

## 33 Reforms to Help Kids in Foster Care During the Pandemic and After

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### PURPOSE

The pandemic has tattered the safety net for our nation’s vulnerable children.

History tells us that economic downturns lead to increases in child abuse cases and increases in the number of children placed into foster care.<sup>1</sup> 2020 is proving to be no different. ER doctors and pediatricians report seeing an increase in cases of severe abuse and child fatalities.<sup>2</sup>

Child protection agencies need to shift – and quickly - to protect at-risk children. State laws must allow them to do so.

This nonpartisan concept memo was prepared in response to the inquiries Gen Justice has received requesting foster care policy recommendations. This memo is not inclusive nor comprehensive, but rather, designed as starting point for state lawmakers and child welfare reformers to tailor to local needs.

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<sup>1</sup> Berger, Rachel & Fromkin, Janet & Stutz, Haley & Makoroff, Kathi & Scribano, Philip & Feldman, Kenneth & Tu, Li & Fabio, Anthony. (2011). Abusive Head Trauma During a Time of Increased Unemployment: A Multicenter Analysis. *Pediatrics*. 128. 637-43. 10.1542/peds.2010-2185; Schlesinger, Michelle. (2010). What Happens to Child Maltreatment When Unemployment Goes up?; Rachel. (2017, November 24).

<sup>2</sup> Natanson, H., & Schmidt, S. (2020, May 05). With kids stuck at home, ER doctors see more severe cases of child abuse, from <https://wapo.st/2Hccfcm>.

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## **Outline of Reform Topics**

Older Children  
Foster Children with Disabilities and Education  
Recruiting and Retaining Foster Families  
Oversight and Court Participation  
Missing Children  
Time in Care and Child Stability  
Protecting Infants and the Most At-Risk Children

## **OLDER CHILDREN**

Nearly 20,000 children each year age out of foster care without families; these children face dismal odds. Kids who age out of state care are more likely to go to prison than to college, and forty percent of these children will experience homelessness by age twenty-one.<sup>3</sup> It is incumbent upon states to improve the outcomes for these children by increasing adoption efforts and providing meaningful job training and employment opportunities.

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<sup>3</sup> Dworsky, A., & Courtney, M. E. (1970, January 1), from <https://www.chapinhall.org/research/midwest-evaluation-of-the-adult-functioning-of-former-foster-youth>; Dworsky, A., & Courtney, M. (1970, January 1), from <http://www.chapinhall.org/research/extended-foster-care-delays-but-does-not-prevent-homelessness/>

## **1. Promote Job Opportunities with an Employment Tax Credit**

The high rate of unemployment for young adults who age out of the foster system can be greatly improved by the private sector. At the federal level, the Work Opportunity Tax Credit provides a tax credit for employers who hire people who traditionally face employment barriers, like veterans and the formerly incarcerated. States can likewise provide a tax credit for companies that hire teens and young adults in and from the foster system. New Mexico enacted legislation implementing this credit in 2018 and provides a blueprint for other states to follow.<sup>4</sup>

Additionally, governors can encourage state agencies and local businesses to develop job and internship programs for foster youth and young adults. Models of successful employment programs exist across the nation, like Safeway's program for employees with disabilities and Hickman Family Farm's employment model for the formerly incarcerated. These programs provide successful blueprints for businesses to adopt.

## **2. Expedited Adoptions**

A common theme for older children is how challenging it is to find adoptive families for them. But some older children have families actively trying to adopt them, but the process is delayed or made impossible before the child ages out due to red tape. A child's adoption should never be stymied due to systemic

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<sup>4</sup> New Mexico [SB231](#) (2018); [NM Stat § 7-2-18.30 \(2018\)](#).

delay. State law can require that adoptions for teenage foster children, including all safety measures like social and home studies, be complete within six months.<sup>5</sup>

Read more:

[Isaac hadn't had a mom in 13 years. When I tried to adopt him, he was told it was too late](#), Arizona Republic.

