Vandivere, supra n. 88, at 5.
\textsuperscript{106} Kortenkamp, supra n. 82, at 3.
\textsuperscript{107} Id.
children ages six through seventeen did not participate in any extracurricular activity.\textsuperscript{108} Even another study involved analyzing a selected group of foster children. This study provided statistics showing that the majority of kids had problems dealing with attentiveness, disruption, and skipping class altogether.\textsuperscript{109} Not only do these children not participate, they are more likely to end up needing some sort of added special education.\textsuperscript{110} The special education need is most likely the result of the unstable foster care environment which “impacts the child’s ability to focus academically.”\textsuperscript{111} However, according to a separate study, over seventy percent of the children interviewed stated they complete homework and get along with their teachers.\textsuperscript{112} Despite not engaging in extracurricular activities, children who had gone through foster care rarely caused problems in class.\textsuperscript{113} Those children that seem to experience a better school environment tend to live in less restrictive foster care homes.\textsuperscript{114} Regardless if the child has to deal with poverty, school issues, or basic interactions, a

\textsuperscript{108} Id.
\textsuperscript{110} See Cara Chambers & Erika Palmer, Educational Stability for Children in Foster Care, 26 Touro L. Rev. 1103 (2010).
\textsuperscript{111} Margaret Ryznar & Chai Park, The Proper Guardians of Foster Children’s Educational Interests, 42 Loy. U. Chi. L.J. 147, 169 (2010).
\textsuperscript{112} Vandivere, supra n. 88, at 3.
\textsuperscript{113} Id. at 4.
dedicated parent or caregiver can help improve the school issues as time goes on.\textsuperscript{115}

In the case \textit{In re Robert J.}, Robert’s support came from his foster parents who chose to support him through his educational journey.\textsuperscript{116} Eight-year old Robert was placed into foster care when his mother and grandmother were unable to take care of him.\textsuperscript{117} His mother suffered from mental retardation and all three ended up living together with Robert’s grandmother.\textsuperscript{118} With the help of the courts, he was placed into a foster home where he has remained since.\textsuperscript{119} However, during his first year living in his new foster home, Robert “exhibited serious behavior problems.”\textsuperscript{120} With the close time correlation, it can be seen how the quick change in environments affected Robert outside the home. Aside from the negative results, his teacher at school did notice quick improvements as time went on.\textsuperscript{121} Even though there are negative effects associated with the foster care system, Robert’s case illustrates that positive outcomes can happen if the support is there from the foster parents. Here, Robert’s improvement was attributed to the positive environment and

\begin{footnotesize}
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\item Kortenkamp, supra n. 82, at 4.
\item See 129 Cal. App. 3d 894 (Cal. App. 1982).
\item Id. at 899.
\item Id. at 898.
\item Id. at 899.
\item Id.
\item Id.
\item Id.
\item Id.
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support of his foster family.\textsuperscript{122} Even with this positive reinforcement, Robert still had to attend sessions with a psychiatrist in order to try and overcome his social behavior problems.\textsuperscript{123} Specifically, Robert was diagnosed with having “severe anxiety reactions” coupled with “thought disorders.”\textsuperscript{124} The negative social effects a child deals with are discussed more often than those effects a “normal” child handles. A suitable foster home and supportive family can be a catalyst to improving a child’s lifestyle in the foster system. In Robert’s case, his foster family planned to support him and eventually adopt him as their own.\textsuperscript{125}

c. Physical Effects

The most obvious effects are those viewable to the naked eye. When someone thinks of a physical injury, that person probably imagines a bruise or cut. However, the worst case scenario is to have a child die due to neglect or abuse associated with the care. When this happens, wrongful death suits are usually brought. A top priority of the foster care system should always be to maintain the well being of the child as far as possible.

\textsuperscript{122} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 900.
During 2005, there were a total of 1,460 children that died from abuse or neglect. Of these deaths, seventy-six percent were caused by one or more parents and thirteen percent were caused by “nonparental perpetrators.” When wrongful death suits are brought, four elements usually have to be established: (1) the defendant owed a duty to the decedent; (2) the defendant failed to perform that duty; (3) the decedent’s death was caused by the defendant’s failure to perform in accordance with the duty owed; and (4) the decedent’s death caused damage to the survivors. To protect children against these types of negative treatment, Congress enacted the Adoption and Safe Families Act of 1997. This Act’s primary concern was ensuring the child’s safety while in the child welfare system. Children that experience the abusive treatment usually wind up having poor health overall, and the health problems will only continue to get worse upon exiting the foster care system. The worsening health status is attributed to the higher risk taking behavior associated with foster children, as well as, the limited access to health care. However, even with enacted statutes to provide protection and support, tragedies still occur.

