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Susan V. Mangold

*University at Buffalo School of Law*

Catherine Cerulli

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**FOLLOW THE MONEY: FEDERAL, STATE, AND LOCAL  
FUNDING STRATEGIES FOR CHILD WELFARE  
SERVICES AND THE IMPACT OF LOCAL LEVIES ON  
ADOPTIONS IN OHIO**

SUSAN VIVIAN MANGOLD AND CATHERINE CERULLI\*

I. INTRODUCTION

Since 1961, the federal government has been an actor in the locally delivered child welfare system, addressing the needs of abused and neglected children by creating both mandated policies and fiscal support for child welfare systems.<sup>1</sup> At the federal level, policies have been enacted, reformed, and amended repeatedly to rectify new problems, sometimes created by their prior reform.<sup>2</sup> Before the Obama Administration even took office, advocacy organizations were developing policy agendas to urge the new administration to continue to reform the child welfare system,<sup>3</sup> and scholars were recommending new models for legal accountability in the welfare state.<sup>4</sup> Concurrently, states and local governments are facing severe budget shortages causing freezes and cuts in

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\* Professor Mangold is a Professor of Law at the University at Buffalo Law School, State University of New York. Thanks to the Baldy Center for Law and Social Policy for support in researching this article. Thanks also to my Fall 2008 Child Welfare class for their research and debate on state funding for child welfare services. Professor Cerulli is Director of the Laboratory of Interpersonal Violence and Victimization and Assistant Professor, Department of Psychiatry, School of Medicine and Dentistry, University of Rochester.

<sup>1</sup> Title IV of the Social Security Act, Pub. L. No. 87-31, § 407-08, 75 Stat. 75, 75-78 (1961).

<sup>2</sup> See ASSISTANT SEC'Y FOR PLANNING & EVALUATION, U.S. DEP'T OF HEALTH & HUMAN SERVS., A BRIEF HISTORY OF THE AFDC PROGRAM 4-8 (1998), available at <http://aspe.hhs.gov/hsp/AFDC/baseline/1history.pdf>.

<sup>3</sup> See CENTER FOR LAW AND SOCIAL POLICY, CLASP FEDERAL POLICY RECOMMENDATIONS FOR 2009 AND BEYOND: AN OVERVIEW (Oct. 16, 2008), available at <http://www.clasp.org/admin/site/publications/files/0436.pdf>.

<sup>4</sup> Kathleen G. Noonan, Charles F. Sabel & William H. Simon, *Legal Accountability in the Service-Based Welfare State: Lessons from Child Welfare Reform*, L. & SOC. INQUIRY (forthcoming 2009) available at <http://ssrn.com/abstract=1088020>.

a range of child welfare services.<sup>5</sup> Undoubtedly, these budgetary constraints will have an impact on children's wellbeing.

This article draws attention beyond the policies to the fiscal strategies at the federal, state, and local levels that impact the service delivery, sometimes perversely altering the policy initiatives. All who watch the child welfare system are repeatedly flummoxed by the unintended consequences that flow from each new policy initiative. Examining the fiscal policies underlying the mandates can help explain these nagging problems, while illuminating the gross inefficiencies in the system. In particular, we consider the use of dedicated tax levies by approximately half of the eighty-eight counties in Ohio. Using ten years of data provided by the Public Children Services Association of Ohio (PCSAO), we examine whether the use of levies correlates with an increasing or decreasing number of children in care over time, as well as the number of adoptions and the mean number of days children await adoption.

The child protection and child welfare systems balance the rights and responsibilities of parents and the state when a child is reported as abused or neglected.<sup>6</sup> Once the state intervenes and assumes some or all of the parental rights, the private arrangements and exchange of rights between biological parents are no longer sufficient to understand the legal arrangements in that family. This tripartite relationship between the parent-child-state has been the central focus of constitutional jurisprudence, scholarly writing, and bureaucratic decision-making. In private family law or domestic relations, the rights of biological parents govern the custody of the child.<sup>7</sup> In public family law, state and federal laws govern the limits and character of state intervention.<sup>8</sup>

When should the state intervene into families? When do children's rights to state protection overcome the parental right to raise their children as they see fit? When does a child's independent right to empowerment or

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<sup>5</sup> Erik Eckholm, *States Slashing Social Programs for Vulnerable*, N.Y. TIMES, Apr. 12, 2009, at A1.

<sup>6</sup> See, e.g., OHIO REV. CODE ANN. § 2151.01 (2000); MINN. STAT. § 626.556 (2004); GA. CODE ANN. § 19-7-5 (2004); N.J. STAT. ANN. § 30:4C-1(a) (West 2005).

<sup>7</sup> See, e.g., OHIO REV. CODE ANN. § 3109.03 (2005); OHIO REV. CODE ANN. § 3109.401 (2009).

<sup>8</sup> The phrase *public family law* is used to highlight the role of the state and federal government in the lives of children identified by the child protective services system. See Susan Vivian Mangold, *Challenging the Parent, Child, State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFF. L. REV. 1397, 1397 (1999).

autonomy emerge? How does the state best exercise the *parens patriae* power to help abused and neglected children grow into healthy adults? These are all questions that play out in the one-dimensional triangle of the parent, child, and state. For a generation, federal mandates implemented at a state level have addressed these questions. These mandates have brought about a new set of questions concerning state autonomy and creativity in addressing family matters that traditionally have been left to private individuals or local officials.<sup>9</sup> We consider this the *substantive dimension* of child welfare law.

Since 1961, with the advent of federal funding for foster care, a second triangle has emerged that is less noted by the courts and commentators, but is often determinative in the bureaucratic realm of child welfare.<sup>10</sup> That is the sharing of fiscal responsibility between the federal, state, and local governments to pay for child welfare services.<sup>11</sup> We consider this the *fiscal dimension* of child welfare law.<sup>12</sup> Here, questions regarding the proper distribution of the fiscal responsibility emerge. The federal mandates are imposed in exchange for federal dollars in the form of grants or open-ended entitlements, but the fiscal incentives are sometimes contrary to the substantive goals of the legislation.<sup>13</sup> Further, these funding incentives may be lost as state and local governments grapple with eligibility criteria and alternative sources of funding.

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<sup>9</sup> See generally Anne C. Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787 (1995) (advocating localism, a theory which supports continued state sovereignty over familial relations due to the normative character of family law and its close ties to a “communitarian model of state authority under the Federal constitution”); Jill Elaine Hasday, *Federalism and the Family Reconstructed*, 45 U.C.L.A. L. REV. 1297 (1998) (discussing the history of the roles of all levels of government in family law).

<sup>10</sup> See Laura Radcliff, *How and Why the Current Funding Structure Fails to Meet the Needs of the Child Welfare Field*, ASPE ISSUE BRIEF (August 2005), <http://aspe.hhs.gov/hsp/05/fc-financing-ib/ib.pdf> (providing an overview of federal child welfare funding programs).

<sup>11</sup> *Id.*

<sup>12</sup> See generally David A. Super, *Rethinking Fiscal Federalism*, 118 HARV. L. REV. 2546 (2005) (providing an overview of Fiscal Federalism and a discussion of federal-state funding for programs for low-income people). Debates about federalism are increasingly about public finance (i.e., which level of government should pay for what). See, e.g., Richard Briffault, *Public Finance in the American Federal System: Basic Patterns and Current Issues*, 2 COLUM. J. EUR. L. 533 (1997); Kenneth J. Drexler, *The Four Causes of the State and Local Budget Crisis and Proposed Solutions*, 26 URB. LAW. 563 (1994).

<sup>13</sup> See Radcliff, *supra* note 10, at 2.

States' interests in maximizing the federal dollars flowing into the state may move them away from the model policies enshrined in the federal mandates. Foster care and adoption assistance are open-ended entitlements under Title IV-E of the Social Security Act.<sup>14</sup> An unlimited federal match is available to states for eligible children.<sup>15</sup> For foster care, approximately half of children can be certified as eligible,<sup>16</sup> so other funding sources with very different substantive goals may be substituted to provide key child welfare services. The law changed in 2008 to eliminate income eligibility for adoption assistance.<sup>17</sup> The impact of this fiscal change will be important to follow in future research to assess the interrelationship between policy, fiscal incentives, and actual service delivery.

Taken together, the substantive and fiscal considerations create a three-dimensional analysis with a dynamic relationship that not only impacts the delivery of child welfare entitlement services, but also impacts other human services programs. Although it may seem obvious that fiscal considerations will guide service delivery, or that service needs will drive fiscal appropriations, the dynamic is more complicated. The complication arises because the substantive and fiscal dimensions are played out in fifty-one different states (counting Washington, D.C. as a state for these purposes). Many states supplement Title IV-E funding with Social Security Block Grants, Medicaid, or Temporary Assistance for Needy Families (TANF) funds to pay for entitlement services such as foster care, adoption assistance, and independent living because they can garner more federal funds through these funding streams than would be available to them through Title IV-E.<sup>18</sup> When states make these fiscal choices, they are trading off other necessary services such as mental health, juvenile justice, and health care for child welfare services.

Increasingly, local governments provide funds for child welfare, contributing to the state match or adding local contributions to the overall pot of funding for child welfare services with discretionary funds. Ohio is at the forefront of county funding reliance, with local funding accounting for 49% of total child welfare funding. Half of the eighty-eight counties

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See KERRY DEVOOGHT ET.AL., FEDERAL, STATE, AND LOCAL SPENDING TO ADDRESS CHILD ABUSE AND NEGLECT IN SFY 2006, at 30 (2008), [http://www.childtrends.org/Files/Child\\_Trends-2009\\_02\\_17\\_FR\\_CWFinancePaper.pdf](http://www.childtrends.org/Files/Child_Trends-2009_02_17_FR_CWFinancePaper.pdf).

<sup>17</sup> See *id.* at 24.

<sup>18</sup> See Radel, *supra* note 10, at 15.

use a dedicated tax levy to provide the local funds for child welfare services.