### **3. Reform: Foster Care Savings Account and Financial Incentives**

An innovative option to promote education and employment for youth aging out of foster care while encouraging them to stay “on the radar” are foster care trust accounts. Using the extended foster care model, states can incentivize youth who follow established guidelines and meet key milestones (a diploma or GED and continuous employment, for examples) with a financial “bonus” that can be used on predetermined expenses. Funding could come from different sources, including existing revenue streams for extended foster care, donations, and tax credits.

States that have an Adoption Tax Credit could reform the law to allow the credit to become a refund for eligible foster youth. The adoption tax credits currently provide no benefit to young adults who age out of the foster system and this reform could be a significant reward for successful outcomes.

Similarly, states with an Earned Income Tax Credit for the working poor could lower the age minimum to eighteen for eligible young adults from foster care. This would encourage employment and provide financial assistance for young adults aging out of foster care to avoid homelessness.

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<sup>5</sup> Arizona adopted [SB2378](#) in 2019 expediting adoptions for older foster children.

#### 4. “Unadoptable” is Not an Option

A family should never be off the table for a child, no matter the child’s age, special needs, or traumatic past. States should end the practice of labeling any child as “unadoptable” or entering a case plan of “long-term foster care” without explicit and written child consent. States should be encouraged, and perhaps incentivized, to partner and contract with licensing agencies, social workers, faith-based and private sector organizations to recruit adoptive families for these children.

Read more:

[After 20 Years, Young Man Leaves Foster Care On His Own Terms](#), NPR.

### **FOSTER CHILDREN WITH DISABILITIES AND EDUCATION**

Over half of foster children have a form of disability, developmental delay and/or a mental health issue. Many children in state care are therefore eligible for public school special education services. Too often, however, foster children fall through the cracks of the education system and do not receive the services and supports they need and to which they are entitled, leading to increased numbers of school dropout rates.

#### 5. Allow Foster Parent Consent for Special Education

Per federal law, schools require parental consent before special education services can be implemented. This presents a barrier for foster children in many states. When a child is removed from a parent due to abuse or neglect, the parent often retains the right to make educational decisions for that child. Oftentimes, the parent does not participate in these educational decisions or their whereabouts are unknown. Without parental consent, educators are legally

unable to move forward, leaving children unevaluated, unsupported, and unable to benefit from the myriad of services offered by public schools for children with disabilities.

States must address how to proceed if the parent does not attempt to participate in the special education process. In statute, states can allow the child’s foster parent or relative caregiver to consent to these crucial education decisions on behalf of a foster child. This does not negate the rights of the biological parent(s) but provides children in state care the same access to public school services as other children.<sup>6</sup>

Read more:  
[Hearings: With Mom Absent, an Education Plan Stalls](#), The Chronicle of Social Change.

## 6. Foster Student School Screening

Only fifty percent of children in foster care graduate high school, compared to the national graduation average of eighty-five percent.<sup>7</sup> Foster children change schools frequently and their educational needs are often not identified or put into place after a move. To ensure that schools are providing necessary supports to children in state care, public schools should screen all newly-enrolled foster children for special needs and other support services. This simple statutory check can provide a critical backstop for children who are at risk of getting lost in the shuffle.<sup>8</sup>

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<sup>6</sup> Arizona removed this barrier to special education by adopting [HB2378](#) in 2019.

<sup>7</sup> ABA Center on Children and the Law. (2014). Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care, from <https://bit.ly/36OZNIw>

<sup>8</sup> In 2020, Georgia enacted [HB855](#) providing this critical check for children.

## **7. Enforce Federal Law by Requiring a Timeline for the “Best Interest Determination” Before a School Change and Clarify Student Transportation**

Historically, every time a foster child moved to another placement, the child was forced to change schools. For many children, this meant a new school every few months, losing credits and classwork, and leaving a safety net of friends and staff behind. Federal law recently changed this practice by allowing a foster child to remain in his or her school if a best interests determination showed that this was the best option for the child.