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126 Pollack, supra n. 4, at 26.
127 Id. at 26.
128 Adoption and Safe Families Act of 1997, supra n. 25.
129 Pollack, supra n. 4, at 34.
131 Id.
Evelyn Pesante lost her four-year old daughter, Angelica, to the foster care system due to her own neglect which included a broken leg, burns, and inadequate food and shelter.\textsuperscript{132} After being placed with a foster family, four-year old Angelica died from injuries received while under the care of her thirteen-year old foster brother.\textsuperscript{133} Her injuries resulted from being “tackled” into a bed by her foster brother.\textsuperscript{134} Whether accidental or not, the facts remain the same. A child removed from her biological mother was placed in what was deemed to be a suitable foster family. Following the incident, Angelica received no medical attention.\textsuperscript{135} Not known at the time, but she had sustained a lacerated and ruptured liver, which ultimately led to her death.\textsuperscript{136} The following morning Angelica became disoriented and fell down a flight of stairs.\textsuperscript{137} As a result of her fall, she sustained a closed head injury and died.\textsuperscript{138} Evelyn Pesante brought a wrongful death action against the foster family and was initially able to recover for pain and suffering and pecuniary damages.\textsuperscript{139} Upon reaching the court of appeals, the verdict was adjusted to $350,000 from the initial $500,000.\textsuperscript{140}

\textsuperscript{132} Estate of Pesante ex rel. Pesante v. Mundell, 829 N.Y.S.2d 390, 392 (N.Y.A.D. 4 Dept. 2007).  
\textsuperscript{133} Id. at 391.  
\textsuperscript{134} Id.  
\textsuperscript{135} Id.  
\textsuperscript{136} Id.  
\textsuperscript{137} Id.  
\textsuperscript{138} Id.  
\textsuperscript{139} Id. at 392.  
\textsuperscript{140} Id.
Ultimately, Pesante failed to establish how she should be awarded pecuniary damages since she had no reasonable expectations of future assistance from Angelica.\textsuperscript{141} It has been previously stated that the goal of the foster care system is to provide for the child in a stable environment while the biological parent attempts to fix any problems that resulted in the removal in the first place.\textsuperscript{142} This is merely one of many cases in which wrongful death occurs. Reunification with the original parents is always a priority, but also, the child’s health should be at the top of that priority list.

VI. What Should Be Done to Improve the System

Depending on how you look at the foster care system as a whole, it can be viewed as a success or a failure. The system is successful at finding suitable homes for those children in need. However, the failure comes at the process by which this is carried out. The system is already divided up into multiple stages,\textsuperscript{143} which could cause confusion and unneeded delays. Along with these stages, workers in the child welfare system must adhere to strict guidelines concerning on when to carry out certain procedures. These guidelines are needed to ensure

\begin{footnotes}
\item[141] Id.
\item[142] Pollack, supra n. 4.
\item[143] Macomber, supra n. 31, at 5.
\end{footnotes}
efficiency. At this point in time with the foster care system, the time is now to implement stricter standards.

Reunification is the main goal\(^{144}\) and should be treated as such. In the early 1980s, changes were made to the child welfare system as a result of widespread criticism.\(^{145}\) Some of the criticisms included: removing children with little intention to keep families together and lack of long term planning.\(^{146}\) After looking at the stages and barriers still present in the foster care system, many of these problems still remain today. These changes were carried out by the federal government in the Federal Adoption Assistance and Child Welfare Act of 1980.\(^{147}\) Shortly after, states began enacting their own state laws from this Act.\(^{148}\) For example, California established a variety of foster care programs in order to emphasize and improve the system as a whole.\(^{149}\) These programs were created through the enactment of Chapter 978 in conjunction with the Federal Adoption Assistance and Child Welfare Act of 1980.\(^{150}\) California pushed for more reunification, stable environments, and


\(^{146}\) Id.

\(^{147}\) See Adoption Assistance and Child Welfare Act of 1980, supra n. 28.

\(^{148}\) English, supra n. 145.

\(^{149}\) Id.

\(^{150}\) Id.
treatment services in order to reduce unneeded foster care.\textsuperscript{151} The federal government and various states seem to be putting forth the effort to improve the system as a whole. The sad reality is that even after the programs were implemented ten years, the system has barely shown any signs of improvement.\textsuperscript{152}

A huge improvement to the foster care system would be an addition of a nationwide data system. One commentator seems to agree that with this data system it would be easier to track foster children and stay up to date with their status.\textsuperscript{153} One of the big difficulties is keeping up-to-date with all of the foster children scattered to various homes. With the addition of a data system, personal information of the children could be kept easily and be compared to other children around the country to determine how to better adjust them to a certain lifestyle.