This article addresses the multidimensional aspects of substantive and fiscal laws on the federal, state, and local levels guiding child welfare services in all fifty-one states. In mapping out the complexity of the system to address child abuse and neglect throughout the country, it provides necessary detail to dispel growing concerns that federal mandates are stifling state creativity.<sup>19</sup> Instead, this research shows that in some states, local fiscal concerns are shifting focus away from federal mandates. It also raises a cautionary call to advocates and policymakers who focus on the substance of the mandates or the type of funding stream available at the federal level. Eligibility determinations, funds that can be substituted with higher reimbursement rates, and state and local funding fiscal policies that limit state matching funds are also crucial components of how child welfare services are actually delivered. In particular, we analyze how local tax levies may impact adoptions.

Part II of this article traces the development of fiscal federalism in the child welfare system from the first initiative to correct racially induced actions in some southern states in 1961 to the John Chaffee Program, which targeted older children in foster care and passed in 2008. In describing the Child Abuse Protection and Treatment Act of 1974 (CAPTA),<sup>20</sup> the Adoption Assistance and Child Welfare Act of 1980 (AACWA),<sup>21</sup> the Adoption and Safe Families Act of 1997,<sup>22</sup> the Foster Care Independence Act of 1999,<sup>23</sup> and their subsequent amendments, the federal mandates and fiscal initiatives for each mandate are described. Contradictions between the substantive goals and the funding incentives in the legislation are highlighted.

Part III explores state and local funding strategies to take advantage of the federal money made available in the laws detailed in Part II. Federal entitlements to foster care and adoption assistance have designated state

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<sup>19</sup> See Vivek S. Sankaran, *Innovation Held Hostage: Has Federal Intervention Stifled Efforts to Reform the Child Welfare System?* 41 U. MICH J.L. REFORM 281, 285–87 (2007).

<sup>20</sup> Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5119c (1994 & Supp. 1997)).

<sup>21</sup> Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended at 42 U.S.C. §§ 602, 608, 620–28, 670–76 (1997)).

<sup>22</sup> Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended at 42 U.S.C. § 670–679c (1994 & Supp. 1998)).

<sup>23</sup> Pub. L. No. 106-169, 113 Stat. 1822.

matching rates;<sup>24</sup> other federal initiatives, such as preventive care and independent living services, are available as capped federal grants.<sup>25</sup> Other services come to states via block grant funding.<sup>26</sup> To maximize federal dollars, the states use fifty-one different combinations of federal funding programs, in addition to state and local strategies to provide child welfare services to abused and neglected children.<sup>27</sup> These are mapped generally in Part III. We do not draw attention to the fiscal strategies at the state and local levels to show the federal government how to save some of the meager funds appropriated for child welfare. Rather, we highlight the funding strategies to show their divorce from the federal policies they were intended to facilitate.

Part IV focuses on the funding strategies in Ohio's eighty-eight counties and their impact on adoptions. Using ten years of data provided by PCSAO, we divide the counties into those with a dedicated property tax levy for child welfare services and those without one. We examine whether having a dedicated levy positively correlates with the number of children in state care over time, the numbers of adoptions finalized, and the mean number of days spent awaiting adoption. We found that having a dedicated levy positively correlates with adoption outcomes by increasing the number of adoptions and decreasing the mean days spent awaiting adoption. The counties with levies also have a greater decrease in the number of children in state care. In subsequent research, we hope to go beyond these correlations to determine the relationship between funding strategies and positive outcomes for children. Especially in difficult economic times, with the counter-cyclical nature of child welfare services, determining the funding model with the best outcomes for children has important policy implications for the child welfare system.

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<sup>24</sup> See discussion *infra* Part III.A and notes 104–05.

<sup>25</sup> See Donald L. Schmid, *Funding Resources for Child Welfare* (2000), <http://www.cwla.org/advocacy/financingfunding.htm>.

<sup>26</sup> See *id.*

<sup>27</sup> See discussion *infra* Part III.C.

## II. DEVELOPMENT OF FEDERAL MANDATES AND FUNDING FOR STATE AND LOCAL CHILD WELFARE SERVICES<sup>28</sup>

A broad summary of the history of federal child welfare legislation is necessary to understand the interrelationship between federal funding and federal policies implemented on the state and local levels. A more comprehensive discussion of the history of child welfare policy could begin in colonial times, but we focus on those aspects of the history relevant to the contemporary substantive and fiscal dimensions of the child welfare system. The first federal foray into child welfare policy was under President Theodore Roosevelt. In 1908, President Roosevelt convened the White House Conference on Dependent Children.<sup>29</sup> This conference did not immediately lead to federal child welfare initiatives, but instead provided the impetus for states to provide women, paradigmatically widows, with Mother's Pensions, a small stipend to assist them in supporting their children.<sup>30</sup> States picked up on this idea, but not in a uniform or consistent manner.<sup>31</sup> Different states used different eligibility requirements and payment rates, but by 1935, all but two states offered some form of Mother's Pensions.<sup>32</sup>

The federal government became more directly involved in caring for children in single parent homes during the New Deal. In 1935, Aid to Dependent Children (ADC) was instituted along the same lines as the Mother's Pensions and was operated by the Department of Health, Education, and Welfare (HEW).<sup>33</sup> States were allowed flexibility in determining eligibility and rates, but the federal government supplied some of the funding to help the states provide this needed assistance.<sup>34</sup>

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<sup>28</sup> This section draws from Professor Mangold's earlier writings. See Susan Vivian Mangold, *Poor Enough to Be Eligible? Child Abuse, Neglect and the Poverty Requirement*, 81 ST. JOHN'S L. REV. 575, 583-89 (2007); Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFF. L. REV. 1397, 1412-29 (1999).

<sup>29</sup> Jo Anne B. Ross, *Fifty Years of Service to Children and Their Families*, 48 SOC. SECURITY BULL. 5, 6 (1985); MATTHEW A. CRENSON, *BUILDING THE INVISIBLE ORPHANAGE: A PREHISTORY OF THE AMERICAN WELFARE SYSTEM* 11 (1998).

<sup>30</sup> See Ross, *supra* note 29 ("It's most far-reaching recommendation was to strengthen family life by providing financial assistance to the mothers of needy children."); CRENSON, *supra* note 29, at 261-62.

<sup>31</sup> See, e.g., CRENSON, *supra* note 29, at 280-82.

<sup>32</sup> See Ross, *supra* note 29.

<sup>33</sup> Social Security Act of 1935, H.R. 7260, 74th Cong. § 401 (1935).

<sup>34</sup> See *id.*



The flexibility given to states to determine initial and ongoing eligibility led to some discriminatory practices. By 1960, twenty-four states included "suitable homes" requirements in their eligibility guidelines.<sup>35</sup> Eight of those states allowed the denial of aid to children who were in homes that were deemed not "suitable," with no requirement for remediation of the problematic conditions.<sup>36</sup> A local caseworker could determine that the home was not suitable for the proper upbringing of a child and deny or cancel benefits without arranging to either improve the conditions to a suitable level or make other plans for the child to be in an environment deemed appropriate.<sup>37</sup> In their official publications, HEW criticized these practices but did not take immediate steps to correct them.<sup>38</sup>

Before the National Biennial Round Table Conference of the American Public Welfare Association, HEW Secretary Arthur Flemming stated:

[T]here is the issue of illegitimacy as it relates to the aid for dependent children program. Personally, I am completely out of sympathy with efforts to deal with this problem by denying aid to the illegitimate child. I could never reconcile myself to a program that puts itself in a position of turning its back on the needs of a child because of the sins of the parents. Not only am I convinced this would be wrong, but I am also convinced that it would make no contribution to the basic problem.<sup>39</sup>

This criticism was not matched with directives or incentives to end or correct the practices.

Later in 1960, Louisiana began the process to disqualify approximately 23,000 children from ADC because their homes did not meet the state's

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<sup>35</sup> See U.S. DEP'T OF HEALTH, EDUC., & WELFARE, UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, & WELFARE ANNUAL REPORT 62 (1961).

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> U.S. Department of Health, Education and Welfare, Social Security Administration, *Twenty-fifth Anniversary of the Social Security Act*, 23 SOC. SECURITY BULL. 35 (August 1960).

<sup>39</sup> Arthur S. Fleming, *Address by the Secretary of Health, Education, and Welfare*, 18 PUB. WELFARE 3, 4-5 (1960).

suitability requirement.<sup>40</sup> As described in 1961 by then HEW Secretary Abraham Ribicoff:

In this instance, State legislation denied assistance to children if the adult caretaker was living with, but not legally married to, a mate; or if the mother had an illegitimate child at any time since first receiving assistance, unless she could prove to a parish welfare board that she had ceased illicit relationships and was maintaining a suitable home for her children.<sup>41</sup>

The disqualification action by Louisiana struck a chord that resonated through advocacy organizations and the federal government. In the fall of 1960, the waning months of the Eisenhower administration, Secretary Flemming held hearings on the Louisiana ADC plan and practices. The hearings provided a forum for national organizations to speak out on what was seen as discriminatory and unjust practices.

Because of the outcry leading up to and during the hearings, and their aftermath, Louisiana revised its state plan to change its eligibility requirements.<sup>42</sup> More importantly for the future of federal child welfare policy, in January 1961, his final hours as Secretary before President Kennedy's Administration took office, Secretary Flemming advised the states that, effective June 30, 1961, federal funds under the ADC program would not be allotted to states that terminated ADC assistance to children in unsuitable homes unless the states provided out-of-home placement for those children.<sup>43</sup> If the states provided such placement as an alternative to in-home ADC funding, *the federal government would reimburse states for*

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<sup>40</sup> U.S. DEP'T OF HEALTH, EDUC., & WELFARE, *supra* note 35; *see also* Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in Its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 631 (1988) (noting that ADC allowed participating states to consider a mother's "moral character").

<sup>41</sup> U.S. DEP'T OF HEALTH, EDUC., & WELFARE, *supra* note 35.

