
CHANGING THE BALANCE: RHODE ISLAND'S AMENDED TERMINATION OF PARENTAL RIGHTS STATUTE

I. INTRODUCTION

Rhode Island's child welfare system is governed by several statutes that address the care of abused and neglected children.¹ The statutes conform with federal funding requirements, which mandate the pursuit of permanent homes for every child.² Section 15-7-7 of the Rhode Island General Laws³ governs the involuntary termination of parental rights.⁴ This statute, and the concept of involuntary termination of

1. See, e.g., R.I. GEN. LAWS § 14-1-34 (1994) (placement of dependent and neglected children); R.I. GEN. LAWS § 15-7-7 (Supp. 1994) (termination of parental rights); R.I. GEN. LAWS § 40-11-12.3 (Supp. 1994) (guardianship subsidies). In Rhode Island, the Department of Children, Youth and Families (DCYF) implements child welfare policy. R.I. GEN. LAWS § 42-72-1 (1993).

2. The Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C.) (AACWA) dictates federal policy.

3. R.I. GEN. LAWS § 15-7-7 (Supp. 1994). The termination of parental rights statute appears in Chapter 7, entitled "Adoption of Children." See *infra* part IV for a detailed discussion of the statute.

4. Termination of parental rights refers to the formal removal of the parent's capacity to consent to the adoption of the child. This technical description does not convey the full impact of the act: termination of parental rights ends the relationship between parent and child. See *infra* text accompanying notes 206-09. Once the court terminates parental rights, the state retains guardianship over the child until adoption occurs. R.I. GEN. LAWS § 40-11-12 (Supp. 1994). Parents may voluntarily terminate their parental rights by waiving consent to the future adoption of the child. R.I. GEN. LAWS

parental rights, is integral to the implementation of the permanency goal.⁵ In July, 1994, the Rhode Island General Assembly modified section 15-7-7⁶ as part of a package of child welfare amendments.⁷ These amendments represent one stage in an overall reform of Rhode Island's child welfare agency.⁸ The modifications accelerate the

§ 15-7-6 (1988). A separate statute addresses termination of the rights of putative fathers. R.I. GEN. LAWS § 15-7-26 (1988). Section 15-7-7 addresses the involuntary termination of parental rights. R.I. GEN. LAWS § 15-7-7 (Supp. 1994). This state-initiated proceeding terminates the residual rights of parents who previously lost custody in an adjudication of neglect or abuse. *Id.* Residual rights include the right to consent to adoption and the right to visitation. MARY A. MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES 149-50 (1994).

5. See *infra* notes 79-82 and accompanying text for a discussion of the role of the termination of parental rights statute in securing permanent homes for children.

6. R.I. GEN. LAWS § 15-7-7 (Supp. 1994).

7. Telephone Interview with Representative Nancy Benoit, Chair of the Rhode Island House DCYF Oversight Committee (Jan. 8, 1995). The General Assembly also modified R.I. GEN. LAWS §§ 40-11-12, 40-12.1 to -12.3 (Supp. 1994). The effect of these modifications is two-fold: (1) Changes to § 40-11-12.1 shorten the length of time a child is in DCYF's care before Family Court holds a dispositional hearing; (2) Changes to §§ 40-11-12 and 40-11-12.3 create a subsidized guardianship alternative to termination of parental rights and adoption. See *infra* notes 51 and 188 for a discussion of dispositional hearings. See *infra* notes 308-11 and accompanying text for a discussion of guardianship.

In addition, the General Assembly authorized the addition of one judge to Family Court to reduce the backlog of child welfare cases. The court was delayed in assigning that judge to the DCYF calendar full time pending funding of an additional public defender position to represent parents. Gina Macris, *Reuniting Families Leaves Abused Children in Limbo; New Laws Prod Debate Among Social Workers About Trying to Fix Broken Families*, PROV. J.-BULL., Feb. 5, 1995, at A1, A17.

8. DCYF is responsible for the juvenile correction system, children's mental health, and the more traditional child welfare services to abused and neglected children. See R.I. GEN. LAWS § 42-72-16 to -18 (1993) for a discussion of DCYF's responsibilities. DCYF and the Department of Mental Health, Rehabilitation and Hospitals share the services for developmentally disabled children. *Id.* § 42-72-18. The child welfare agency was named Child Welfare Services, and the Department for Children and Their Families, prior to its current appellation. See *id.* § 42-72-16(A) (transferring power over the administration of child welfare services to DCYF). For purposes of this Note, the earlier-named versions will be referred to as either "the state" or "DCYF."

After a series of highly publicized deaths and injuries to children, the legislature mounted an effort to reform the functioning of DCYF to more adequately protect Rhode Island's children. The General Assembly DCYF Oversight Committee, co-chaired by Representative Benoit, provides ongoing legislative review. See, e.g., Laureen D'Ambra & Noreen Shawcross, *Formalized Office of Child Advocate Effectively Monitors Children in State Care*, BROWN U. CHILD AND ADOLESCENT BEHAVIOR LETTER, March, 1993, at 2, available in LEXIS, News Library, ARCNEWS File; Laura M. Kirk, *No Jail for Mom in Child's Murder*, SACRAMENTO BEE, Aug. 11, 1993, at A5; Gina Macris, *Joann Rossi-*

termination process; the goal is to increase adoptions for children removed from their parents.⁹

In developing a system for responding to the needs of children who cannot remain at home with their parents, each state has adopted the goals of the permanency planning movement.¹⁰ A focused analysis of the history and application of one state's efforts to implement permanency planning goals may assist analysis of child welfare systems in other states. Thus, this Note provides a detailed description of Rhode Island's child welfare system and the statute governing termination of parental rights.

Specifically, this Note examines the implications of amended section 15-7-7 in the context of child welfare's mission.¹¹ Part II briefly outlines the historical development of the current child welfare policy, the federal mandates to the states, and the role of the termination of parental rights in child welfare policy. Part III examines decisions of the United States Supreme Court and Rhode Island Supreme Court, and their respective analyses of the competing interests of the child, the parent, and the state. Part IV provides a detailed examination of the history of the termination of parental rights statute in Rhode Island, and the effects of the recent amendments. Part V considers the impact of the changes on policy and service delivery within the child welfare system in Rhode Island.

Casiano Admitted Hitting Son, Investigator Testifies, PROV. J.-BULL., June 7, 1994, at 4D. The legislative package discussed in this Note is one outcome of the reform effort, and was drafted by a commission consisting of members of the Oversight Committee; the Chief Justice of Rhode Island's Family Court, the Hon. Jeremiah S. Jeremiah, Jr.; Family Court Associate Judge Raymond Shawcross; the Child Advocate, Laureen D'Ambra; and the Director of DCYF, Linda D'Amario Rossi. Telephone Interview with Kevin Aucoin, Chief Legal Counsel, DCYF (Jan. 5, 1994).

9. Telephone Interview with Kevin Aucoin, *supra* note 8. DCYF reports a significant increase in the number of termination petitions filed since the passage of the amendments. Macris, *supra* note 7, at A17.

10. See *infra* part II.B for a discussion of permanency planning.

11. "Child welfare" refers to the systemic response to children living in, or at risk for, out-of-home placement. The children served by the child welfare system may have special needs or handicapping conditions of their own. However, a concern about the parent's ability to care for the child triggers the attention of the child welfare system. CHILDREN'S DEFENSE FUND, CHILDREN WITHOUT HOMES: AN EXAMINATION OF PUBLIC RESPONSIBILITY TO CHILDREN IN OUT-OF-HOME CARE 3 n.5 (1978) [hereinafter CHILDREN WITHOUT HOMES]. See *infra* part II.B. for a discussion of the federal funding mandates for child welfare services.

II. THE CHILD WELFARE SYSTEM

The federal Adoption Assistance and Child Welfare Act of 1980 guides current child welfare policy in the United States.¹² This Part describes past solutions to the problems posed by children in need of assistance.¹³ A discussion of the federal legislative response to the unique problems of children follows.¹⁴ Finally, this Part discusses permanency planning and the role of the termination of parental rights statute in achieving permanent homes for children.¹⁵

A. *A Brief History of Child Welfare*

The federal government did not turn its attention to the plight of orphaned, abandoned, or otherwise needy children until the twentieth century.¹⁶ Early local solutions to the problem of destitute or abandoned children included indenture or apprenticeships, almshouses, and institutions.¹⁷ The use of indenture and institutional care declined throughout the nineteenth century.¹⁸ Simultaneously, private societies,

12. Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.).