While a handful of states have addressed this, many school districts are struggling to successfully implement this federal law and children continue to move schools automatically without the mandated best interest analysis. To assist, states can issue statutory guidance that the child’s team must conduct the student’s best interest determination within five days of learning about the placement change. This determination will decide whether the child moves schools or stays in the current school.

Secondly, and if it is determined that the child will stay in the school of origin after the child moves, transportation to that school must be arranged. Currently, funding responsibility for this transportation is blocking the intent of the law. States can remedy this confusion by clarifying which entity initially pays the transportation (the child welfare agency or school, for example) and, if applicable, provide a reimbursement mechanism.

### **RECRUITING AND RETAINING FOSTER FAMILIES**

The number of children entering the foster system is increasing and states are facing critical shortages of foster parents, leaving group homes and institutional

care as the only options for abused children.<sup>9</sup> The following ideas can assist states in recruiting and retaining licensed foster families.

Read more:

[The crisis in foster care](#), Washington Post.

## 8. Licensing Reciprocity Between States

Foster parent licensing regulations are developed by each state and may vary in detail, but the singular focus of every state’s licensing process is to ensure that licensed foster parents are safe and stable. When licensed foster parents move out-of-state, they must begin the licensing process from scratch to continue fostering. As part of the effort to retain foster parents, states could offer reciprocity with other states, streamlining the process to retain as many available safe placements for children as possible.

## 9. “Grandfathering” Requirements for Licensing Renewals

Many foster parents close their foster licenses due to the burdens of the extensive annual process or because they need a temporary break. While it is, of course, imperative that states take every precaution to license only safe and appropriate homes, the renewal process for former foster parents could allow for current foster parents to be “grandfathered” in on some regulatory aspects. Current criminal checks should always be maintained, but some of the requirements the home has already met could be waived or documented by affidavit on the part of the foster parents.

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<sup>9</sup> Neilson, S. (2019, July 15). More Kids Are Getting Placed In Foster Care Because Of Parents' Drug Use, from <https://n.pr/3913sFX>; Number of children in foster care continues to increase. (2017, Nov. 30), from <https://bit.ly/36N2vOv>.

## 10. Recruit America’s “Empty Nesters”

Every child deserves a safe and loving home, but it goes without saying that it can be more difficult to find willing and able homes for older foster children. Foster parents tend to be younger parents with other children in the home and recruitment efforts tend to focus on this demographic. But older children often need the one-on-one attention that being an only child can provide and these children sometimes come with behaviors that put other children in the home at risk. Older foster children could thrive with the patience, authority, and stability of older adults. America’s empty-nesters are in a unique position to help this demographic of vulnerable children and states can develop recruiting programs aimed at retirees and encourage licensing agencies to do the same.

Read more:

[More Older Adults Seek to Adopt](#), AARP.

## 11. Outsource the Search for Adoptive Placements

Child welfare agencies cannot be tasked with every single aspect of foster care. The purpose of these state agencies is singular – to protect children and keep them safe. To ensure that agencies can focus on this goal, family recruitment efforts should be outsourced to nonprofit organizations like [Wendy’s Wonderful Kids](#), faith-based organizations, and other entities skilled at locating foster and adoptive homes for foster children. Outsourcing maximizes recruitment efforts while freeing up state agencies to focus on the safety of children.

## OVERSIGHT and COURT PARTICIPATION

Child welfare cases are not typically open to the public and the foster parents who best know the child are often precluded from participating in the child’s

court case. This makes advocacy for the child and overall oversight of the process challenging, if not impossible. The following reform ideas are designed to remedy these issues and ensure that relevant information reaches the court.