<sup>42</sup> *See id.* at 62–63. *See also* GWENDOLYN MINK, *WELFARE'S END* 48–49 (1998) (noting the 1960 enforcement of Louisiana's ADC plan expunged 23,000 children, 95% of whom were African American); CHILD WELFARE LEAGUE OF AM., *CHILD WELFARE PERSPECTIVES: SERVING AFRICAN AMERICAN CHILDREN* 15 (Sondra Jackson & Sheryl Brissett–Chapman eds., 1999) ("By 1961, the NAACP had accused [Louisiana] . . . of expanding their definition of home suitability requirements while unfairly and arbitrarily interpreting and enforcing them to satisfy unjust and racist social, political, and economic purposes.").

<sup>43</sup> *See* CHILD WELFARE LEAGUE OF AM., *supra* note 42, at 14–16.

*those costs under ADC grant* allotments.<sup>44</sup> Alternatively, if the state made a determination that a home was not suitable for a child, it could maintain the ADC payment to the family and provide remedial services to make the homes suitable for the child.<sup>45</sup>

These administratively declared policy changes were the genesis of federal payments for foster care and for preventive services for children.<sup>46</sup> The policy changes were implemented as requirements for federal reimbursement to states. The federal government offered out-of-home payments or preventive funds as open-ended grants to states under the ADC program for ADC-eligible children.<sup>47</sup> In the spring of 1961, Congress passed legislation to codify the Flemming Rule as an amendment to the Social Security Act with little debate.<sup>48</sup> Again, for the future of child welfare policy making, the new law was noteworthy not just for the introduction of out-of-home and preventive funding, but also for the requirements put in place before the funding could be triggered. Although private philanthropic organizations and states had provided out-of-home care to children since the Progressive Era,<sup>49</sup> the federal government now imposed oversight responsibility as a prerequisite to federal funds. Today, we refer to this arrangement as a federally funded mandate.

Secretary Ribicoff announced the new legislation in the Social Security Bulletin of July, 1961:

Under the new law the Federal Government will participate in payments for foster-family care for a dependent child under the following conditions: (1) He would otherwise meet the existing definition of dependent child except for his removal after April 30, 1961, from his

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<sup>44</sup> See HARRY F. BYRD, ADC BENEFITS TO CHILDREN OF UNEMPLOYED PARENTS, S. REP. NO. 87-165, at 6 (1961) (emphasis added).

<sup>45</sup> See U.S. DEP'T. OF HEALTH, EDUC., & WELFARE, *supra* note 35, at 63.

<sup>46</sup> See *id.* at 62-63.

<sup>47</sup> See S. REP. NO. 87-165, at 6.

<sup>48</sup> Title IV of the Social Security Act, Pub. L. No. 87-31, § 407-08, 75 Stat. 75, 75-78 (1961). The limited debate of the foster care provision that took place was focused on the ability of the impacted states that still had suitability requirements to amend their provisions. There was concern expressed that these states, some of whom had legislatures that only convened biannually, needed an effective date of the amendments that gave them adequate time to amend their laws and change their state plans to comply with the new directives. See AID TO DEPENDENT CHILDREN OF UNEMPLOYED PARENTS, 107 CONG. REC. 3757-72 (1961); S. REP. NO. 87-165, at 6.

<sup>49</sup> See Ross, *supra* note 29.

home by a court that has found that it is contrary to the child's welfare to continue living there; (2) the assistance agency is responsible for his placement and care; (3) he is placed in a foster-family home as a result of the judicial determination; and (4) he received aid to dependent children in or for the month in which the court action was initiated.<sup>50</sup>

Because there had been no central record-keeping for the number of children who might now be eligible for these funds, the cost estimates were small.<sup>51</sup> The Conference Report on the bill estimated the new provisions would cost only \$3 million to \$4 million.<sup>52</sup>

The Public Welfare Association explained why the cost impact was estimated to be so low:

Most of the children who will now receive ADC while in foster-care would have remained in their own homes as ADC recipients, had this legislation not been passed. Therefore, it is not expected to add substantial numbers of children to the public assistance rolls. The additional federal costs will probably range between three and four million dollars for the 14-month period of operation. The expenditures will be little, but the results will be extremely rewarding, in terms of the new security and opportunity provided to children threatened by unfortunate home environments.<sup>53</sup>

The Association also emphasized the important policy implications of the four-part eligibility requirement for the federal funds:

Though the foster-care legislation for ADC children is limited, it is expected to stimulate and assist the states in protecting and caring for children under proper safeguards—that is, under the continuing watchfulness of the public welfare agencies. Moreover, the new law will

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<sup>50</sup> DIV. OF PROGRAM STANDARDS AND DEV., BUREAU OF PUB. ASSISTANCE, *Notes and Brief Reports: Amendments to the Public Assistance Provisions of the Social Security Act, 1961*, 24 SOC. SECURITY BULL. 18, 18–19 (1961).

<sup>51</sup> See generally, Wilbur J. Cohen, *Public Welfare Legislative Progress: 1961*, 19 PUB. WELFARE 91, 123 (1961) (discussing the minimal impact of legislation).

<sup>52</sup> See H.R. REP. NO. 87-307, at 1–3 (1961) (Conf. Rep.).

<sup>53</sup> Cohen, *supra* note 51.

further stimulate the use of professionally trained staff who are skilled and experienced in the placement and supervision of children outside their own homes.<sup>54</sup>

Today, the four-part eligibility criteria for federal foster care reimbursement are still in place.<sup>55</sup> Notably, given the end of the ADC (later Aid to Families with Dependent Children, AFDC) over ten years ago, the income eligibility criteria still refer back to the income eligibility guidelines for public assistance before the program expired. Even years after the public benefits program for which the income eligibility requirements were written has ceased to exist, the federal government still requires that the four criteria from 1961 be met, including the income eligibility for public assistance.<sup>56</sup>

In 1962, Dr. Henry Kempe and his team of physicians published *The Battered Child Syndrome*.<sup>57</sup> Dr. Kempe became the face of the American Medical Association (AMA) as it lobbied states to pass reporting requirements to allow physicians to report child abuse.<sup>58</sup> By 1967, every state answered the AMA's call.<sup>59</sup>

All fifty states had some form of a reporting law in place, requiring some professionals and other citizens to report suspected child abuse. There was no uniformity among these laws and no central collection of information on the scope of the problem of child abuse. In the early 1970s, the U.S. Senate convened hearings on CAPTA, the first piece of federal legislation on child abuse and neglect.<sup>60</sup> The Senate Subcommittee on Children and Youth of the Committee on Labor and Public Welfare, under the leadership of Senator Walter Mondale, held hearings across the United States, notably in Children's Hospitals, to gain support and determine the

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<sup>54</sup> *Id.*

<sup>55</sup> See 42 U.S.C. § 672(a)(1)–(3) (2006).

<sup>56</sup> See *id.*

<sup>57</sup> C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS'N. 17 (1962). The article was reprinted with permission of the American Medical Association in 9 CHILD ABUSE & NEGLECT 143 (1985).

<sup>58</sup> See BARBARA NELSON, MAKING AN ISSUE OF CHILD ABUSE: POLITICAL AGENDA SETTING FOR SOCIAL PROBLEMS 13 (1984).

<sup>59</sup> See *id.* ("Once alerted to the problem, the U.S. Children's Bureau and other organizations drafted model child abuse reporting laws which were rapidly passed by all state legislatures.").

<sup>60</sup> See *Child Abuse Prevention Act, 1973: Hearing on S. 1191 Before the Subcomm. on Children and Youth of the Comm. on Labor and Public Welfare*, 93d Cong. 185-89 (1973) [hereinafter *Mondale Hearings*].

breadth of the act.<sup>61</sup> In a letter of transmittal to the Senate Committee Chairman, Mondale explained the need for the legislation:

The Subcommittee held hearings in Washington, New York, Denver and Los Angeles. Members of the Subcommittee personally visited victims of child abuse in hospitals and observed firsthand the operations of multi-disciplinary child abuse teams in several cities.

We were appalled to learn how many abused and neglected children there are and how little is being done to help them and their troubled families. Statistics vary widely, but there is no question that thousands and thousands of youngsters suffer severe physical and emotional abuse every year. This is a problem that cuts across social and economic barriers. It occurs in all kinds of families and in all kinds of neighborhoods.

Yet there was no focused Federal effort to deal with the problem. Nowhere in the Federal government could we find one official assigned full time to the prevention, identification and treatment of child abuse and neglect.<sup>62</sup>

CAPTA was the first piece of federal legislation to address child abuse and neglect.<sup>63</sup> It required HEW to gather data from the states on child abuse, a crucial component because so little was known at the time.<sup>64</sup> Most important in terms of the subsequent history of the federal/state relationship in addressing child abuse, CAPTA established a grant program to provide federal funds to the states.<sup>65</sup> Eligibility for federal grants required states to follow a series of mandates.<sup>66</sup> The mandates covered reporting, investigating, confidentiality of record keeping, and law

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<sup>61</sup> See generally *id.* (containing almost 600 pages of witness testimony and statements made at the Child Abuse Prevention Act hearings).

<sup>62</sup> Letter from Walter Mondale to Harrison A. Williams (Mar. 15, 1974), in *Child Abuse and Prevention Treatment Act, 1974, P.L. 93-247 (S. 1191), Questions, Answers, Analysis and Text of the Act, 93rd Congress*, at vii–viii.

<sup>63</sup> KASIA O'NEILL MURRAY & SARAH GESIRIECH, A BRIEF LEGISLATIVE HISTORY OF THE CHILD WELFARE SYSTEM 3, available at <http://pewfostercare.org/research/docs/Legislative.pdf>.

<sup>64</sup> Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 (1976).

<sup>65</sup> *Id.* § 5103.