13. See *infra* notes 16-30 and accompanying text.

14. See *infra* notes 31-59 and accompanying text.

15. See *infra* notes 60-82 and accompanying text.

16. See *infra* text accompanying note 29.

17. See Kermit T. Wiltse, *Current Issues and New Directions in Foster Care, in CHILD WELFARE STRATEGY IN THE COMING YEARS* 51, 54 (Children's Bureau, U.S. Dep't of Health, Educ. & Welf. ed., 1978); MASON, *supra* note 4, at 108-11. During the colonial period, children played an essential role in the labor force, whether as indentured servants, apprentices, or, in the case of black children, slaves. MASON, *supra* note 4, at 1-4. Courts reviewed indenture contracts, dealt with cases of runaway servants, and intervened in cases of neglect that threatened the economic viability of a child. *Id.* at 3, 4. In 1874, the first Society for the Prevention of Cruelty to Children was founded in New York, patterned upon the existing animal-protection societies. *Id.* at 101. Throughout the late nineteenth and early twentieth centuries, the states developed legislation proscribing the misuse of children and granting authority for the removal of children. *Id.* The authorities generally applied the laws to parents who were neglectful as a result of incompetence or unfitness. *Id.* at 104. Physical abuse of children was perceived as a form of parental discipline and, thus was tolerated. *Id.* at 102-03.

18. ALFRED KADUSHIN & JUDITH A. MARTIN, *CHILD WELFARE SERVICES* 346-47 (4th ed. 1988).

alarmed by the increase in the number of destitute and "vagrant"¹⁹ children in the cities, started the "placing-out" movement.²⁰ These societies sent large numbers²¹ of urban poor children, many of whom were neither vagrant nor orphaned, to rural Western communities.²² When the children arrived, townspeople placed them with families in exchange for the child's labor.²³ The private societies retained custody of the children and often sought to prevent reunification with their parents, whose only fault may have been that they lived in poverty.²⁴

The placing-out approach to finding homes for children had numerous shortcomings. No systematic screening of receiving families took place, and once placement occurred, no one provided adequate supervision.²⁵ The states that received these children responded by passing legislation regulating the practice,²⁶ while public agencies in other states began developing institutional care and foster homes as alternatives to placing-out.²⁷

These early state efforts were generally founded upon "child-rescue" principles of removing children from harmful environments, incidentally severing the relationship with the biological parent.²⁸ The initial

19. In the mid-nineteenth century, the Chief of Police of New York City reported there were approximately 10,000 vagrant children "who infest our public thoroughfares, hotels, docks, etc., children who are growing up in ignorance and profligacy, only destined to a life of misery, shame, and crime and ultimately to a felon's doom." *Id.* at 347.

20. Karoline S. Homer, *Program Abuse in Foster Care: A Search for Solutions*, 1 VA. J. SOC. POL'Y & L. 177, 182 (1993). See also KADUSHIN & MARTIN, *supra* note 18, at 347-50 (discussing the "placing out" movement and its founder, Charles Loring Brace).

21. By 1892, the Children's Aid Society had placed 84,318 children. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 494 (2d ed. 1985).

22. KADUSHIN & MARTIN, *supra* note 18, at 347-48.

23. *Id.*

24. *Id.*

25. Homer, *supra* note 20, at 182.

26. KADUSHIN & MARTIN, *supra* note 18, at 348. MASON, *supra* note 4, at 80. States were concerned that large numbers of juvenile delinquents were being "dumped" within their borders. *Id.*

27. KADUSHIN & MARTIN, *supra* note 18, at 349-50. These were the first modern foster homes. Some states paid foster parents board money, reflecting a shift away from placing children for their labor value, to securing homes to meet their emotional needs. *Id.* at 350.

28. "While well-intentioned, [the child-rescue] philosophy often doomed children to years of drift in foster care, with little or no hope of being placed in a permanent

involvement of the federal government²⁹ compounded the tendency for states to remove children: Federal programs provided states with funds for foster-care services, without requiring prevention or reunification efforts.³⁰ Permanency planning attempts to address this reliance on out-of-home placement as a solution to environmental deficits.

B. *The Adoption Assistance and Child Welfare Act of 1980:
A New Model for Child Welfare Services*

The passage of the Adoption Assistance and Child Welfare Act of 1980 (AACWA)³¹ made permanency planning³² the guiding principle of the child welfare system. The permanency planning concept developed in response to the inadequacies of earlier solutions to the problems of poor, orphaned, or abandoned children.³³ The core principle of permanency planning is the recognition that children need to form psychological ties with primary caretakers, and that, absent clear and serious harm to children,³⁴ those caretakers should be the child's

home." Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223, 255 (1990). Parents had no procedural safeguards beyond the writ of habeas corpus. Stephen R. Shealy, Note, *Does Connecticut Provide Adequate Due Process Protection to Parents Facing a Termination of Their Parental Rights?*, 8 CONN. PROB. L.J. 69, 72 (1993).

29. In 1935, Congress enacted Aid to Dependent Children, which provided states with funds for "needy dependent children." Homer, *supra* note 20, at 183. In 1961, Congress changed the focus from "aid to children to aid to families with dependent children," *id.*, creating the present day AFDC program.

30. *Id.* at 183-84.

31. Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.).

32. Permanency planning is "the systemic process of carrying out, within a brief, time-limited period, a set of goal-directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships." Homer, *supra* note 20, at 185 (citations omitted).

33. See *supra* part II.A for a discussion of earlier efforts to address children's needs.

34. The emphasis of the child welfare system has shifted from orphaned or abandoned children to those who have been abused or neglected within their biological families. See Wiltse, *supra* note 17, at 66 (stating that statutory removal criteria based on "specific harm to the child," rather than "parental conduct," are more relevant to the child's needs and more informative to the parent about remedial actions). See generally KADUSHIN & MARTIN, *supra* note 18, at 346-51 (discussing the history of child welfare services). This shift in emphasis to abuse and neglect reflects changes in family structures

parents.³⁵ Once a disruption occurs in a child's placement with her family, the child welfare system should quickly reunify the child with her family or find a permanent placement for her with another family through adoption.³⁶ Out-of-home placement³⁷ is meant to be only a temporary solution.³⁸

A growing awareness of children's psychological needs motivated the permanency planning concept.³⁹ Simultaneously, studies of out-of-home care revealed numerous detrimental conditions, primarily the

which resulted from increased single-parenting and poverty. MASON, *supra* note 4, at 121.

35. "Deference to parental child rearing . . . serves society's interests in fostering social pluralism and diversity, and supports our basic social institutions and values . . ." Marsha Garrison, *Child Welfare Decisionmaking: In Search of the Least Drastic Alternative*, 75 GEO. L.J. 1745, 1770-71 (1987). This deference to parents is codified in the AACWA: One of the purposes of child welfare services under the AACWA is to "prevent[] the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible." 42 U.S.C. § 625(a)(1)(C) (1994). *Cf.* R.I. GEN. LAWS § 42-72-2(1) (1993) ("[P]arents have the primary responsibility for meeting the needs of their children and the state has an obligation to help them discharge this responsibility or to assume this responsibility when parents are unable to do so. . .").

36. 42 U.S.C. § 625(a)(1)(D)-(E) (additional purposes of child welfare services are to "restor[e] to their families children who have been removed" and to "plac[e] children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate"). *See also* Homer, *supra* note 20, at 187-93 (discussing the AACWA); CHILDREN WITHOUT HOMES, *supra* note 11, at 15; KADUSHIN & MARTIN, *supra* note 18, at 351.

37. Out-of-home placement takes many forms: foster, or substitute-family care; residential treatment centers; group homes; emergency shelters; institutions; and psychiatric hospitals. CHILDREN WITHOUT HOMES, *supra* note 11, at 2.

38. Foster care is "[a] child welfare service which provides substitute family care for a planned period for a child when his own family cannot care for him . . ." Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 823 (1977) (alteration in original) (quoting the CHILD WELFARE LEAGUE OF AMERICA, STANDARDS FOR FOSTER FAMILY CARE SERVICE 5 (1959)). *See* KADUSHIN & MARTIN, *supra* note 18, at 344 (discussing substitute care as the "third line of defense in child welfare"); Homer, *supra* note 20, at 185-86 (noting a "consensus that foster care is damaging because it separates a child from her family . . . and lead[s] to multiple placements"); Jamie D. Manasco, Student Article, *Parent-Child Relationships: The Impetus Behind the Gregory K. Decision*, 17 LAW & PSYCHOL. REV. 243, 245 (1993) ("[T]he foster care system is not intended to be a long-term arrangement.").