**12. Child Lawyers Should be Appointed in All Dependency Actions**

The single most effective way to change the foster system for the better is to appoint children in state care client-directed lawyers whose legal goal is to advocate for a safe and permanent outcome within twelve months. Research indicates that children with traditional attorney representation exit the system two to three times faster and have better outcomes, all while saving the state money.

Read more:  
[Twenty Years of Progress in Advocating for a Child’s Right to Counsel](#), American Bar Association; [Can Children’s Attorneys Transform the Child Welfare System?](#), American Bar Association.

**13. Foster Parent Involvement in Court Cases**

States vary greatly on the involvement of foster parents and relative caregivers in a child’s dependency court case. While some states allow foster placements to speak in a foster child’s hearing or request party status in the case, some states fail to involve caregivers at all. While the particulars of the judicial process vary from state-to-state, foster parents typically have the most information about the children in their care, yet across the board, are not adequately permitted to provide information to the court.

First, state laws should require that foster parents receive written or electronic notice of court hearings regarding the child(ren) in their care. Second, states should adopt a state law guaranteeing these caregivers the right of providing critical information to the court in the underlying court case.

States can independently determine when caregivers may take this role (after the child has been in care for six months, for example) and may choose the legal mechanism, such as intervention or sworn testimony, but the process should be spelled out in state law. The court shall consider this information, including information regarding the adequacy of the services for the child, proposed placement changes, educational issues, and the child’s health, safety, and well-being, in any rulings about the child.<sup>10</sup>

#### **14. Include Relevant Information from Child Professionals in Court**

In addition to the caregivers, state law can outline how other providers can reach the court when they have information about a child they believe is not being addressed sufficiently. For example, a child’s teacher, doctor, or therapist may have information that is essential to the protection of that child, but that is being overlooked. Again, the specific legal mechanism, like an application for an order to show cause, may be implemented state-by-state, but allowing truly relevant information about the child in the dependency action must be a priority.

### **MISSING CHILDREN**

More than 18,000 children went missing from America’s child protection system in 2017.<sup>11</sup> With no families to search for them, there is no real effort to locate these kids. Even more terrifying, FBI statistics indicate that children missing from foster care are fueling the domestic child sex trafficking trade. Research shows

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<sup>10</sup> In 2019, Georgia adopted [SB439](#) guaranteeing caregiver participation.

<sup>11</sup> <https://www.missingkids.org/theissues/cmfc>

that children in group homes and children who have had multiple foster placements are particularly vulnerable.

Read more:

[How can social services lose 18,000 children – and not look for them?](#) Arizona Republic.

## **15. Require Photographs and State ID Cards**

According to law enforcement, a simple photograph would greatly assist police departments in locating missing foster children. But without a family to snap a photo and often lacking access to cell phones or even social media, recent photos of foster children are scarce. Without a recent photo, law enforcement agencies are unable to search for children missing from foster care, leaving the children with no hope of being found.

A simple, yet critical update to state child welfare statutes is to waive the cost of state identification cards for all children in foster care and to require a state ID card for every child in a group home. If a child goes missing, the state identification card photo can easily and immediately be linked to national and local databases with the click of a button.

## **16. Provide Education on Trafficking**

On the prevention side, states can require that children in foster care be provided with age-appropriate and meaningful information about sex trafficking. Without families to teach and protect them, it falls to the states to make sure these at-risk kids are educated about the common predatory online and in-person efforts to harm them.

## **17. Require School Reporting**

Schools are in a unique position to identify when a child is in harm’s way or may be missing from care. Already tracking attendance, schools withdraw students after a set number of unexcused consecutive absences. When a withdrawn foster student is not tied to a legitimate reason for the withdrawal (enrollment at another school or homeschooling, for examples), state law should require that the student information be reported to the child welfare agency immediately. This provides another safety net to ensure that every missing child is identified and reported.<sup>12</sup>

## **18. Stop Labeling Children as “Runaways”**

When a child runs from their family home and does not return, the child is termed “missing” or even “kidnapped,” lending an appropriate urgency to recovery efforts. But children missing from foster care, whether or not they leave voluntarily, are categorized as “runaways.” This disparate treatment implies fault on the part of minor foster children and allows agencies to simply write these missing kids off without search efforts. A foster child whose whereabouts are unknown should be classified as “missing” and every effort should be made to locate them.