<sup>66</sup> See *id.* § 5106a(b)(2).

enforcement cooperation.<sup>67</sup> CAPTA established the structure within the Social Security Act to provide federal funds to states for services to address child abuse and neglect in exchange for state codification and implementation of federal mandates.<sup>68</sup>

By the end of the 1970s, the reporting system for child abuse and neglect had exploded well beyond the predictions of the 1973 Mondale hearings.<sup>69</sup> Senator Cranston summarized the situation before the Senate in 1979:

The number of children in foster care in 1977 was approximately 500,000—nearly three times the number of children in foster care as compared to 1961 . . . . In only one of every five cases does the services plan for these foster children recommend a specific length of placement. In other words, the so-called temporary provision of foster care has no definite target date for ending the placement and for placing the child in a permanent family setting. Over half the children in foster care have been away from their families for more than 2 years—about 100,000 children have spent more than 6 years of their lives in foster care. Nearly one-fourth of the children have been in three or more foster family homes. Even in cases where the agency had developed a plan for returning the child to his or her home, in one-third of the cases, there was no plan for visits between the child and the parent or another person who would care for the child if returned home. There are more than 100,000 children in foster care awaiting adoption.<sup>70</sup>

The problems of “unnecessary placement” and “foster care drift,” described by Senator Cranston, led to the passage of the AACWA and the establishment of Title IV-E of the Social Security Act, which covered foster care and adoption assistance programs.<sup>71</sup> The AACWA mandated that states provide a plan to the federal government requiring that in each

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<sup>67</sup> *See id.*

<sup>68</sup> *See id.* §§ 5101–119c. Although all states had some form of reporting law in place before CAPTA, few met the more rigorous CAPTA requirements before 1974. *See Mondale Hearings, supra* note 60, at 1.

<sup>69</sup> *See* 125 CONG. REC. 22,681 (1979).

<sup>70</sup> *Id.*

<sup>71</sup> Pub. Law 96-272, 94 Stat. 501 § 101(a)(1).

case, the child welfare agency would make “reasonable efforts” to prevent placement or achieve reunification for children temporarily placed in foster care.<sup>72</sup> The law also established a new program of adoption assistance to continue funding for children adopted out of the foster care system.<sup>73</sup> In addition to the reporting, investigating, and record keeping governed by CAPTA, states then needed to follow federal mandates governing entry into foster care and judicial oversight of placements.

The fiscal strategies employed to fund these new AACWA mandates contradicted the policy changes. Although the law sought to limit unnecessary placements by requiring a judicial finding of “reasonable efforts to prevent placement,” Title IV-E provided *uncapped funds* for foster care and adoption assistance based upon a federal-state matching formula.<sup>74</sup> The eligible children that were placed in foster care were eligible for the federal matching funds. The preventive services, or the “reasonable efforts” emphasized in the new law, were in Title IV-B as *capped grants*.<sup>75</sup> Unlike placement services, preventive services would only be reimbursed up to a certain predetermined level.<sup>76</sup> Still, the introduction of Title IV-B grants and the new emphasis on preventive services initiated a reduction in the number of children entering foster care in the 1980s.<sup>77</sup>

For a variety of reasons—the explosion of crack cocaine in inner cities, economic downturns, overstretched preventive services—the number of children in out-of-home placement climbed throughout the 1990s.<sup>78</sup> A series of widely publicized, horrific deaths of children at the hands of their parents while under the supervision of child welfare agencies led to an outcry for reform of the system, again emphasizing the need for placement over prevention in some cases.<sup>79</sup>

The next major piece of federal legislation, The Adoption and Safe Families Act of 1997 (ASFA), was the federal response to both the call for swifter removal in cases with “aggravated circumstances” and for

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<sup>72</sup> 42 U.S.C. § 671(a)(15)(A) (1982).

<sup>73</sup> *See id.* § 672(a).

<sup>74</sup> *See id.* § 674(a)(1)–(3).

<sup>75</sup> *See id.* § 623(a).

<sup>76</sup> *See id.* § 621.

<sup>77</sup> *See* Children’s Defense Fund, *The State of America’s Children Yearbook 22* (1994).

<sup>78</sup> *See* Dorothy E. Roberts, *Foster Care*, in *2 POVERTY IN THE UNITED STATES: AN ENCYCLOPEDIA OF HISTORY, POLITICS, AND POLICY* 328 (Gwendolyn Mink & Alice O’Connor eds., 2004).

<sup>79</sup> *See, e.g.*, New York State Commission on Child Abuse, *Final Report* (1996).



expedited adoptions when the hopes for reunification were slim.<sup>80</sup> This legislation amended provisions of Title IV-E of the Social Security Act, but left in place the federal-state funding structure and income eligibility requirements.<sup>81</sup>

In 1999, Congress again amended the Social Security Act to address the unmet needs of older children, some of whom had aged out of the foster care system, in the Foster Care Independence Act (FCIA).<sup>82</sup> In 2008, the Fostering Connections to Success and Increasing Adoption Act of 2008 (FCSIA) was passed into law.<sup>83</sup> Like CAPTA, AACWA, and ASFA, these two laws are also codified within parts IV-B and E of the Social Security Act, maintaining the framework of federal-state fiscal strategies.<sup>84</sup> These provisions of the Social Security Act still provide grants, as well as matching funds, various matching rates for different categories of service, and antiquated eligibility requirements that result in decision-making with an eye to reimbursement. Under current law, services are still not reimbursed equally. States must continue to consider the myriad of funding streams, accounting categories, and reimbursement rates when designing their responses to child abuse and neglect.

The Supreme Court and subsequent Bush Administration policies have emphasized the fiscal nature of the federal relationship to state and local child welfare systems and limited the force of federal mandates. In *Suter v. Artist M.*,<sup>85</sup> the Court clarified that a state merely had to have a plan approved by the federal government to be eligible for federal reimbursement for qualified services.<sup>86</sup> The case was a challenge to Illinois practices as insufficient under the mandates of the AACWA.<sup>87</sup> In finding for the state, the Court made clear that actual implementation of the mandates is not contemplated under the law.<sup>88</sup> Instead, the law requires that each state have a plan that applies to the entire state (“plan in effect”).<sup>89</sup> The plan must detail how the state will meet the mandates

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<sup>80</sup> See 42 U.S.C. § 671(a)(15)(C)–(D) (2000).

<sup>81</sup> See Pub. L. No. 105-89, 111 Stat. 2115–36.

<sup>82</sup> Pub. L. No. 106-69, 113 Stat. 1822 (1999).

<sup>83</sup> Pub. L. No. 110-351, 122 Stat. 3949 (2008).

<sup>84</sup> *Id.*; 113 Stat. at 1822.

<sup>85</sup> 503 U.S. 347 (1992).

<sup>86</sup> *Id.* at 358.

<sup>87</sup> See *id.* at 351–52.

<sup>88</sup> See *id.* at 358.

<sup>89</sup> 42 U.S.C. § 671(a)(3) (2006).

contained in the federal law.<sup>90</sup> Once the plan is approved, the state is eligible for federal reimbursement.<sup>91</sup> The state practices are subject to audits by the Department of Health and Human Services (HHS).<sup>92</sup> HHS may limit funding in some instances based on failures uncovered by the audit, but the law does not create rights for the children or families served by the system.<sup>93</sup> Instead, the law provides for a fiscal contract between the state and federal government.<sup>94</sup>

In a 2005 HHS issue brief on Federal Foster Care Funding, the exclusively fiscal dimension of the federal child welfare laws was articulated forcefully:

It should be noted that while Title IV-E eligibility is often discussed as if it represents an entitlement of a particular child to particular benefits or services, it does not. Instead, a child's Title IV-E eligibility entitles a State to Federal reimbursement for a portion of the costs expended for that child's care.<sup>95</sup>

### III. STATE AND LOCAL FUNDING OF CHILD WELFARE

#### A. *State Use of Federal Entitlement Programs*

Two results of the current fiscal federalism for child welfare services developed from 1961 to the present are: (1) high administrative costs; and (2) lack of uniformity between states on what service is billed to what category of service delivery. These make actual cost assessments difficult. In the AACWA, Congress established Title IV-E of the Social Security Act to establish new entitlement programs to serve the needs of abused and neglected children and their families.<sup>96</sup> Foster care and adoption assistance are open-ended federal entitlements.<sup>97</sup> The current federal matching rates for foster care and adoption assistance range from 50–75% of the total state cost of foster care maintenance and adoption subsidies.<sup>98</sup> States receive a federal match, keyed to their Medicaid matching rate, for all eligible

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<sup>90</sup> See *id.* § 671(a).

<sup>91</sup> *Id.* § 674(a).

<sup>92</sup> See *id.* § 671(a)(13).

<sup>93</sup> See *id.* § 674(d)(1).

<sup>94</sup> See *Suter v. Artist M.*, 503 U.S. 347, 356 (1992).

<sup>95</sup> Radel, *supra* note 10, at 3.

<sup>96</sup> See *supra* notes 72–74 and accompanying text.

<sup>97</sup> See *id.*

<sup>98</sup> See Radel, *supra* note 10, at 5.

children receiving these entitlement services.<sup>99</sup> For administrative and data collection services, states receive a 50% match.<sup>100</sup> Finally, for allowable training of state and local workers, as well as for institution-based workers who serve Title IV-E eligible children, the states receive a 75% federal match.<sup>101</sup> The matching rate for foster care maintenance and adoption assistance varies by state in accordance with the federal Medicaid formula, but administration, data collection, and training are reimbursed at the same matching rate for all states for allowable costs.

Overall, the federal contribution to foster care expenditures is approximately one-half of the total cost of the services.<sup>102</sup> State and local governments contribute the other half of the funding.<sup>103</sup> Most federal funding comes from Title IV-E, covering both foster care maintenance and adoption assistance.<sup>104</sup> It is approximately half of all federal funding, followed by TANF, SSBG, Medicaid, and finally Title IV-B.<sup>105</sup> Title IV-B, providing preventive funds for child welfare, accounts for about only 5% of federal spending for child welfare.<sup>106</sup> Despite the policy initiatives and mandates for family preservation and other non-placement services, federal funds for non-placement services are very limited.<sup>107</sup> This is one example where federal mandates seek reunification and family preservation, but dollars allocated make this lofty goal difficult to achieve.

The different matching rates create tremendous administrative costs. In fact, overall administrative costs exceed service delivery expenses.<sup>108</sup> Administrative costs are reimbursed at a rate of 50% for all states, making

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<sup>99</sup> *See id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> CTR. FOR LAW & SOC. POLICY, CHILD WELFARE IN THE UNITED STATES 2 (2006), available at <http://www.clasp.org/admin/site/publications/files/0317.pdf> (fact sheets developed in conjunction with Children's Defense Fund).