39. *See infra* text accompanying notes 60-70 for a discussion of children's psychological needs for permanency.

absence of stable relationships between children and identified caretakers.⁴⁰ These studies contributed to a national reform effort.⁴¹ Permanency planning attempts to ensure that the state intervenes with families only when children are at risk of immediate harm, while employing the least intrusive means necessary to improve the situation.⁴²

The AACWA codified the principles of permanency planning.⁴³

40. Despite federal and state efforts, the concerns regarding children in out-of-home care have proven to be intractable. Demographics regarding today's foster children reflect the same concerns which sparked the reform efforts. One source estimates that currently 400,000 children are in foster care, with an anticipated one million by the year 2000. Manasco, *supra* note 38, at 248. Nearly 20% of the children in foster care remain there for five years or more; 50% remain for more than two years. *Id.* Out-of-home placements do not result in permanence for the majority of placed children: 55% experience two or more placements; eight percent experience six or more placements. Homer, *supra* note 20, at 195. Congress has found that "tens of thousands" of children are in foster care; they will wait a median of two and three-quarters years for adoption. H.R. 4, 104th Cong., 1st Sess. (1995). Children are not being placed near their homes, creating an additional state-imposed barrier to reunification. Homer, *supra* note 20, at 195. As the length of time a child spends in foster care increases, the tie between the natural parent and child diminishes. KADUSHIN & MARTIN, *supra* note 18, at 351. In an alternate analysis, Garrison reviews the statistics regarding the duration of out-of-home placement and suggests that the risk of multiple placements does not increase significantly with duration. Garrison, *supra* note 35, at 1823. For a comprehensive overview of the use of foster care in the 1970s, immediately prior to passage of the AACWA, see generally, CHILDREN WITHOUT HOMES, *supra* note 11, at 3-9 (reporting the results of in-depth studies of seven states' child welfare systems). See also Deborah Sharp, *In Florida, a Challenge to Foster Care*, USA TODAY, Feb. 14, 1995, at 3A (discussing a suit filed in a Florida federal court to prevent the placement of more children in foster care).

41. See Homer, *supra* note 20, at 186-87.

42. *Id.* at 184-85.

43. Under the AACWA, Congress directed states to provide "child welfare services" for the following purposes:

(A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children;

(B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children;

(C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible;

(D) restoring to their families children who have been removed, by the provision of services to the child and the families;

(E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and

(F) assuring adequate care of children away from their homes, in cases where the

The Act amended Title IV of the Social Security Act to create funding incentives for states to develop child welfare services in keeping with the principles of permanency planning.⁴⁴ Modified Title IV-B requires states to inventory all children placed in out-of-home care,⁴⁵ conduct periodic case reviews,⁴⁶ implement a tracking system,⁴⁷ and create a service system that promotes reunification or adoption.⁴⁸ The Act also amended Title IV-E to provide funding for foster-care services.⁴⁹ The legislation mandated several protections to ensure that placements were both necessary and time-limited:⁵⁰ it required states to establish case-plan review systems,⁵¹ make "reasonable efforts"⁵² to prevent the

child cannot be returned home or cannot be placed for adoption.

42 U.S.C. § 625(a)(1).

44. See 42 U.S.C. §§ 620-628, 670-679(a) (1994). The AACWA is codified in two sections, Title IV-B and Title IV-E of the Social Security Act. Homer, *supra* note 20, at 187-93 (discussing the structure of the AACWA and the amendments Congress made to Titles IV-B and IV-E). Congress intended Title IV-B to provide funding to those states that were "establishing, extending, and strengthening child welfare services." 42 U.S.C. § 620(a). Under Title IV-E, Congress intended to reimburse those states that provided "foster care and transitional independent living programs." 42 U.S.C. § 670.

45. 42 U.S.C. § 627(a)(1). In addition, the state must determine whether the current foster placement is necessary and whether the child should be reunited with his parents or placed for adoption. *Id.*

46. 42 U.S.C. § 627(a)(2)(B).

47. 42 U.S.C. § 627(a)(2)(A). This system should track the "status, demographic characteristics, location, and goals" for every child placed in a foster home. *Id.*

48. 42 U.S.C. § 627(a)(2)(C). See Homer, *supra* note 20, at 188-90 (discussing Title IV-B provisions).

49. 42 U.S.C. § 670.

50. Homer, *supra* note 20, at 190-93 (outlining Title IV-E protections against unwarranted or overlengthy removals).

51. 42 U.S.C. § 675(5). The case plan review is to ensure that (A) the child is placed "in close proximity to the parents' home"; (B) a court reviews the status of the child at least every six months "to determine the continuing necessity for and appropriateness of the placement . . . and the extent of progress . . . toward alleviating . . . the causes necessitating placement"; (C) and a dispositional hearing is held in family or juvenile court within eighteen months of the child's placement. *Id.* § 675(5)(A)-(C).

Rhode Island has implemented the case-plan review requirement as follows: Upon a finding of abuse, neglect, or dependency, Family Court directs DCYF to develop a case plan within thirty days. R.I. R. JUV. P. 17(c) (1994). DCYF submits the plan to the court for approval or modification. *Id.* The plan is then reviewed in court every six months. *Id.* § 17(d). Section 40-11-12.1 of the General Laws of Rhode Island governs dispositional hearings. The Rhode Island legislature amended this statute to require a dispositional hearing within twelve months of *placement* with DCYF, rather than the initial adjudication.

placement of a child, and facilitate a child's return home after removal.⁵³

Congress intended to promote preventive services to ameliorate conditions likely to result in the removal of a child and the destruction of the family unit.⁵⁴ However, in funding the AACWA, Congress provided open-ended funding for foster-care services through Title IV-E,⁵⁵ while underfunding preventive services under Title IV-B.⁵⁶ This predictably resulted in states continuing to reap the financial benefits of maintaining children in foster care, rather than preventing the initial family disintegration.⁵⁷ In the several cases where states have failed to properly implement the AACWA,⁵⁸ the ills that Congress sought to

R.I. GEN. LAWS § 40-11-12.1(1) (Supp. 1994). This amendment was necessary to bring DCYF into compliance with the AACWA eighteen-month requirement. *See* 42 U.S.C. § 675(5)(A)-(C).

52. A state's eligibility for funding under the AACWA is dependent upon a showing that it made "reasonable efforts" to prevent placement; however, neither the AACWA nor the federal regulations define the standard. Homer, *supra* note 20, at 197. This has resulted in uncertainty in implementation. *See* David J. Herring, *Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System*, 54 U. PITT. L. REV. 139, 142 (1992) (stating that a requirement of reasonable efforts by the state agency prior to the termination of parental rights is not an incentive to provide the necessary services, but rather is an unnecessary condition precedent delaying appropriate terminations). *But see* Patrick R. Tamilia, *A Response to Elimination of the Reasonable Efforts Required Prior to Termination of Parental Rights Status*, 54 U. PITT. L. REV. 211, 211-12, 227-28 (1992) (arguing that the ineffectiveness of child welfare reforms is due to resolvable systemic problems, not the "reasonable efforts" standard).

53. 42 U.S.C. § 671(a)(15) ("[R]easonable efforts will be made . . . prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and . . . to make it possible for the child to return to his home.").

54. 42 U.S.C. § 625(a)(1)(C). "Congress wanted to ensure that each individual case would receive close scrutiny before the child was removed, and that the individual rights of the children and family would be protected." Homer, *supra* note 20, at 193. "Congress sought to . . . eliminat[e] economic incentives to place children in foster homes and increas[e] incentives for preventive services." *Id.* at 196.

55. The AACWA also mandated subsidized adoption for "special-needs" children, for whom adoption without subsidies is difficult to attain. 42 U.S.C. § 673(c)(2)(A)-(B).

56. Homer, *supra* note 20, at 196.

57. *Id.*

58. *Id.* at 194-202. In addition to the funding inequities, *see supra* text accompanying notes 55-57, and the undefined "reasonable efforts" standard, *see supra* note 52, the AACWA requirements for states are too burdensome, given present resources: state agency workers have far too many cases; there are insufficient numbers of foster families; and juvenile courts are overloaded and cannot meet the review requirements. *Id.* at 197-

address continue unabated.⁵⁹

C. *Achieving Permanence*

In order to understand the place of involuntary termination of parental rights in the permanency planning concept, one must consider the particular needs children have for continued care. First, this section briefly describes children's psychological processes. Next, this section describes how the AACWA attempts to ensure the continuity of a child's relationships with a permanent caretaker. Finally, it describes the role played by the termination of parental rights in achieving permanence.

Children progress through a number of developmental stages, each with its own set of tasks.⁶⁰ A child must successfully negotiate the tasks of each early stage to succeed in subsequent stages.⁶¹ As a result of the physical helplessness of infancy and early childhood, children are dependent upon adult caretakers to provide a safe environment.⁶² Through their daily interaction, the child develops an attachment to the primary caretaker; primary attachment to the caretaker serves as a vehicle for mastery of developmental tasks.⁶³ Disruptions from the external

200. Federal monitoring of states has been lax, and reimbursement for eligible expenses has been slow. *Id.*

59. *Id.* at 194 (“[F]or many children—particularly the most vulnerable and troubled children and their families—we have failed.”) (quoting Rep. George Miller).