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<sup>12</sup> This reform concept could have prevented the death of Arizona eleven-year-old Ana Loera: Thomason, B. (2020, February 06). Principal talks about little girl whose bones may have been found in Phoenix home, from <https://bit.ly/3msBcPE>

## 19. Utilize Available Technology

Technology exists that would greatly improve the number of missing children recovered, but it is not being utilized. For example, facial recognition technology, mobile fingerprinting scans and social media are all powerful tools for locating missing persons but are rarely being used to find children missing from foster care. In addition, an online database listing the children missing from care with photographs and identifying information that can be shared and posted could be developed easily in each state and harness community efforts to locate these children.

### **TIME IN CARE and CHILD STABILITY**

States routinely violate the federal law requiring a move to permanency in a child’s dependency matter when the child has spent fifteen months in state care.<sup>13</sup> Despite mountains of research that children in stable, permanent homes have better outcomes, nearly forty percent of children spend over eighteen months in foster care.<sup>14</sup> The following concepts decrease the time foster children spend in the system and put the emphasis on the stability and best interests of the child.

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<sup>13</sup> Riley, N. S. (2020). “Children Are Not Chattel.” *National Review*, 72(21), 25–27 (“...of the children who had been in the foster-care system for at least 15 of the past 22 months, only 14.3 percent became legally free adoption.”)

<sup>14</sup> Administration for Children and Families. Administration on Children, Youth and Families, Children’s Bureau. (2019). [The AFCARS Report \(No. 27\)](#). U.S. Department of Health and Human Services, p.5.

## 20. Immediate Relative Search and Child Stability

States outline the placement preferences for foster children in statute that appropriately prioritize relative placements. However, often these statutes do not incorporate the federal requirement that requires a timely search for relatives of children placed into foster care within 30 days, nor do the state laws require court oversight to ensure that relatives are found quickly so that children can be placed in a stable home as soon as possible. Finally, state laws frequently lack timelines by which the relatives must assume placement. This allows children to be moved without regard for their best interests from stable non-relative foster homes months and sometimes years into the process simply because social services neglected to perform an adequate relative search at the onset of the case.

Two pieces of model legislation were adopted by ALEC on these precise issues: the [Relative Search Act](#) and [Family Stability Act](#). These two reforms, enacted in Arizona and Georgia, work together to require a diligent and immediate search for relatives, provide court oversight for this search, and allow non-relative foster parents to remain as the child’s placement after a set timeframe to prioritize the best interests of the child.<sup>15</sup>

Read more:

[Georgia’s foster care reform bill: Blood relatives shouldn’t always have legal preference](#), USA TODAY; [There’s a Better Way to Do Foster Care](#), Tampa Bay Times.

## 21. 30 days to Start Reunification Services

Federal law requires children’s court cases to move to adoption after fifteen

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<sup>15</sup> Arizona and Georgia adopted versions of these two model acts, in Arizona [SB1473](#) (2018) and Georgia [SB167](#) (2019).

months in care, but this timeline does not start to run until reunification services for the parent(s) are put in place. These services, such as drug treatment, counseling, and childcare, are often not put into place for months. This delays progress on the part of the parents, and results in children spending unnecessary time in foster care. To address this issue, states should mandate that reunification services be put into place within thirty days from the child's entry into foster care.