<sup>103</sup> *Id.*

<sup>104</sup> *See id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*; Sankaran, *supra* note 19, at 300.

<sup>107</sup> *See* Sankaran, *supra* note 19, at 300; KASIA O'NEILL MURRAY, THE CHILD WELFARE FINANCING STRUCTURE 2, available at <http://pewfostercare.org/research/docs/MurrayPaper2.pdf>.

<sup>108</sup> Federal maintenance payments were \$1.8 billion, while administrative expenses accounted for \$2.1 billion. CYNTHIA ANDREWS SCARCELLA ET AL., THE COST OF PROTECTING VULNERABLE CHILDREN V: UNDERSTANDING STATE VARIATION IN CHILD WELFARE FINANCING 15 (2006).

this the category with one of the lowest reimbursement rates for states.<sup>109</sup> In 2004, administration and child placement services accounted for 49% of foster care expenditures, while foster care maintenance payments accounted for only 40%.<sup>110</sup> This is a frustrating fact given the shortage of resources to deliver services. There is a higher reimbursement rate for service delivery in most states, but the administrative costs in properly accounting for the necessary eligibility requirements are high.<sup>111</sup> Although a large proportion of administrative expenses are due to case management, considerable cost is also spent tracking the various requirements for full federal reimbursement eligibility.<sup>112</sup>

Because the federal matching rates are so high, states have a strong incentive to maximize the allotted federal funds. States expend great administrative costs in trying to verify eligibility for each child entering the system, even though only approximately half of the children are ultimately certified as eligible (as discussed in the next section).<sup>113</sup> The SFY 2006 funding report by Child Trends stated, “Based on the 44 states that provided sufficient data for both years, Title IV-E foster care maintenance payments decreased by 8% (\$125 million) between SFY 2004 and SFY 2006, and other administrative and placement activities, training and SACWIS [information systems] combined dollars increased by 4% (\$86 million).”<sup>114</sup>

The national story does not accurately illustrate the great variation among states. For instance, in Alaska, maintenance payments account for only 15% of foster care expenditures, while administration and child placement services account for 60% of the federal funds into the state.<sup>115</sup> In the largest state, California, federal funding for administration is 60.6%

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<sup>109</sup> See Radel, *supra* note 10, at 2.

<sup>110</sup> CTR. FOR LAW & SOC. POLICY, *supra* note 102.

<sup>111</sup> See, e.g., IOWA DEP’T OF HUMAN SERVS., DETERMINING TITLE IV-E ELIGIBILITY 2 (2004) (listing reimbursement rates for foster care maintenance, monthly adoption subsidies, and rates for training expenditures as being higher than administrative rates).

<sup>112</sup> See DEVOOGHT, *supra* note 16, at 11–12 (explaining that both caseworker salaries and eligibility determination are significant administrative expenses).

<sup>113</sup> *Id.* at 24.

<sup>114</sup> *Id.* at 11.

<sup>115</sup> CTR. FOR LAW & SOC. POLICY, CHILD WELFARE IN ALASKA 2 (2006), available at <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cwf/child-welfare-financing-fact-sheet-alaska-2006.pdf> [hereinafter CLASP REPORT: ALASKA].

while funding for maintenance is 30%.<sup>116</sup> In Georgia, the gap is not as great and the majority goes to maintenance, with maintenance payments accounting for 51.75% with administration only 47.12%.<sup>117</sup>

Beyond the administrative expenses for eligibility determinations, states also must accurately track which service goes with which funding stream and with which matching rate.<sup>118</sup> Although category criteria are narrow, each individual state makes different assessments on how to bill these lines and is then audited on accuracy.<sup>119</sup> This process makes it difficult to collect accurate data on service costs because some states successfully place more of their costs in one category, while other states may place those same costs in another category.

The variation in claiming practices made possible by the complexity of the reimbursement rules makes assessment of foster care costs impossible. Claims per eligible child for foster care maintenance costs range from a federal match of \$2829 to \$20,539.<sup>120</sup> This is not a reflection of merely higher costs or grander services in some states over others, but instead largely reflects differences in the narrowness or generality with which states allot costs to foster care maintenance as opposed to administration, training, or data collection. “Claims for child placement and administration vary from 10 cents per dollar claimed of maintenance to \$4.34. Six states claim less than 50 cents in administration for every maintenance dollar claimed, while nine states claim more than \$2 in administration for every dollar of maintenance.”<sup>121</sup>

In 2005, HHS issued results of state compliance with federal requirements—the HHS measure of quality—against the federal matching

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<sup>116</sup> CTR. FOR LAW & SOC. POLICY, CHILD WELFARE IN CALIFORNIA 2 (2006), available at <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cwf/child-welfare-financing-fact-sheet-california-2006.pdf>. See also U.S. CENSUS BUREAU, GCT-T1-R. POPULATION ESTIMATES (2007), available at [http://factfinder.census.gov/servlet/GCTTable?\\_bm=y&-geo\\_id=01000US&-\\_box\\_head\\_nbr=GCT-T1-R&-ds\\_name=PEP\\_2008\\_EST&-format=US-40S](http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=GCT-T1-R&-ds_name=PEP_2008_EST&-format=US-40S) (providing statistics to show that California is the largest state by population).

<sup>117</sup> CTR. FOR LAW & SOC. POLICY, CHILD WELFARE IN GEORGIA 2 (2006), available at <http://www.childrensdefense.org/child-research-data-publications/data/state-data-repository/cwf/child-welfare-financing-fact-sheet-georgia-2006.pdf>.

<sup>118</sup> See 42 U.S.C. § 674(a) (2006).

<sup>119</sup> See *id.* § 674(b)(4).

<sup>120</sup> Radel, *supra* note 10, at 8.

<sup>121</sup> *Id.* at 11.

cost per child.<sup>122</sup> The results showed higher claims per child did not result in higher quality service.<sup>123</sup>

The three states with the highest claims per child were in compliance with 3, 5 and 7 areas respectively of the 14 possible areas of compliance in their first Child and Family Services Review (CFSR). Average per-child claims did not differ appreciably between the highest and lowest performing states . . . . There are States with relatively high—and low—Federal claims at each level of CFSR performance.<sup>124</sup>

To receive the federal match for eligible children, states must follow the mandates in the laws for each of the programs discussed in Part II and must provide the state portion of the match. Even though the federal government pays about half of the cost of all of these programs for eligible children, the restrictive eligibility requirements and the need for state matching funds sometimes make the entitlement funding streams less lucrative for states than capped grant or block grant programs.<sup>125</sup> When states choose to use grant or block grant funds to pay for open-ended entitlement services, they are trading away other necessary human services that could also draw from the grant pool, but not the entitlement pool.

This growing dependence on general human services funding to provide mandated child welfare services that can be provided with dedicated funding is a growing trend in the child welfare fiscal federalism story. From 2004 to 2006, federal expenditures under Title IV-B and IV-E only increased 1% and 2%, respectively.<sup>126</sup> Federal expenditures for child welfare activities over the same period increased 16% and 19% from Social Security Block Grants and Medicaid, respectively.<sup>127</sup>

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<sup>122</sup> *See id.* at 13.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See MARGY WALLER, BLOCK GRANTS: FLEXIBILITY VS. STABILITY IN SOCIAL SERVICES 3 (Frederick Dews and Anjetta McQueen eds., 2005), available at <http://www.brookings.edu/es/research/projects/wrb/publications/pb/pb34.pdf>, for a discussion on block grants in social services.

<sup>126</sup> DEVOOGHT ET AL., *supra* note 16, at 8.

<sup>127</sup> *Id.*

*B. Federal Grants for Non-Entitlement Services*

Title IV-E is the largest source of federal funds for child welfare services with the unlimited matches available for foster care maintenance and adoption assistance subsidies.<sup>128</sup> Title IV-B is the other federal source of funding exclusively available for child welfare services.<sup>129</sup> Title IV-B provides capped aid to states in the form of grants for some child welfare services.<sup>130</sup> It is a very attractive source of funds because it does not have the eligibility requirements of Title IV-E and because the state match is only 25%.<sup>131</sup> However, the funds are capped at low levels compared to the unlimited funds available under Title IV-E.<sup>132</sup> Title IV-B accounted for only 5% of child welfare spending in 2006, while Title IV-E accounted for 48%.<sup>133</sup> Most prevention and family preservation funding is under Title IV-B.<sup>134</sup>

Although the federal law may *substantively* favor family preservation and reunification in policy since the AACWA, the law has always *fiscally* incentivized foster care and adoption placements. States can use limited Title IV-B funds for a range of prevention and reunification services, but the money runs out. The foster care maintenance and adoption assistance funds, on the other hand, are an unlimited source of funds for states. Again, this evidenced a dichotomy between federal policy agendas and fiscal incentives.

This disparity in funding between prevention/reunification and placement has only increased over time. Between 1989 and 2001, federal funding under Title IV-B remained nearly stable and well below \$1 billion.<sup>135</sup> During the same period, Title IV-E funds soared from nearly \$1 billion to nearly \$7 billion annually.<sup>136</sup> At the state level, the disparities are dramatic. In 2004 and 2006, Alabama claimed a little over two-times the

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<sup>128</sup> See *id.* at 9.

<sup>129</sup> See *id.* at 6.

<sup>130</sup> See *id.* at 15; COMM. ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES, 106TH CONG., 2000 GREENBOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 651 (Comm. Print 2000) [hereinafter 2000 GREENBOOK].

<sup>131</sup> See DEVOOGHT ET AL., *supra* note 16, at 6 tbl.1.; 2000 GREENBOOK, *supra* note 130, at 647.

<sup>132</sup> See DEVOOGHT ET AL., *supra* note 16, at 24.

<sup>133</sup> *Id.* at 8 fig.6.

<sup>134</sup> See *id.* at 24; 2000 GREENBOOK, *supra* note 130.

<sup>135</sup> 2000 GREEN BOOK, *supra* note 130, at 648 tbl.11-2.