60. Many theorists have created models of childhood development premised upon stages. *See, e.g.*, ERIK H. ERIKSON, *CHILDHOOD AND SOCIETY* 247-74 (2d ed. 1963) (outlining eight stages of personality development); SIGMUND FREUD, *THE EGO AND THE ID* (Joan Riviere, trans., James Strachey, ed. 1962) (discussing the formation of the personality structure); 2 LAWRENCE KOHLBERG, *THE PSYCHOLOGY OF MORAL DEVELOPMENT*, in *ESSAYS ON MORAL DEVELOPMENT*, 1-205 (1984) (outlining the cognitive developmental approach to socialization and moralization); 1 JANE LOEVINGER & RUTH WESSLER, *MEASURING EGO DEVELOPMENT* 1-8 (1970) (defining stages of ego development); JEAN PIAGET, *THE CONSTRUCTION OF REALITY IN THE CHILD* 3-96 (Margaret Cook trans., 1954) (outlining the stages of cognitive development). For an excellent analysis and comparison of the many theories of ego development, see John Snarey et al., *Ego Development and Education: A Structural Perspective*, in *CHILD PSYCHOLOGY AND CHILDHOOD EDUCATION: A COGNITIVE-DEVELOPMENTAL VIEW* 329 (Lawrence Kohlberg ed., 1987).

61. *See, e.g.* Snarey, *supra* note 60, at 370 (discussing Erikson's ego development theory).

62. *See generally* JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 9-17 (1979) (describing children's psychological processes).

63. *Id.* at 17-18. The caretaker is referred to as the “psychological parent.” *Id.* While for adults, attachment to a child is strengthened by biological relation, children form

environment, particularly those that interfere with the child's relationship with the "psychological parent," affect the child's psychological development.⁶⁴ Although the impact varies with the particular stage of development,⁶⁵ repeated disruptions can cumulatively damage a child's capacity to form attachments.⁶⁶ Children do not sense time by objective, external events; rather, they experience the passage of time in direct relation to their ability to manage frustration and anxiety.⁶⁷ A separation which an adult may tolerate could prove damaging to a young child.⁶⁸ Thus, separations from psychological parents should be as short as possible.⁶⁹ If the state cannot reunify the child with a parent, it should provide the child with an opportunity to form a relationship with a new psychological parent with "all deliberate speed."⁷⁰

this primary attachment based on the continuity of care. *Id.* at 16-17.

64. *Id.* at 32-34 (discussing the effects of disruptions during infancy, childhood, and adolescence).

65. *See id.* at 40-42. This concept is reflected in § 15-7-7's requirement that determinations of a child's probable reunification with her parent be assessed in light of "the child's age and the need for a permanent home." *See, e.g.,* R.I. GEN. LAWS § 15-7-7(1)(b)(iii) (Supp. 1994). In addition, the Rhode Island General Assembly amended the dispositional hearing statute to mandate parental rights termination proceedings for those children age 10 and younger after they have been in care for 12 months. R.I. GEN. LAWS § 40-11-12.1(5)(d) (Supp. 1994). *See also* COLO. REV. STAT. § 19-1-102(1.6) (Supp. 1994) ("[C]hildren undergo a critical bonding and attachment process prior to the time they reach six years of age. . . . [A] child who has not bonded with a primary adult during this critical stage will suffer significant emotional damage which frequently leads to chronic psychological problems . . ."). *Id.*

66. GOLDSTEIN, *supra* note 62, at 32-34 (detailing the impact of disruption at the different stages of development).

67. *Id.* at 40-49. Children have a difficult time anticipating the future and managing delays. *Id.* at 40. Instead, children base their sense of time on their "instinctual and emotional needs." *Id.* Only when children begin to incorporate the way their parents fulfill their needs will they begin to anticipate the future and manage delays. *Id.*

68. *Id.* A child's ability to deal with the absence of his parents varies with the child's age. *Id.* An infant may endure a few days before feeling overwhelmed, while a young child may not feel anxiety due to the absence of his parents for a longer period. *Id.* at 40-41.

69. *Id.* at 40-49. Lengthy delays may cause the child to attach to the new caretaker, who will become the child's psychological parent. *Id.*

70. *Id.* at 42. Garrison takes a different position on the speed with which the state should seek terminations. She proposes that states should not seek terminations until the child has been in placement for three years. Garrison, *supra* note 35, at 1825. She bases her proposal upon her finding that the risk of instability in placement is low during the early years of placement, the significant possibility that parents can regain custody

The AACWA requires the state to hold a dispositional hearing within eighteen months of the child's removal from a family.⁷¹ The goal, from the perspective of the child's best interests,⁷² is to prevent extended periods of disruption in a child's attachment to her primary parent.⁷³ The AACWA directs the judge to determine the likelihood of the child's return home within a reasonable period.⁷⁴ If the original conditions which resulted in the child's removal have been ameliorated sufficiently, the judge will return the child home.⁷⁵ However, if the parent has demonstrated unfitness, the court will find another permanent home for the child.⁷⁶ In this circumstance, the court will schedule termination proceedings.⁷⁷ Ideally, the parent-child relationship is quickly terminated, and another family with whom the child has established a psychological bond may adopt her.⁷⁸

within this time, and the inability of agencies to provide necessary services in a timely fashion. *Id.*

71. 42 U.S.C. § 675(5)(C) (1988). The dispositional hearing "shall determine the future status of the child." *Id.* See Homer, *supra* note 20, at 199 (noting that dispositional hearings are delayed in many states). See *supra* note 7 for a discussion of Rhode Island's compliance with this requirement of the AACWA.

72. Goldstein, Freud, and Solnit propose changing the "child's best interests" standard to the "least detrimental available alternative for safeguarding the child's growth and development." GOLDSTEIN, *supra* note 62, at 53. The authors point to the conflict between the apparent meaning of the "best interests" standard and its application, which often results in long periods of uncertainty while courts determine the respective rights of the parties. *Id.* at 54-64. For a discussion of the difficulty in applying the "best interest of the child" standard, see Robert H. Mnookin, *The Enigma of Children's Interests*, in *IN THE INTEREST OF CHILDREN* 16, 16-18 (Robert H. Mnookin ed., 1985) (describing the "best interest of the child" standard as indeterminate due to poor predictive ability and the value-laden nature of the decision).

73. See 42 U.S.C. § 675(5)(C).

74. See, e.g., CAL. WELF. & INST. CODE § 366.22(a) (West Supp. 1996). At the eighteen-month hearing, the judge may return the child to her parents, or order a "permanency planning" hearing under § 366.26. *Id.* At the permanency planning hearing, the court may order an adoption, guardianship, or long-term foster care. *Id.*

75. See, e.g., *id.* The court will consider reports from probation officers and any appointed child advocate. *Id.*

76. *Id.*

77. *Id.*

78. Reality may be quite different: termination may result in an unintended disruption. When the state removes a child from home, it is rarely clear whether a parent will be able to regain custody within the eighteen-month period. In all likelihood, availability will determine a child's initial placement, rather than the state worker's estimation of the length of time the child will be in care and the setting that best meets the

The termination of parental rights statute⁷⁹ is critical for the permanent placement of each child removed from a biological family. The statute has three notable features: First, the statute specifies the grounds for termination and thus serves notice to both the state and the biological parents.⁸⁰ Second, the reasonable efforts requirement ought to serve as a guarantee that the state does not permanently remove children from parents who have the capacity to provide adequate care.⁸¹

child's present and future needs. Certainly, it is doubtful that the initial placement will be with a "pre-adoptive" foster family; that is, a family which has identified itself as seeking a child for adoption. Thus, if, after the initial placement, a worker decides that adoption is the likely outcome, the state must move the child to a pre-adoptive home. Once the child arrives in a pre-adoptive foster home, however, the parties face a second conundrum: it is not certain that, in the end, the child will be available for adoption. Thus, the formation of the new "permanent" psychological bond is paradoxically occurring in an atmosphere of impermanence and uncertainty. See generally GOLDSTEIN, *supra* note 62, at 35-37 (discussing the impact of probationary periods before finalizing adoption decrees). California's approach may minimize the potential disruption of a termination: the relevant statute mandates that a termination petition will not be granted unless the court finds "by clear and convincing evidence that it is likely that the minor will be adopted." CAL. WELF. & INST. CODE § 366.26(c)(1) (West Supp. 1996). See also Garrison, *supra* note 35, at 1826 ("No parent's rights should finally be terminated unless and until a permanent placement is available.").