## **22. Parental Obligations Must be Clear**

When reunification services are put into place for parents, the obligations should be set forth in writing in a clear, concise, and detailed manner. The offer of tax-funded state services is essentially a contract and parents must know the terms of precisely what they must accomplish in order to reunify with their children and in what timeframe. Second, state law should make it clear that a material breach of this agreement is a legal basis for termination of parental rights. This enhances fairness for the parents who are sincerely attempting to reunify by outlining the exact requirements, goals, and timeframes, and simultaneously expedites adoption for children when it is clear they cannot safely return home.<sup>16</sup>

## **23. Reduce Court Continuances and Unnecessary Delays**

Too often, a child's court case is delayed due to generic scheduling conflicts of the involved adults. Time is of the essence for establishing permanency for children and unnecessary delays in a child's case should be curtailed in state law. Federal and state time limitations are a child's right and should not be waived, extended, or continued absent extreme and noteworthy circumstances.<sup>17</sup>

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<sup>16</sup> Florida, in [FLA. STAT. § 39.806](#), incorporates "material breach" in statute and serves as an example.

<sup>17</sup> Florida's statute at [FLA. STAT. § 39.0136](#) serves as an example.

## 24. Limit Time in Care to Twelve Months

When a child has been in out-of-home foster care for fifteen months and is still unable to safely reunify with his or her parents, federal law requires that the state move to terminate the parental rights so the child can be adopted. The federal fifteen-month time in care deadline is the maximum amount of time a child can be in foster care. States are free to consider a shorter timeframe.

When the fifteen-month deadline was implemented into federal law, in-home prevention services were not available to families and children were routinely and more frequently removed. Now however, if a child is removed from the home, it is either because in-home services were not successful and / or the child was in too much danger of repeat harm to remain in the home. In light of the shift to prevention, a twelve-month timeframe for children in out-of-home care allows ample time for parental progress and allows the children who are unable to reunify to proceed to adoption in shorter time.

Read more:

[Don't Let Vulnerable Children Linger in Foster Care](#), Arizona Daily Star.

## 25. Break Out Neglect into Meaningful Categories

Children currently enter foster care for two reasons: abuse or neglect. “Neglect” has become a catch-all term that encompasses a broad spectrum of harm to children. To effectively develop policies and laws that better protect children, more information is needed and should be tracked. For example, and just to name a few, states should track whether children enter the system as a substance-exposed newborn, because a caregiver failed to obtain necessary medical care for the child, due to mental health issues on the part of the parents, drug exposure in the home or caregiver addiction. More detailed information about the removals of children from their homes would also provide transparency

to ensure children are not removed due to poverty or lack of resources. Without accurate and transparent information, child welfare laws cannot effectively develop.

**26. State-Funded Drug Treatment for Pregnant Mothers to Improve Infant Health**

Every fifteen minutes, a child is born addicted to drugs.<sup>18</sup> But child welfare funding streams, generally, are not available for pregnant women with substance abuse issues. Allowing state funds to be utilized for programs that assist pregnant women in their treatment efforts would decrease the likelihood of foster care by giving the parent a longer runway for sobriety and decrease the effects of drug exposure in the infant.

**PROTECTING INFANTS AND THE MOST AT-RISK CHILDREN**

Infants and children facing extreme danger need additional protections to ensure their safety. The following are policy recommendations for these vulnerable children.

**27. Abandoned Infants Should Receive Expedited Permanency**

Every state has grounds for terminating the parental relationship on the basis of abandonment. Abandonment is a choice made by a parent that can take many forms, such as leaving an infant in a park, leaving a newborn in the hospital after birth, or failing to make minimal efforts to visit or communicate with the child.

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<sup>18</sup> National Institute on Drug Abuse. (2020, October 01). Dramatic Increases in Maternal Opioid Use and Neonatal Abstinence Syndrome, from <https://bit.ly/3II98YU>

State laws should provide a specific timeline in the legal definition of abandonment for children under the age of one. Infants who have been intentionally left with no subsequent or meaningful efforts should not linger unnecessarily in the foster system without a permanent home when stability and attachment in the first year of a child's life is critical. States should implement a strict timeline in their abandonment statutes of no more than three months when sufficient contact from a birth parent has not been made.