<sup>136</sup> *Id.*

amount for Title IV-E as for Title IV-B.<sup>137</sup> In Alaska, Title IV-E payments were nearly twenty times the amount claimed for Title IV-B.<sup>138</sup> Comparing two heavily populated states, California claimed less than two times as much for Title IV-E as for Title IV-B,<sup>139</sup> whereas New York claimed fifteen times as much.<sup>140</sup>

*C. State and Local Substitution of Social Security Block Grants, Medicaid, and TANF Funds for Dedicated Child Welfare Services*

Beyond the two dedicated sources of federal funds, Titles IV-B and E, states also use other sources of federal money to cover some eligible costs for children and families served by the child welfare system. In fact, Social Security Block Grants and Medicaid are growing sources of funding, outpacing even Title IV-E, the dedicated, open-ended funding source for foster care.<sup>141</sup> Nearly all the growth in federal funding for foster care between 2000 and 2002 was from growth in the use of Social Security Block Grants, Medicaid, and TANF.<sup>142</sup> Medicaid, an uncapped entitlement program for eligible children, provided 10% of all child welfare funds in 2004.<sup>143</sup> TANF replaced the AFDC Program in 1996.<sup>144</sup> Emergency Assistance was rolled into TANF. In 2004, it provided 19% of the funds claimed by states for child welfare services.<sup>145</sup> From 2004 to 2006, the use of these three sources of non-dedicated funding accounted for 44% of the federal funds for child welfare services, an increase of 16%.<sup>146</sup>

Medicaid carries the same matching rate as foster care maintenance payments and is similarly an open-ended entitlement program.<sup>147</sup> The program is used for initial health screens as well as for routine medical care for children in foster care.<sup>148</sup> All Title IV-E eligible children are

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<sup>137</sup> See DEVOOGHT ET AL., *supra* note 16, at 27 app.A.

<sup>138</sup> *See id.*

<sup>139</sup> *See id.*

<sup>140</sup> *See id.*

<sup>141</sup> *See id.* at 8.

<sup>142</sup> See ROSEANA BESS & CYNTHIA ANDREWS SCARCELLA, CHILD WELFARE SPENDING DURING A TIME OF FISCAL STRESS (2004), available at [http://www.urban.org/UploadedPDF/411124\\_ChildWelfareSpending.pdf](http://www.urban.org/UploadedPDF/411124_ChildWelfareSpending.pdf).

<sup>143</sup> See DEVOOGHT ET AL., *supra* note 16, at 8.

<sup>144</sup> *Id.* at 16.

<sup>145</sup> *Id.* at 8 fig.6.

<sup>146</sup> *See id.* at 15.

<sup>147</sup> *See id.* at 7 tbl.1.

<sup>148</sup> *See id.* at 18.



eligible for Medicaid and most children in the foster care system, even if not IV-E eligible, are eligible for Medicaid services.<sup>149</sup>

States have wide discretion in their use of TANF funds, but the funds are a blocked grant, capped for each state.<sup>150</sup> Nonetheless, they are an attractive source of funding because they do not require a state match.<sup>151</sup> If these funds are used for child welfare services, they are not available for other local needs. States use the funds to provide cash assistance to families and for various employment services so that families can stay together with adequate income to survive.<sup>152</sup> Because of the broad policy goals of TANF, the funds can be used for a wide variety of services, such as parenting classes that could be billed under Title IV-B.<sup>153</sup> However, the limited funds available in Title IV-B may push states to categorize services in the TANF category. Emergency Assistance was another source of funding formerly used by states for child welfare services, but those funds are now rolled into TANF funds.<sup>154</sup>

#### *D. State and Local Contributions to Child Welfare Funding*

State and local contributions to child welfare funding exceed federal contributions.<sup>155</sup> This means that even though federal funds are available at a matching rate of at least 50% for all categories of services, the eligibility requirements for some sources of federal funds and the caps on many other types of federal funds force states to dip into state funds for much of the overall cost of child welfare services. States, in turn, can push the costs down onto the local governments. Overall, in fiscal year 2004, the federal government covered 48.52% of the total cost of child welfare spending, amounting to \$11,662,213,004.<sup>156</sup> States contributed 39.20%, a total of \$9,071,468,186.<sup>157</sup> Local government covered 12.28% of the costs for a total of \$2,544,500,801.<sup>158</sup> These percentages remained largely

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<sup>149</sup> See *id.* at 7 tbl.1.

<sup>150</sup> See *id.*

<sup>151</sup> *Id.*

<sup>152</sup> See OFFICE OF FAMILY ASSISTANCE, U.S. DEP'T OF HEALTH & HUMAN SERVS., ABOUT TANF PROGRAM, <http://www.acf.hhs.gov/programs/ofa/tanf/about.html> (last visited Jan. 17, 2009).

<sup>153</sup> See DEVOOGHT ET AL., *supra* note 16, at 6–7 tbl.1.

<sup>154</sup> *Id.* at 16.

<sup>155</sup> CTR. FOR LAW & SOC. POLICY, *supra* note 102.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

unchanged in 2006, with the federal government contributing 47.9% (\$12.4 billion), states contributing 41.0% (\$10.7 billion), and local governments contributing 11.1% (\$2.6 billion).<sup>159</sup>

It can be difficult to understand child welfare funding just by looking at the national ratios because the variation between federal, state, and local funding percentages is so great among the states. Local funding is becoming an increasingly important aspect of the child welfare system, with sixteen states reporting that they required local governments to provide matching funds to draw down federal funds.<sup>160</sup> The largest state system, California,<sup>161</sup> along with Ohio and Minnesota, required more matching funds from the local governments than from the state.<sup>162</sup> Ohio and Minnesota remain the only states that require localities, and not the state, to provide matching funds for federal child welfare funds.<sup>163</sup>

In 2004, the Bush Administration attempted to change child welfare funding by eliminating the various categories and matching rates, and replacing them with the Child Welfare Program Option.<sup>164</sup> Although the saving of administrative time and expense by eliminating archaic eligibility criteria and needless categorization of services to a given child is a laudable goal, that program provided only capped funding, albeit flexibly, to states.<sup>165</sup> Given the rise in Title IV-E costs, capping funds at current levels with modest increases is a way to manage costs, but it is not necessarily a way to provide quality services. The relationship of the funds to model services or positive outcomes has yet to be explored. Ohio has been piloting a flexible funding demonstration project to provide funds on an experimental basis. Florida was also granted a waiver to use federal funds flexibly, without the strict limits imposed by the various funding

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<sup>159</sup> DEVOOGHT ET AL., *supra* note 16, at 4 figs.3–4.

<sup>160</sup> *See id.* at 22.

<sup>161</sup> *Id.* at 27 app.A.

<sup>162</sup> *Id.* at 22.

<sup>163</sup> *See id.* (noting that Ohio and Minnesota are the only states to require local governments to match 100% of the funds from the federal government).

<sup>164</sup> *See* CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., SUMMARY OF THE TITLE IV-E CHILD WELFARE WAIVER DEMONSTRATIONS (2008), [http://www.acf.hhs.gov/programs/cb/programs\\_fund/cwwaiver/2008/summary\\_demo2008.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2008/summary_demo2008.htm) (discussing program details); *see also* RUTLEDGE Q. HUTSON, CTR. FOR LAW & SOC. POLICY, BUSH ADMINISTRATOR'S "CHILD WELFARE PROGRAM OPTION" PUTS CHILDREN WHO HAVE BEEN ABUSED OR NEGLECTED AT GREATER RISK 2–4 (2007), <http://www.clasp.org/admin/site/publications/files/0343.pdf> (discussing of the pros and cons of Bush's program).

<sup>165</sup> *See* CHILDREN'S BUREAU, *supra* note 164.

streams.<sup>166</sup> Evaluation of these programs is pending.<sup>167</sup> Regardless of the balance between federal, state, and local shares, what remains unknown is how implementation of federal policies may vary depending on the fiscal strategies employed by local governmental administrations. Part IV begins to explore whether local fiscal policies for funding federal mandates correlate with, and ultimately impact, outcomes for children.

#### IV. AN EMPIRICAL ANALYSIS OF OHIO'S LOCAL FUNDING AND THE IMPACT ON ADOPTIONS

The Public Children Services Association of Ohio (PCSAO) provided aggregate level data from 1997 to 2007 related to their "Safe Children, Stable Families and Supportive Communities" initiative that works to improve the quality of care for children who are facing family disruptions.<sup>168</sup> Ohio is comprised of eighty-eight counties.<sup>169</sup> Each county

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<sup>166</sup> See CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., PROFILES OF THE CHILD WELFARE WAIVER DEMONSTRATION PROJECTS: FLORIDA—FLEXIBLE FUNDING, [http://www.acf.hhs.gov/programs/cb/programs\\_fund/cwwaiver/2007/florida.htm](http://www.acf.hhs.gov/programs/cb/programs_fund/cwwaiver/2007/florida.htm).

<sup>167</sup> See *id.*

<sup>168</sup> PCSAO provided the data for this paper via electronic transfer to the authors. The excel data files were transported in SPSS and linked into a unified longitudinal data file for analysis. Descriptive statistics were used to clean the data for accuracy. Frequencies explored minimum and maximum values, and missing values were assigned. Independent sample T-Tests assessed for differences between mean values of the variables of interest, notably: 1) share of federal, state, and local funding for Title IV initiatives; 2) number of children in state care; 3) number of adoptions finalized; and 4) the mean days to adoption. Although only two counties for any analysis were outside two standard deviations from the mean, we did not center the data as there was little possibility of data entry error due to PCSAO's methodology. Only those counties that placed children for adoption were included in the analysis comparing the number of days children await adoption. SAS was used for data management and SPSS 16 for analysis.