79. As stated in the Introduction, this Note concerns itself only with the procedures for involuntary termination of the rights of parents whose custody the state has suspended due to abuse or neglect. Many states passed termination statutes during the late 1960s and early 1970s. Rosemary S. Sackett, *Terminating Parental Rights of the Handicapped*, 25 FAM. L.Q. 253, 255 (1991). Early versions of Rhode Island's termination of parental rights statutes provided that a court, in considering an adoption petition, could terminate a parent's right to consent to an adoption under certain specified conditions, including mental incompetence and abandonment. See *infra* part IV.A for a discussion of the earlier versions of § 15-7-7. By 1980, Rhode Island's emphasis had shifted from the parent's right to consent to the impending adoption, to a child-welfare purpose of permanently severing the relationship between a child and an unfit parent, regardless of the child's potential for adoption. Some states specifically place their termination statutes in chapters related to child welfare, rather than adoption. See, e.g., CONN. GEN. STAT. ANN. § 17a-112 (West Supp. 1995) (Child Welfare); MONT. CODE ANN. § 41-3-609 (1995) (Child Abuse and Neglect); N.J. STAT. ANN. § 30:4C-15.1 (West Supp. 1995) (Dependent and Neglected Children).

80. See, e.g., Judith D. Wolferts, *Recent Development*, 1993 UTAH L. REV. 343, 350-51 (stating that the clarification of statutory grounds for termination permits judges to "move more confidently to terminate parental rights").

81. See Tamilia, *supra* note 52, at 218 (suggesting that the reasonable efforts standard is necessary to implement the permanency planning goal of severing parent-child ties only as a last resort). But see Herring, *supra* note 52, at 142-43 (arguing that appropriate application of the reasonable efforts standard occurs during the period preceding termination hearings). The reasonable efforts requirement also counteracts bias

Finally, the termination of parental rights is the condition precedent to adoption of a child whose biological parents are unfit and unwilling to relinquish their rights.⁸²

III. THE BALANCING ACT

Permanency planning and the child welfare system as a whole focus on the best interests of the child. However, the application of permanency planning principles requires courts to examine the child's interest in the context of the family relationship.⁸³ The constitutional principles of family law require balancing the interests of the child, the parent, and the state. Part III.A discusses the development of this balancing process by the United States Supreme Court. Part III.B examines Rhode Island's application of these emerging constitutional principles.

A. *The United States Supreme Court*

Although state law traditionally governs matters concerning the family, throughout this century, the United States Supreme Court has issued rulings that affect family relationships.⁸⁴ The Court has considered cases raising the constitutional principles governing the

against fit parents living in poverty. For a discussion of the increased exposure of poor families to the risk of child removal, see MASON, *supra* note 4, at 153-54. Mason states that three factors contribute to the greater removal of children from poor families: first, cultural differences between poor families and the middle class affect judgements of the adequacy of parenting; second, state agencies scrutinize poor parents who rely on public assistance programs more closely; third, poverty is associated with problems such as substance abuse which increase the likelihood of child abuse or neglect. *Id.* at 154.

82. See, e.g., R.I. GEN. LAWS § 15-7-5 (1988) (requiring parental consent for adoption of minors).

83. See, e.g., 42 U.S.C. § 675(1)(B) (1994) (describing the case plan requirements, including services to improve the parents' home). For a discussion of the difficulties in implementing the AACWA's reasonable efforts requirement, see *supra* note 52. For a discussion of Rhode Island's implementation of the reasonable efforts requirement, see *infra* notes 198-204, 251-54, 318-20 and accompanying text.

84. The increased involvement of the Supreme Court in an area traditionally left to the states is the result of two developments: First, the creation of federal social-reform programs requires federal courts to address statutory and administrative issues related to these programs. Second, the development of due process, equal protection, and rights-to-privacy jurisprudence provides litigants with new tools to challenge state statutes. EVA R. RUBIN, *THE SUPREME COURT AND THE AMERICAN FAMILY* 12-13 (1986).

interrelationship of parent, child, and state.⁸⁵ These cases involve such issues as the right to decide how to educate one's children;⁸⁶ rights to contraception⁸⁷ and abortion;⁸⁸ and the due process rights of foster parents,⁸⁹ illegitimate fathers,⁹⁰ and parents whose rights were terminated.⁹¹ In general, the family-rights cases reflect a particular conception of family⁹² that subsumes the child's interests into those of

85. One author states that, despite the expansive language the Court uses in discussing parent or family rights, the holdings are necessarily much narrower. Francis B. McCarthy, *The Confused Constitutional Status and Meaning of Parental Rights*, 22 GA. L. REV. 975, 985 (1988). "[W]hat has developed is a patchwork of decisions that leave many questions unanswered." *Id.*

86. *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding that the First and Fourteenth Amendments protect the rights of Amish parents to direct their children's religious education); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) (finding that statute requiring public school education unreasonably interfered with parents' liberty to direct their children's education); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (stating that statute forbidding instruction in foreign languages infringed on parents' rights to control their children's education).

87. *See, e.g., Eisenstadt v. Baird* 405 U.S. 438 (1972) (holding that statute forbidding the distribution of contraceptives to single persons violated the Equal Protection Clause); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding that statute forbidding the use of contraceptive devices by married couples violated a protected right to privacy).

88. *See, e.g., Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (holding that spousal notification requirements constitute an undue burden on a woman's right to choose whether to terminate a pregnancy); *Roe v. Wade*, 410 U.S. 113 (1973) (concluding that women have a protected right to choose an abortion).

89. *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977) (finding that the interests of foster families do not outweigh those of a natural parent).

90. *Quilloin v. Walcott*, 434 U.S. 246 (1978) (holding that use of the "best interests of the child" standard in permitting adoption by a step-father did not violate an unmarried father's due process and equal protection rights); *Stanley v. Illinois*, 405 U.S. 645 (1972) (holding that statutory scheme which created a presumption that unwed fathers were "unfit" violated due process).

91. *Santosky v. Kramer*, 455 U.S. 745 (1982) (holding that due process requires the state prove statutory grounds for termination of parental rights by clear and convincing evidence).

92. Rubin states:

The family accepted by the Supreme Court in these early cases is clearly the ideal Victorian family. The family unit is a small government in its own right. . . . The rearing and education of children is its most important function. . . . Parents speak and act for children, discipline them and determine what their education will be.

RUBIN, *supra* note 84, at 16.

the parent or the state.⁹³ This bipolar analysis is inadequate to address the child's conflicting interests in maintaining the connection with family and receiving adequate care when the state is seeking to sever the parent-child relationship.⁹⁴

By the mid-twentieth century, the Court had established family rights⁹⁵ as a matter of substantive due process.⁹⁶ Parents have a fundamental interest⁹⁷ in making decisions regarding the education of their children,⁹⁸ and only a compelling interest can justify state intrusion.⁹⁹ Furthermore, parents are better equipped than the state to provide children with the necessary care.¹⁰⁰ In 1972, the Court

93. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The majority asserted:

Our holding in no way determines the proper resolution of possible competing interests of parents, children, and State [in a case in which Amish children wish to attend school against their parents' wishes]. . . . [I]ntrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom

Id. at 231. See *infra* notes 126-46 and accompanying text for a discussion of the competing interests analysis in *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977).

94. RUBIN, *supra* note 84, at 180-82 (discussing the risks in due process analysis if courts assign erroneous weight to the effected interests).

95. For discussion of whether the Court's due process analysis creates protected "parent's" rights or "family" rights, see McCarthy, *supra* note 85, at 992-1006.

96. RUBIN, *supra* note 84, at 120.

97. This fundamental interest derives from "[t]he history and culture of Western civilization [which] reflect[s] a strong tradition of parental concern for the nurture and upbringing of their children." *Yoder*, 406 U.S. at 232.

98. "[L]iberty] denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children, . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness. . . ." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right . . . to recognize and prepare him for additional obligations." *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925).

99. "[W]here nothing more than the *general* interest of the [parent in the nurture and education of his children is involved, it is beyond dispute that the State acts 'reasonably' . . . in requiring education to age 16" *Yoder*, 406 U.S. at 233 (emphasis added). The state also has unquestioned authority to regulate vaccination and child labor, and to protect children from abuse and neglect. McCarthy, *supra* note 85, at 977-78.

100. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince v. Massachusetts*, 321 U.S. 158, 166

reaffirmed these principles in *Wisconsin v. Yoder*.¹⁰¹ Chief Justice Burger's opinion relied on both a First Amendment free-exercise-of-religion analysis and "the traditional rights of parents to supervise the education . . . of their children."¹⁰² The opinion expressly declined to address the potential conflict between a parent's control of a child's religious upbringing and a child's desire for education.¹⁰³

The Supreme Court moved within the family circle itself in several cases that required an examination of the roles played by parents, children, and the state. The following discussion examines the rights of unwed fathers, foster parents, and biological parents in termination proceedings.