## **28. Allow Parents to Choose to Relinquish**

The decision to relinquish an infant is rarely part of the discussion around parental rights and it should be. Parents, especially those with addiction issues, who know they are unable to parent are left with few options. Abandonment often comes with criminal charges and states lack adequate mechanisms to provide mothers with a voluntary choice, forcing parents' unwilling entry into the child welfare system.

States should expand laws to ensure that parents who knowingly choose to relinquish their infants are able to do so. With appropriate safeguards, this honors the parent's choice and allows infants to avoid foster care and move to adoption immediately.

## **29. Methamphetamine**

The increasing rate of drug abuse in our country is having a devastating impact on our nation's children. While not a reform per se, it is imperative that states recognize that while the opioid crisis gets more headlines, methamphetamine is still a raging epidemic in our country. Meth is particularly dangerous as it is a stimulant, not a depressant like heroin, and results in delusions, paranoia, aggression, and an altered reality.

Child welfare agencies must be cognizant that meth users pose a unique and extreme danger to children. States must look at their own data, including child abuse and fatalities involving meth use, and evaluate whether safety plans that allow children to live with known meth users are truly safe. The decision must weigh in favor of protecting the child.

Read more:

[A girl was drugged with meth, abused and killed. One of the suspects: Her mother.](#), The Washington Post; [Meth-Addicted Mothers and Child Abuse](#), The Atlantic; [Coroner: Ohio baby found in well was placed in plastic bags, crates bound by chains](#), 10 Tampa Bay.

### **30. The Required “Red Flags” Must Protect Children from Extreme Risks**

Federal law outlines several dangerous conditions that put children at extreme risk of repeat abuse, making reunification with parents presumptively too dangerous. Federal law outlines several of these conditions, such as torture or chronic abuse, but leaves it to each state to define these “aggravated circumstances” in statute. When one more of these conditions is present, the states are encouraged to move a child’s case toward permanency and adoption. Federal law allows states to expand upon the list and tailor the dangerous conditions to their state. The following state reforms improve this process and ensure the federal law is being utilized to protect the most at-risk children.

### **31. State Law Must Enforce Aggravated Circumstances**

Too often, the aggravated circumstances defined in state law do not protect the child because these red flags do not reach the court. Children who, by law, should move to permanency are lingering unnecessarily in foster care, but more worrisome is that children are being returned to known dangerous situations.

State laws should incorporate a “check” to make sure these extreme situations reach the court. Child welfare agencies should investigate whether one or more

aggravated circumstances exist at the onset of the child’s court case and alert the court in a pleading or affidavit. If one of the circumstances exists, the court should schedule a hearing and make an expedited decision as to the child’s permanency plan.

### **32. Add Chronic Substance Abuse**

States have wide latitude in developing the list of aggravated circumstances. Despite the increase in children entering our nation’s foster care due to parental drug abuse, many state laws do not include chronic drug use as one of the circumstances. This oversight leaves children, especially substance-exposed infants, at extreme risk.

States should add specific language to their respective statutes that a history of chronic substance abuse coupled with refused or failed prior treatment and/or prior infants born exposed to drugs may expedite a child’s case to permanency. It is important to note that this is not an automatic decision, but rather a legal safety net to ensure that known dangers facing the most vulnerable children reach the court.

Read more:  
[Helpless & Hooked: The most vulnerable victims of America’s opioid epidemic](#), Reuters Investigations.

### **33. Clarify All Statutory Aggravated Circumstances**

Due to ASFA, every state defines aggravated circumstances in statute. This is a crucial, yet underused, part of the law. Some state statutes simply copy the federal language while others have tailored the language to address specific state issues. States are encouraged to take the latter approach and should review the current statutory language with fresh eyes, amending the language to be clear

and to ensure it effectively protects the children in the greatest danger as the federal law intends.