<sup>169</sup> *E.g.*, Counties by CPOE Size Category

Listed from smallest population to largest population  
(Rev. 5/1/08)

Small	Medium-Small	Medium	Large	Metro	Major Metro
Vinton	Guernsey	Darke	Miami	Warren	Hamilton
Noble	Mercer	Pickaway	Ashtabula	Trumbull	Franklin
Monroe	Ottawa	Ashland	Allen	Lake	Cuyahoga
Morgan	Holmes	Seneca	Columbiana	Mahoning	3
Harrison	Madison	Knox	Wayne	Lorain	

(continued)

has a public child service agency that provides data to the PCSAO regarding children in care.<sup>170</sup> PCSAO publishes a biannual report that tracks changes within two-year timeframes to assess the number of children in custody, days awaiting placement, and detailed information on how well Ohio is meeting its goals of helping children secure permanency.<sup>171</sup> This data is published to monitor improvement.<sup>172</sup> We analyzed this data to compare the number of children in care, the number of finalized adoptions, and the mean days children await adoption between those counties with dedicated tax levies, and those without levies. The

Paulding	Preble	Huron	Wood	Butler
Wyandot	Fulton	Sandusky	Richland	Stark
Meigs	Highland	Washington	Clark	Lucas
Pike	Clinton	Lawrence	Fairfield	Montgomery
Adams	Brown	Athens	Greene	Summit
Fayette	Crawford	Marion	Portage	10
Carroll	Logan	Belmont	Licking	
Van Wert	Auglaize	Jefferson	Delaware	
Henry	Union	Hancock	Medina	
Hocking	Shelby	Ross	Clermont	
Gallia	15	Scioto	15	
Hardin		Erie		
Jackson		Muskingum		
Morrow		Tuscarawas		
Putnam		Geauga		
Perry		20		
Coshocton				
Williams				
Defiance				
Champaign				
25				

**POPULATIONS**

Major Metro: 800,000 +  
 Metro: 200,000–799,999  
 Large: 100,000–199,999  
 Medium: 50,000–99,999  
 Medium-Small: 40,000–49,999  
 Small: 39,999 and less

U.S. CENSUS BUREAU, COUNTY POPULATION ESTIMATES (July 1, 2007), *available at* <http://www.census.gov/popest/counties/CO-EST2007-01.html> (chart provided by PCSAO).

<sup>170</sup> See PCSAO, THE CHILD PROTECTION MISSION: SAFE CHILDREN, STABLE FAMILIES AND STRONG COMMUNITIES, PCSAO FACTBOOK 16 (9th ed. 2009–10) [hereinafter PCSAO 9th ed.], *available at* [http://www.pcsao.org/2009\\_2010PCSAOFactbook/MeasuringOurPerformance\\_CFSR.pdf](http://www.pcsao.org/2009_2010PCSAOFactbook/MeasuringOurPerformance_CFSR.pdf).

<sup>171</sup> See *id.* at 23, *available at* [http://www.pcsao.org/2009\\_2010PCSAOFactbook/Ohio.pdf](http://www.pcsao.org/2009_2010PCSAOFactbook/Ohio.pdf).

<sup>172</sup> *Id.* at 16, *available at* [http://www.pcsao.org/2009\\_2010PCSAOFactbook/MeasuringOurPerformance\\_CFSR.pdf](http://www.pcsao.org/2009_2010PCSAOFactbook/MeasuringOurPerformance_CFSR.pdf).

years for comparison were 1997 and 2007. Additionally, we depict the ten-year period in-between to provide reference points for the analysis.

Approximately half of the counties have dedicated children services tax levies.<sup>173</sup> Although these provide a defined, reliable source of income for the term of the levy, they are subject to periodic approval by the voters in the various counties.<sup>174</sup> With difficult economic trends in Ohio over the last few years, it was unclear before analysis whether the levies would result in stronger or weaker outcomes for children. The three largest metropolitan areas in Ohio (Cleveland, Columbus, and Cincinnati<sup>175</sup>) all have levies,<sup>176</sup> and it was unclear whether these larger child welfare systems would have better or weaker outcomes than their smaller counterparts.

Ohio is noted as the state with the highest percentage of local funding<sup>177</sup> at 49% of the total child welfare public expenditures.<sup>178</sup> Federal funds account for 43% and state funds account for only 8% of the total costs.<sup>179</sup> For Title IV-E funds, the allocations are 57% federal, 25% state, and 18% local.<sup>180</sup> The variation among the counties in the federal vs. state vs. local funding breakdown for Title IV-E funding is great, with many of the smaller counties using a much smaller percentage of local funds.<sup>181</sup> This information is lost in the aggregate costs because the larger counties account for such a large share of the total costs. For total child welfare expenditures, five counties (Adams, Wayne, Butler, Champaign, and Montgomery) spent over 60% in local funding.<sup>182</sup> All of these were

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<sup>173</sup> *Id.* at 23, available at [http://www.pcsao.org/2009\\_2010PCSAOFactbook/Ohio.pdf](http://www.pcsao.org/2009_2010PCSAOFactbook/Ohio.pdf).

<sup>174</sup> See ATHENS COUNTY CHILDREN'S SERVS., AGENCY LEVY, <http://www.athenschildrenservices.com/pages/agency-levy>; FRANKLIN COUNTY CHILDREN'S SERVS., THE 2009 CHILDREN SERVICES LEVY, [http://www.co.franklin.oh.us/children\\_services/history.cfm](http://www.co.franklin.oh.us/children_services/history.cfm), for examples of county efforts to support levy votes.

<sup>175</sup> OHIO DEP'T. OF DEV., OHIO'S POPULATION 1, <http://www.development.ohio.gov/research/files/p0006.pdf>.

<sup>176</sup> See PCSAO, THE CHILD PROTECTION MISSION: SAFE CHILDREN, STABLE FAMILIES & STRONG COMMUNITIES, PCSAO FACTBOOK 59, 73, 85 (8th ed. 2007-08) [hereinafter PCSAO 8th ed.], available at [http://www.pcsao.org/factbook2007\\_2008.htm](http://www.pcsao.org/factbook2007_2008.htm) (follow "88 County Profiles" hyperlink; then follow "Cuyahoga," "Franklin," or "Hamilton" hyperlink).

<sup>177</sup> See CHILDREN'S BUREAU, *supra* note 164.

<sup>178</sup> PCSAO 9th ed., *supra* note 170, at 23.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See, e.g., PCSAO 8th ed., *supra* note 176, at *passim*.

<sup>182</sup> *Id.* at 25, 41, 45, 137, 193.

counties that had a dedicated levy.<sup>183</sup> Of those five counties, two are metro, one is large, and two are small counties.<sup>184</sup> Twenty-three counties spent less than 20% local funding.<sup>185</sup> Of these, four counties (Ashtabula, Crawford, Muskingum, and Ross) have a dedicated levy and nineteen do not.<sup>186</sup> Among those twenty-three counties, twelve are small, five are medium-small, five are medium, and one is large.<sup>187</sup>

Adoption Assistance funding comes from Title IV-E.<sup>188</sup> Statewide, 18% of title IV-E funds are local.<sup>189</sup> Among the counties, there is again variation, with nine counties spending 0% local funding for IV-E services.<sup>190</sup> None of those nine counties have a dedicated levy.<sup>191</sup> Eight of the counties are small and one is medium.<sup>192</sup> The mean percentage data in Tables 1 and 2 below depict the mean percentages of each county with equal weight, not accounting for the costs associated with each percentage that varies greatly among the various sized counties. The percentage variation is captured in the standard deviations, in parentheses next to each percentage, to illustrate the range of funding distribution among the counties with and without a levy.

Table 1 provides an overview of the findings. When including all eighty-eight counties, those with levies do receive a lower mean percentage of state dollars, 30% compared to 37% for those non-levied counties. The forty-three levied counties have a larger local mean

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<sup>183</sup> *See id.*

<sup>184</sup> Butler and Montgomery are metro, Wayne is large, and Adams and Champaign are small. *See Census, supra* note 169 (categorizing Ohio's eighty-eight counties by population size).

<sup>185</sup> PCSAO 8th ed., *supra* note 176, at *passim*.

<sup>186</sup> *See id.* at 31, 57, 143, 165.

<sup>187</sup> Ashtabula County is large. Seneca, Ross, Pickaway, Muskingum, and Lawrence are medium. Shelby, Mercer, Crawford, Brown, and Auglaize are medium-small. Van Wert, Jackson, Fayette, Carroll, Hardin, Meigs, Monroe, Morgan, Noble, Putnam, Vinton, and Williams Counties are small. *See Census, supra* note 169 (categorizing Ohio's eighty-eight counties by population size).

<sup>188</sup> *See* 42 U.S.C. § 670 (2006).

<sup>189</sup> PCSAO 9th ed., *supra* note 170, at 23.

<sup>190</sup> *See id.* at 29, 43, 71, 77, 103, 129, 161, 139, 145, 161 (citing specifically to data from the following counties: Ashland, Carroll, Fayette, Gallia, Jackson, Meigs, Morgan, Noble, and Putnam).

<sup>191</sup> *See id.*

<sup>192</sup> Carroll, Fayette, Gallia, Jackson, Meigs, Morgan, Noble, and Putnam are small. Ashland is medium. *See Census, supra* note 169 (categorizing Ohio's eighty-eight counties by population size).

percentage share than counties without levies, 13% as compared to 8% of total child welfare.

**Table 1. Examining the Differences Between Counties (n=88) With and Without Levies<sup>193</sup>**

Variable	Levy County 2005	
	No 45(51 %)	Yes 43(49%)
<b>County Size</b>		
Small	20(44)	6(14)
Medium-Small	9(20)	5(12)
Medium	12(27)	9(21)
Large	4(9)	11(25)
Metropolitan	0	9(21)
Major-Metropolitan	0	3(7)
	<b>Mean (s.d.)</b>	<b>Mean (s.d.)</b>
<b>Title IV 2007</b>		
Fed % Match	55(6.58)	57(5.26)
State % Match	37(9.96)	30(7.61)
Local % Match	8(5.80)	13(4.82)
<b>Children In Care</b>		
1997***	72(50.91)	672(1414.43)
2007***	75(56.86)	546(1030.22)
<b>Adoptions Finalized</b>		
1997***	3(3.83)	31(61.78)
2007***	3(4.89)	35(61.21)
<b>Median Days to Adoption</b>		
1997	445(338.31)	489(228.16)
2007**	408(324.52)	349(153.99)

Statistically Significant at the .05\*, .01\*\*, .001\*\*\*

<sup>193</sup> See *id.* (assembling data from all eighty-eight counties). T tests: Fed Math: 1.63; State Match, -3.90; Local Match, 4.66; Children in Care 1997, 3.06; 2007, 2.84; Adoptions Finalized 1997, 2.99; 2007, 3.54; Mean Days to Adoption 1997, .655; 2007, -1.02.