1. The Rights of Unwed Fathers

In 1972, the Court addressed the rights of a biological parent against the state's presumption of unfitness in *Stanley v. Illinois*.¹⁰⁴ Stanley was an unwed father who had lived with the mother of his children and participated in their care.¹⁰⁵ Upon the death of the children's mother, Illinois found Stanley's children to be dependent¹⁰⁶ and took custody.¹⁰⁷ The Supreme Court rejected the state's presumption of unfitness, finding that parents have a protected interest in the "custody, care and nurture" of their children.¹⁰⁸ Removing children from the care of unwed fathers without a prior fitness hearing violates both the

(1944) (holding that Massachusetts statute fining a parent for allowing child to sell magazines was not invalid when applied to the sale of religious texts).

101. 406 U.S. 205 (1972). *Yoder* affirmed the Wisconsin Supreme Court's decision to overturn the conviction of Amish parents for violating the compulsory education laws. *Id.* at 234-36.

102. RUBIN, *supra* note 84, at 130.

103. *See supra* note 93.

104. 405 U.S. 645 (1972).

105. *Id.* at 646.

106. Under Illinois law, children without a "parent" are considered dependent. ILL. REV. STAT. ch. 37, para. 702-05 (1971). "Parents" were defined as "the father and mother of a legitimate child, or the survivor of them, or the natural mother of an illegitimate child and includes any adoptive parent, but the term does not include unwed fathers." *Stanley*, 405 U.S. at 650 (citation omitted). Under this statute, Stanley's children were "parentless" and thus, dependent. *Id.* *See also* ILL. REV. STAT. ch. 37, para. 701-14.

107. *Stanley*, 405 U.S. at 646.

108. *Id.* at 651 (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹⁰⁹

Stanley used stirring language in granting protection to the “essential” rights of unwed fathers¹¹⁰ against a “*de minimis*” state interest.¹¹¹ This extended protection created, however, procedural requirements for states seeking custody or adoption of the children of absent or putative unwed fathers.¹¹² The *Stanley* opinion did not address questions regarding the potential conflict between protected interests of fathers and the best interests of the child.¹¹³

In 1978, the Court addressed the issue of the absent unwed father in *Quilloin v. Walcott*.¹¹⁴ In *Quilloin*, a step-father’s attempt to adopt his wife’s son was blocked by the boy’s natural father who had never legitimated him.¹¹⁵ The natural father claimed that the Georgia statute that allowed adoption without the consent of the unwed father violated the Equal Protection and Due Process Clauses.¹¹⁶ The trial court, after extensive testimony from both parties, and without finding *Quilloin* unfit,¹¹⁷ applied the “best interests of the child” standard, and denied him visitation.¹¹⁸ In addition, the trial court found that, because

109. *Stanley*, 405 U.S. at 658. According to Rubin, *supra* note 84, the Court resorted to an analysis which blended due process and equal protection elements, rather than relying solely on equal protection, because Justices Rehnquist and Powell, though appointed, were not yet sitting on the bench. Rubin states that the Court wished to avoid a possible expansion of equal protection doctrine without consideration by the full Court. *Id.*

110. “[T]he interest of a parent in the companionship, care, custody, and management of his or her children ‘come[s] to this Court with a momentum for respect’” *Stanley*, 405 U.S. at 651 (alteration in original) (quoting *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (Frankfurter, J., concurring)).

111. *Stanley*, 405 U.S. at 657. The state’s asserted interest was to protect the best interests of the child. Illinois argued that government supervision was “necessary” to protect this interest because illegitimate children are usually raised by one parent. *Id.* at 653-54 n.5. The Court found that the state had a *de minimis* interest in protecting the children of a fit parent. *Id.* at 657-58.

112. RUBIN, *supra* note 84, at 40.

113. *Id.*

114. 434 U.S. 246 (1978).

115. *Id.* at 247.

116. *Id.* at 252.

Id.

118. *Id.* at 251. The mother testified that the natural father’s infrequent visits were having a “disruptive effect” on the child. *Id.*

Quilloin never attempted to legitimate the child before the mother consented to adoption by the step-father, he had no standing to object.¹¹⁹

On appeal, the United States Supreme Court addressed the issue of whether "the best interests of the child" standard adequately protected the unwed father's interests.¹²⁰ Justice Marshall wrote that Due Process required something more than the "best interests of the child" if the state sought to break up an existing family.¹²¹ However, this case did not involve such a breakup; rather it sought to give "full recognition" to an existing family.¹²² Thus, termination did not implicate the unwed father's due process rights.¹²³ Nor did the father have a valid equal protection claim.¹²⁴ Despite the different treatment under state law of an illegitimate father and a divorced father, the former's interests were "readily distinguishable" when he had assumed no significant responsibility for the child.¹²⁵

2. The Rights of Foster Families

In *Smith v. Organization of Foster Families*,¹²⁶ the Court confronted a case in which foster parents claimed to have a protected "liberty interest" in the "psychological family" created when they cared for a foster child for a year or more.¹²⁷ The foster parents claimed that New York statutes permitting the removal of foster children without a prior hearing deprived them of this interest without due process.¹²⁸ The Court applied a balancing test¹²⁹ and found that the New York

119. *Quilloin*, 434 U.S. at 251-52.

120. *Id.* at 254. Quilloin argued that, absent a finding of unfitness, the adoption of the child over his objection was constitutionally invalid. *Id.* at 252.

121. *Id.* at 255.

122. *Id.*

123. *Id.* at 254-55.

124. *Quilloin*, 434 U.S. at 255-56.

125. *Id.* at 256. *Cf.* *Caban v. Mohammed*, 441 U.S. 380, 393 (1979) (holding that a New York statute permitting adoption by the step-father with only the mother's consent was invalid as applied to a natural father who had contributed to the child's care).

126. 431 U.S. 816 (1977).

127. *Id.* at 839.

128. *Id.*

129. The Court applied the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), analysis to determine whether the existing procedures adequately protected the interests

procedures adequately safeguarded the foster families' interests.¹³⁰

The Court first examined the interests of the parties involved. The denied that foster children had a liberty interest based merely on the potential loss of a psychological family.¹³¹ The Court next addressed the foster parents' claim to have a right to familial integrity.¹³² In so doing, the Court stated that biological ties, though historically important to the Court, are not the exclusive determinants of family relations.¹³³ The emotional attachment that derives from daily care and association is also significant.¹³⁴ Thus, foster families are not "a mere collection of unrelated individuals."¹³⁵ However, the foster family relationship arises from a contractual arrangement with the state; thus, state law must determine the "expectations and entitlements of the parties."¹³⁶ As a result, the Court was willing to assume that foster parents have no more than a limited liberty interest.¹³⁷ In addition, the Court was unwilling to say that foster parents have rights at the expense of the rights of natural parents.¹³⁸

The Court found that New York's procedures were adequate to

involved. The test requires the Court to balance three elements: (1) the existence of a protected private interest affected by a state action; (2) a risk that an erroneous deprivation of the interest will result from existing procedures, and the likelihood that additional safeguards will reduce the risk; and (3) the state's interest, including the cost of additional or substitute procedures. *Smith*, 431 U.S. at 848-49.

130. *Id.* at 848-56.

131. The trial court held that New York's procedures were constitutionally invalid because they denied the foster *child* the right to be heard before suffering a "grievous loss." *Id.* at 840. The Court, applying *Board of Regents v. Roth*, 408 U.S. 564 (1972), said that the nature, not the weight, of the interest controls whether it is protected by the Due Process Clause. *Id.* at 840-41.

132. *Smith*, 431 U.S. at 842-47.

133. *Id.* at 843.

134. *Id.* at 844.

135. *Id.* at 844-45.

136. *Id.* at 845-46.

137. *Id.* at 846.

138. *Smith*, 431 U.S. at 846. The Court stated:

It is one thing to say that individuals may acquire a liberty interest against arbitrary governmental interference in the family-like associations into which they have freely entered. . . . It is quite another to say that one may acquire such an interest in the face of another's constitutionally recognized liberty interest that derives from blood relationship, state-law sanction, and basic human right. . . .