One commentator thinks that to improve the system as a whole, improvements must be made by raising expectations of the kids in the foster care system; developing educational programs to further support for the future; and holding the foster care system accountable to what happens with the kids in their care.\textsuperscript{154} Another study suggests other agreeable solutions to

\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Vandivere, supra n. 88, at 6.
\textsuperscript{154} See Betsy Krebs & Paul Pitcoff, Reversing the Failure of the Foster Care System, 27 Harv. Women’s L.J. 357 (2004).
improving foster care. The proceeding with terminating parental rights can be drawn out to great lengths. In order to alleviate some of the delays, a reminder system could be implemented in order to maintain efficiency with completing caseloads. Forgetfulness is something that can be easily remedied. A harder goal would be adding more available personnel. Adding more personnel, such as attorneys and workers, than necessary would cause more expenses, but if done successfully, could improve the overall efficiency of the system. Finding a suitable home for the child is a vital step. To lessen the possibility of abuse or an unstable environment, the selection process should be in-depth and thorough. The extra time spent at this stage in the process would cut out many unneeded obstacles which could appear in the future due to selecting an unsuitable foster home. Others have more recently spent time reviewing the foster care system and identifying the problems which need to be fixed. The Pew Commission on Children in Foster Care was able succeed in identifying the problems and possible reforms.

In 2006, The Pew Commission on Children in Foster Care released their own findings on how to possibly improve the

155 Macomber, supra n. 31, at 14.
156 Id.
157 Id.
158 Id.
159 Ramsey, supra n. 77.
foster care system.\textsuperscript{160} This commission was comprised of judges, social workers, a state legislator, a child psychologist, foster and adoptive parents, a[nd] former foster youth,” all being very familiar with the system as a whole.\textsuperscript{161} The commission’s focus was more on the children already in the foster care system rather than those circumstances which seem to put the children there in the beginning.\textsuperscript{162} This seems to be the correct approach. The government, no matter if state or federal, will not be able to regulate every family around the country. Families will continue to have problems until the end of time. The only thing that can be done is to perfect the foster care system the best way possible in order to get these children into the system, assisted, and sent back out of the system in a timely manner. Specifically the Pew Commission identified five “child-centered principles:” (1) physical and emotional safety; (2) meeting needs in a timely manner; (3) continuity and consistency in relationships; (4) equal protection and care; and (5) having an informed voice about decisions.\textsuperscript{163}

These five principles echo the barriers that were discussed earlier. It is clear that the safety of children is not where it should be. The overwhelming case loads along with the

\textsuperscript{161} Ramsey, supra n. 77.
\textsuperscript{162} Id. at 32.
\textsuperscript{163} Id. at 31.
cooperation between welfare workers and the courts must be managed quicker. Also, as repeated throughout, reunification must continue to be a top priority if in the best interest of the child. At the same time, every child in the system should be treated the same regardless of background. Finally, allowing the parents and children to have a voice in the decisions can play a beneficial role in reunification as well as the other principles. More improvements and reforms must be made. The foster care system can be more efficient if the time and money is used wisely. It seems that the problems are known, it is just a matter of fixing them.

VII. Conclusion

The foster care system is a great resource and program. The reforms that have been made of the years have provided welfare workers with a greater ability to assist the children in need. The system itself is not there just for the children, but also the biological parents. Reunification should be the top goal whenever a child is removed from his or her biological parents. Right there with reunification should also be the safety of the child as well. Depending on the circumstances, termination of parental rights is a move that needs to be taken with utmost care. The bond between a parent and child is vital to helping the child grow. As bad as it sounds, rights should remain with
the natural parents unless extreme or dangerous circumstances arise. The reality is that no matter what child services say, once the child is old enough to get out of the foster care system, he or she will reunite with their natural parents if they desire.

The system has been shown to be complex and sometimes seemingly everlasting. However, with adequate resources and cooperation between branches, this process could be made to work more smoothly and quickly. Cooperation appears to be essential part in the foster care system. With the present economy, it could be difficult finding the money to use in order to make improvements. Most people would probably view foster care as something not of great importance when compared to more pressing matters such as the national debt. Although this may be correct, foster care is still something that affects thousands of kids and families throughout the United States. If work is not done to improve the process, then eventually it will get worse to the brink of collapse. From a personal standpoint, I cannot recall the last time I heard anything positive about the welfare system in general. Television ratings seem to come from talking about negatives rather than positives. The sad reality is that the media will only publicize those negative stories rather than focusing on the positive advancements in the foster care system.
With dedication from Congress and the individual states, the foster care system as a whole could be easily improved. The biggest challenge is making cooperation work smoothly.