Table 2 provides findings when the twelve metropolitan and major metropolitan counties are removed. There are differences related to funding distributions. The state mean percentage match for non-levied counties is still 37%; however, the state mean percentage match to these smaller levied counties is 29% and becomes statistically significant. Likewise, although the local mean percentage contribution appears to be similar, 13% compared to 8%, it becomes statistically significant as well.

**Table 2. Examining the Differences Between Small, Medium-Small, Medium, and Large Counties (n=76) With and Without Levies<sup>194</sup>**

Variable	Levy County 2005	
	No 45(59 %)	Yes 31(41%)
<b>County Size</b>		
Small	20(44)	6(19)
Medium-Small	9(20)	5(16)
Medium	12(27)	9(29)
Large	4(9)	11(36)
	<b>Mean (s.d.)</b>	<b>Mean (s.d.)</b>
<b>Title IV</b>		
<b>2007</b>		
Fed % Match	55(6.58)	57(6.11)
State % Match***	37(9.96)	30(7.90)
Local % Match***	8(5.80)	13(4.51)
<b>Children In Care</b>		
1997***	72(50.91)	161(108.88)
2007***	75(56.86)	150(119.66)
<b>Adoptions Finalized</b>		
1997**	3(3.83)	6(5.61)

<sup>194</sup> See PCSAO 9th ed., *supra* note 170 (assembling data from select counties). T tests: Fed Math: -1.59; State Match, 3.42; Local Match, -3.96; Children in Care 1997, -4.78; 2007, -3.68; Adoptions Finalized 1997, -5.61; 2007, -4.00; Mean Days to Adoption 1997, .032; 2007, 1.04.

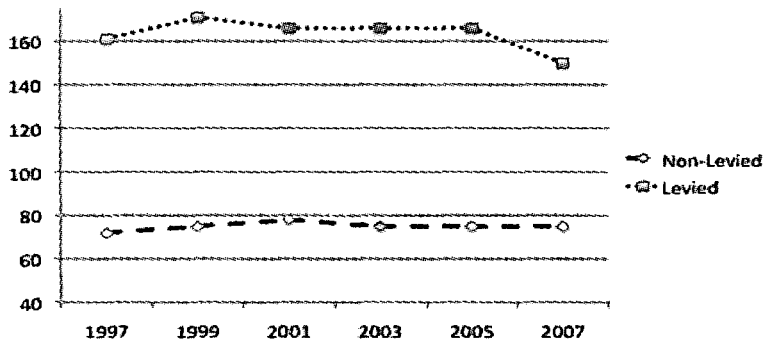


2007***	3(4.89)	10(8.99)
<b>Median Days to Adoption</b>		
1997	445(338.31)	442(203.70)
2007	408(324.52)	338(157.16)

Statistically Significant at the p value = .05\*, .01\*\*, .001\*\*\*

The mean number of children in care per year for counties with dedicated tax levies is significantly higher than that for those without levies, as we suspected given the distribution of larger counties with levies. When including all eighty-eight counties, as seen in Table 1, counties with levies decreased the mean number of children in care from 672 to 546 from 1997 to 2007, while the mean number of children in care in non-levied counties increased from seventy-two to seventy-five in the same period. Taking out the twelve largest counties, Figure 1 depicts the trend was similar over a ten-year period with an overall decline for those levied counties from 161 to 150, compared to seventy-two with an overall increase to seventy-five for the non-levied counties.

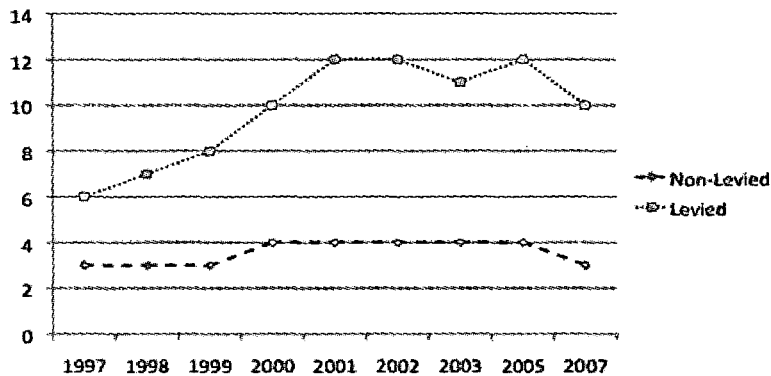
Figure 1: Children in Care



Between 1997 and 2007, the number of children placed for adoption remained constant for non-levied counties at three children, but increased for the counties with a levy from thirty-one to thirty-five children per year when the larger counties were included. Likewise, Table 2 provides data without the larger counties and still documents the increase from six children who were adopted on average for levied counties to ten children,

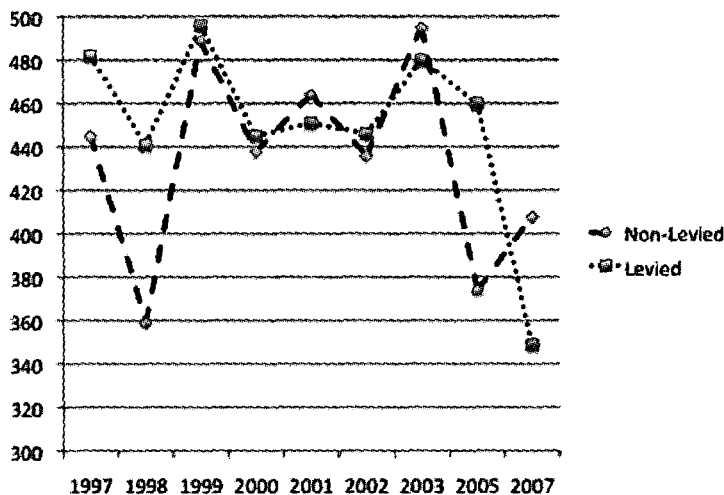
comparing 1997 to 2007. Figure 2 provides an overview of the ten-year period with the larger counties removed and depicts an overall increase in the number of children placed for levied counties.

**Figure 2: Adoptions Finalized**



Perhaps of all the analysis, that which is of most interest is the median days to await adoption. Regardless of the size of the county, or levy status, federal, state, and local policies all aim towards placing children into adoption in an expedient manner. The analysis of both Tables reveals that counties with a levy decreased the number of days that children waited for an adoption by 140 days between 1997 and 2007, from 489 to 349. Non-levied counties showed a difference of thirty-seven days, decreasing from 445 to 408. Even with the larger counties removed, the levied counties still reduce the mean days a child awaits placement by 104 days. In the life of a child, that means permanent placement is achieved months earlier for those counties with levies. Figure 3 depicts the ten-year trend for levied and non-levied counties with the larger counties removed. The overall difference for levied counties was 104 days versus a 37 day difference for non-levied counties.

Figure 3: Median Days Awaiting Adoption



This analysis is preliminary, but the positive outcomes for counties with levies in comparison to non-levied counties suggest that the use of dedicated tax levies should be studied further. It also suggests that funding mechanisms may have an impact on the services delivered to children in the child welfare system.

## V. CONCLUSION

Since 1961, the federal government has played a major role in the child welfare system by enacting laws attempting to balance the rights and responsibilities of the parent, child, and state.<sup>195</sup> Each of these laws has contained mandates attempting to address the problem of child abuse and neglect, directing states to redesign their child welfare systems to meet these mandates.<sup>196</sup> The key aspects of these laws are not just the mandates, but also the funds that flow to states to reimburse them for their child welfare services. Complex, discrete categories of service that bear little relationship to practice, and funding mechanisms that do not match policy incentives are in all the major pieces of federal legislation.

<sup>195</sup> See *supra* note 1.

<sup>196</sup> See discussion *supra* Part II.

States use a variety of strategies to maximize federal dollars into their states,<sup>197</sup> but these bear no relation to the mandates attempting to force quality service delivery. The funding strategies do not match the mandate incentives. Although the federal government mandates prevention over placement,<sup>198</sup> states spend little on prevention in relation to placement, and placement costs continue to grow.<sup>199</sup> The federal government provides dedicated funding sources for child welfare, but funds are increasingly used from other sources, draining resources from other human services needs, due to their more attractive matching rates.<sup>200</sup> There is no uniformity in terms of how states categorize the same service, each using a different mix of funding streams. Costs vary between states for a given type of service, not only because of the cost of the service, but also because of the accounting between the various categories.<sup>201</sup> Administration to service ratios vary wildly.<sup>202</sup> The fiscal slights-of-hand make national trends deceiving and meaningful evaluations impossible.

There is no uniformity between the states in how they apportion the costs between the federal, state, and local governments. If states with similar apportionment are grouped together, the quality of service, based upon HHS assessments, runs the spectrum from grossly out-of-compliance to model compliance. Likewise, comparing counties within a state would result in a similar spectrum of service delivery quality.

Because local funds are a major component of the child welfare system, we analyzed data from Ohio to determine whether one funding strategy—local dedicated tax levies—positively correlated with child welfare outcomes. We found over a ten-year period that the number of children in care, number of finalized adoptions, and mean number of days spent awaiting adoption were all better for the counties with a levy than for those without. This suggests the need for further study of local funding mechanisms and their impact on the delivery of adoption and other child welfare services.

The substantive and fiscal dimensions of federal child welfare policy must be in sync to deliver quality services to children and families. Especially in times of fiscal retrenchment, analyses of which fiscal policies

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<sup>197</sup> See discussion *supra* Part III.A.

<sup>198</sup> See discussion *supra* Part III.B.

<sup>199</sup> See discussion *supra* Part III.B.

<sup>200</sup> See discussion *supra* Part III.A.

<sup>201</sup> See discussion *supra* Part III.A.

<sup>202</sup> See discussion *supra* Part III.A.

at the federal, state, and local levels lead to the best outcomes are important to provide quality, efficient services to children in need.