Id.

protect all parties' interests. First, the Court rejected the trial court's view that the child's interests require an automatic pre-removal hearing.¹³⁹ The Court reasoned that, because the allegedly protected interest was the right of family privacy based on close emotional ties, the foster parent's ability to request a hearing would adequately protect the foster child's interests.¹⁴⁰ The Court was similarly unimpressed with the trial court's concern that the natural parents and child were not parties to the hearing.¹⁴¹

In a concurring opinion, Justice Stewart rejected any claim of a protected interest for foster parents.¹⁴² He disagreed with the majority that the child's interests in the relationship were the same as the foster parents'.¹⁴³ However, in his view, the dictates of state law requiring placement determinations based on the child's best interests adequately protected the child's interest.¹⁴⁴ Finally, Stewart rejected any argument that the formation of emotional attachments in foster care created an interest in family privacy.¹⁴⁵ Such formation, he averred, was an indication that the foster arrangement had failed of its essential purpose—to prepare children for their return home or placement with adoptive families.¹⁴⁶

139. *Id.* at 850. The trial court found that procedural safeguards available to foster parents (e.g., the state must give a ten-day notice before removal; foster parents could request a hearing) were insufficient to protect the child's interests, because the child's interests are not co-extensive with those of the foster parent. *Id.*

140. The Court reasoned that if the foster family was not sufficiently motivated by the emotional attachments to request a pre-removal hearing, as entitled, the foster child's interests would not be served by providing a hearing to determine the harm that would ensue by rupturing those ties. *Id.*

141. The Court stated that because the interest sought to be protected was that of the foster family, the natural parents could have little input. *Id.* at 851-52. However, nothing prevents the foster family from requesting the natural parents' participation. Children also may be consulted. *Id.* at 852.

142. *Id.* at 857-58 (Stewart, J., concurring). Justice Stewart stated that foster families had "no basis for a justifiable expectation . . . that their relationship [would] continue indefinitely." *Id.* at 860.

143. *Smith*, 431 U.S. at 857-58 n.1 (Stewart, J., concurring).

144. *Id.* at 860.

145. *Id.* at 861-63.

146. *Id.* Justice Stewart further stated: "If the foster family relationship were to occupy the same constitutional plane as that of the natural family, the conflict between the constitutional rights of natural and foster parents would be totally irreconcilable." *Id.* at 862 n.3.

3. The Rights of Parents in Termination Proceedings

In 1982, the Court decided *Santosky v. Kramer*,¹⁴⁷ which addressed a due process challenge to New York's involuntary termination procedures.¹⁴⁸ Specifically, parents challenged the state's use of the preponderance of the evidence standard in determining whether the parents had permanently neglected their children and terminating their parental rights.¹⁴⁹ The Supreme Court held that a state must provide parents with "fundamentally fair procedures"¹⁵⁰ when it seeks to terminate their parental rights, and it must meet, at minimum, the "clear and convincing evidence" standard of proof.¹⁵¹

The Court first reaffirmed the natural parents' interests.¹⁵² As in *Smith*,¹⁵³ the Court applied the *Mathews v. Eldridge*¹⁵⁴ balancing

147. 455 U.S. 745 (1982).

148. New York employed a bifurcated hearing. *Id.* at 748. In the initial fact-finding proceeding, the court determined whether a child was "permanently neglected" on the basis of the parent's failure "substantially and continuously or repeatedly to maintain contact with or plan for the future of the child . . ." *Id.* (quoting N.Y. FAM. CT. ACT § 614.1(d) (McKinney 1975 & Supp. 1981-82)). In the second, dispositional, proceeding, the court determined whether termination of parental rights was in the child's best interests. *Id.*

149. *Id.* at 751-52. The New York Supreme Court, Appellate Division, dismissed the parents' constitutional challenge, stating that the preponderance of the evidence standard reflected the legislature's attempt to balance the rights of the child and the parents. *Id.* at 752.

150. *Id.* at 753-54.

151. *Id.* at 769. *Cf. In re Diana P.*, 424 A.2d 178, 182 (N.H. 1980) ("[T]he government must prove its case . . . beyond a reasonable doubt before the permanent termination of liberty and natural rights of parents guaranteed under the New Hampshire Constitution . . . can occur.") (quoting and reaffirming *State v. Robert H.*, 393 A.2d 1387, 1389 (1978)), *cert. denied*, 452 U.S. 964 (1981).

152. The Fourteenth Amendment protects "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child . . ." *Santosky*, 455 U.S. at 753. This interest does not "evaporate" when parents have lost temporary custody to the state; indeed, the parents have a greater need for procedural protections at the termination stage. *Id.* "When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Id.* at 753-54.

153. *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977). See *supra* notes 126-46 and accompanying text for a discussion of *Smith*.

154. 424 U.S. 319, 335 (1976). See *supra* note 129 for a description of the balancing test.

test.¹⁵⁵ In examining the private interests implicated by a termination proceeding, the Court determined that natural parents have a “commanding” interest in the standard of proof.¹⁵⁶ The interests of the child and the foster family, by contrast, are not implicated at the fact-finding portion of the proceeding.¹⁵⁷ Rather, the state has moved directly against the parent, “marshal[ing] an array of public resources to prove” the parent’s unfitness.¹⁵⁸ The child’s interest is subsumed into that of the parent until a court makes a finding of parental unfitness.¹⁵⁹ The foster parent’s interest, though it may be “substantial,”¹⁶⁰ is not implicated in state-initiated permanent neglect proceedings.¹⁶¹ The state’s interest in the welfare of the child is concomitant with the parent’s interest in accurate decision making.¹⁶²

The Court next found that the risk of an erroneous deprivation of private interests was high under the preponderance of the evidence standard.¹⁶³ This result was due to the greater resources the state commands,¹⁶⁴ the likelihood that natural parents are “poor, uneducated,

155. *Santosky*, 455 U.S. at 758.

156. *Id.* at 759. The Court based its conclusion on the nature and permanence of the loss the parent suffers. A high standard of proof is necessary to protect the parent’s interest in the accuracy of the judicial determination. *Id.* at 758-61.

157. *Id.* at 759.

158. *Id.* at 760. The Court took a similar approach in *Wisconsin v. Yoder*, 406 U.S. 205, 230-31 (1972) (rejecting consideration of the child’s interest in the context of criminal prosecution of a parent for violation of the compulsory education law).

159. *Santosky*, 455 U.S. at 760 (“[U]ntil the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship.”). For a criticism of this analysis of the involved interests, see RUBIN, *supra* note 84, at 180 (stating that formal due process analysis obscures the real interests of those involved).

160. *Santosky*, 455 U.S. at 761. For a discussion of the Supreme Court’s consideration of the interests of foster parents, see *supra* notes 131-38 and accompanying text.

161. *Santosky*, 455 U.S. at 761. The Court distinguished between state-initiated proceedings against natural parents, and those brought directly by foster parents. *Id.* In addition, the foster parents have the opportunity to advocate for their interests during the dispositional phase of the hearing. *Id.* Finally, natural parents’ interests outweigh those of foster parents due to the permanence of the findings. *Id.*

162. *Id.* at 766-67. The state’s first *parens patriae* interest is in preserving positive parent-child relationships. *Id.*

163. *Id.* at 764.

164. *Id.* at 763. The state is not limited in the amount of money it may spend and the number of experts it may call in making its case. *Id.* In addition, because the

or members of minority groups,"¹⁶⁵ and the discretion the court has to "underweigh probative facts that might favor the parent."¹⁶⁶ In completing the balancing analysis, the Court concluded that the state's interest in the child's welfare is served by a stricter standard of proof,¹⁶⁷ while the increased administrative burdens are minimal.¹⁶⁸

In summary, the Supreme Court has found that parents have a fundamental liberty interest in the care of their children,¹⁶⁹ and that this interest is not attenuated by the temporary loss of custody.¹⁷⁰ Children's interests in accurate decision-making regarding termination of family ties are co-extensive with those of their natural parents.¹⁷¹ Foster parents may have a liberty interest in the psychological family created when they provide care for a foster child, but the interests of the natural parent outweigh that interest.¹⁷² Finally, while states determine the statutory grounds for involuntary termination, procedural due process requires that the state prove those grounds by clear and convincing evidence.¹⁷³ Although the Court has stopped short of requiring the state to prove parental unfitness as a precondition of termination, it has

state caseworkers both provide reunification services and testify against parents, the state exerts influence over the "historical events that form the basis for termination." *Id.* Specifically, caseworkers establish visitation schedules and set tasks for parents to prove their fitness. *Id.* at 763 n.13.

165. *Id.* at 763. See also Garrison, *supra* note 35, at 1827 ("It is no accident that virtually all of the children in foster care come from families that are impoverished . . .").

166. *Santosky*, 455 U.S. at 762.

167. *Id.* at 767.

168. *Id.* at 767-68. As evidence that the burden is minimal, the Court pointed out that the New York Family Court applies the clear and convincing evidence standard in other proceedings. *Id.*

169. See *supra* notes 97-99, 108 and accompanying text.

170. *Santosky*, 455 U.S. at 753. See *supra* note 152 and accompanying text.

171. *Santosky*, 455 U.S. at 760-61.

172. *Smith v. Organization of Foster Families*, 431 U.S. 816, 845-47 (1977). See *supra* notes 137-38 and accompanying text for a comparison of the rights of natural and foster parents.

173. *Santosky*, 455 U.S. at 769-70. See *supra* text accompanying note 151. For other due process limitations on termination statutes, see *Alsager v. District Court of Polk County*, 406 F. Supp. 10, 21 (S.D. Iowa 1975) (finding Iowa termination of parental rights statutes to be unconstitutionally vague both as written and applied because they (1) fail to give adequate notice; (2) permit arbitrary and discriminatory use of discretion; and (3) "inhibit . . . the exercise of the fundamental right to family integrity"), *opinion adopted by* 545 F.2d 1137 (8th Cir. 1976).

given strong indications of such a requirement.¹⁷⁴

B. *The Rhode Island Supreme Court*

The Rhode Island Supreme Court has held that a court must find parental unfitness before it may terminate parental rights.¹⁷⁵ This requirement of parental unfitness is a component of Rhode Island's overall analysis of the interrelation of the interests of the natural parent, the child, and the state.¹⁷⁶ Part III.B explores Rhode Island's derivation of the parental unfitness requirement, followed by a brief review of the court's analysis of the interests involved.

1. Unfitness

In 1987, the Rhode Island Supreme Court decided *In re Kristina L.*,¹⁷⁷ and held that a court must find parental unfitness before it may

174. *Santosky*, 455 U.S. at 760. The Court stated:

Nor is it clear that the State constitutionally could terminate a parent's rights without showing parental unfitness. . . . "We have little doubt that the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family . . . without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest."

Id. at 760 n.10 (internal quotations and citations omitted). *Cf. In re K.A.*, 484 A.2d 992, 997-98 (D.C. 1984) (holding that a finding of unfitness is not required to terminate the rights of a parent who has lost custody).

The Court has held that due process does not require the state to provide counsel to every indigent parent facing termination procedures. *Lassiter v. Department of Social Services*, 452 U.S. 18, 27-31 (1981). In making case-by-case determinations, trial courts are to examine factors which increase the parent's risk of an erroneous deprivation of rights, such as criminal abuse prosecution. *Id.* at 24-32.

175. *In re Kristina L.*, 520 A.2d 574, 579-80 (R.I. 1987). "The best interest of the child outweighs all other considerations once the parents have been adjudged unfit. In essence, a finding of parental unfitness is the necessary first step." *Id.*

176. *See In re Lester*, 417 A.2d 877, 880 (R.I. 1980) (introducing a "three-dimensional" analysis of the conflicting interests in the dependency-neglect context); *In re Jonathan*, 415 A.2d 1036, 1039 (R.I. 1980) (stating that, although the child's best interest is paramount, no single factor may be considered in isolation); *In re LaPorte*, 236 A.2d 264, 266 (R.I. 1967) ("[T]he right of a natural parent to its child is lost only in extreme circumstances."). *See infra* note 187 (contrasting Rhode Island's dependency-neglect proceedings with termination proceedings).

177. 520 A.2d 574 (R.I. 1987). The facts of the case were as follows: The state removed Kristina from her mother as an infant for "failure-to-thrive." She remained in foster care for six years. *Id.* at 575, 578. The child and her natural parents participated in an intensive reunification program which recommended the child's return home. *Id.* at 577. Despite the recommendation, the state petitioned to terminate parental rights after a

terminate a parent's rights.¹⁷⁸ The court reached this principle through three avenues. First, the court quoted section 15-7-7 and, by implication, found that the statute replicates the bifurcated proceeding that was at issue in *Santosky*; that is, a court cannot consider the child's interests until the dispositional stage, and only after a finding of parental unfitness.¹⁷⁹ Second, the court quoted with approval dicta in *Quilloin*¹⁸⁰ and *Smith*¹⁸¹ which questioned the suitability of terminating a parent's rights without a finding of parental unfitness.¹⁸² Third, the court applied the unfitness doctrine to its own precedent, finding that unfitness was an implicit component of its prior decisions.¹⁸³

psychologist's evaluation found that the child had bonded with her foster family and was unlikely to transfer that bond to her parents. *Id.* at 578. The trial court applied a "best interest of the child" standard and terminated the parents' rights. *Id.* at 578-79.

178. *Id.* at 580. "In essence, a finding of parental unfitness is the first necessary step." *Id.*

179. *Id.* at 579. The court stated:

At the initial stage of the hearing, the state should not presume that the natural parents and the child are adversaries. . . . Once [§ 15-7-7's] requirements of proof are met, the court may then assume, at the dispositional stage of the proceeding, that the interests of the child may not coincide with those of the parents.

Id. (citing *Santosky v. Kramer*, 455 U.S. 745, 760 (1982)). See *supra* note 148 and accompanying text for a discussion of the New York statute at issue in *Santosky*.

180. *Quilloin v. Walcott*, 434 U.S. 246 (1978). See *supra* notes 114-25 and accompanying text (discussing *Quilloin*).

181. *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977). See *supra* notes 126-46 and accompanying text (discussing *Smith*).

182. *Kristina L.*, 520 A.2d at 579-80. The court asserted:

[We have] little doubt that the Due Process Clause would be offended if a State were to attempt the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest.

Id. (internal quotes omitted) (quoting *Quilloin*, 434 U.S. at 255). The Rhode Island court mistakenly attributed the above statement as a holding.

183. *Id.* at 580. The court stated:

We acknowledge that we have not previously used the term "unfit" when describing the finding required before parental rights may be terminated. Prior interpretations of § 15-7-7(c) have made it clear, however, that unless the child "is likely to suffer physical and/or emotional harm, there is no reason to disturb the basic security of a family relationship."

Id. (quoting *In re Lester*, 417 A.2d 877, 880 (R.I. 1980) and *In re Jonathan*, 415 A.2d 1036, 1039 (R.I. 1980)). The two cited cases did not address the termination of parental rights proceedings, but the initial dependency-neglect proceedings at which the court

Two difficulties emerge from the court's analysis in *Kristina L.* First, the *Santosky* Court based its holding, which requires the state to present clear and convincing evidence that it met the statutory grounds for termination,¹⁸⁴ on a procedural due process analysis.¹⁸⁵ The Rhode Island Supreme Court, however, did not develop its analysis on this or any other constitutional grounds; instead, it relied on precedent and principles of statutory construction.¹⁸⁶ Thus, the principle established by *Kristina L.* is vulnerable to attack via legislative action. Second, despite the court's past efforts to distinguish the dependency-neglect procedures from the termination procedure,¹⁸⁷ the *Kristina L.* court transferred precedent based upon the former procedures¹⁸⁸ into the latter procedures.¹⁸⁹

In summary, *Kristina L.* held that the state may not terminate a parent's rights, regardless of the child's best interest, until the Family

assigned temporary custody to the state. *In re Lester*, 417 A.2d at 877; *In re Jonathan*, 415 A.2d at 1038.

184. *Santosky v. Kramer*, 455 U.S. 745, 760 (1982).

185. See *supra* notes 147-68 and accompanying text (discussing *Santosky*).

186. See *supra* note 183 (quoting *Kristina L.*).

187. "[Unlike neglect or dependency proceedings,] [s]ection 15-7-7 does not require a finding of harm as an essential prerequisite to the termination of parental rights." *In re Crystal*, 476 A.2d 1030, 1034 & n.1 (R.I. 1984).

188. There are two stages of court intervention into family life. At an initial proceeding, DCYF petitions the court for custody of a child based upon an allegation of abuse, neglect, R.I. GEN. LAWS § 40-11-12 (Supp. 1994), or dependency. R.I. GEN. LAWS § 14-1-34 (1994). This petition is referred to variously as the dependency, dependency-neglect, or abuse-neglect petition. If there is an adjudication of abuse, neglect, or dependency, the state awards DCYF temporary custody, while the parents retain their residual rights. R.I. GEN. LAWS §§ 40-11-12, 14-1-34. See *supra* note 4 for a discussion of residual rights. Twelve months after adjudication, the Family Court holds a dispositional hearing, and may order DCYF to file a petition to terminate parental rights if reunification is not indicated. R.I. GEN. LAWS § 40-11-12.1(5)(c). DCYF may not file a termination petition without a prior adjudication of abuse or neglect. Telephone Interview with Kevin Aucoin, *supra* note 8. See *infra* note 189 for a discussion of the differing implications of dependency and abuse-neglect petitions.

189. The court previously held that, prior to granting a dependency-neglect petition, a court had to find that the child suffered, or was likely to suffer, physical or emotional harm. *In re Lester*, 417 A.2d 877, 880 (R.I. 1980); *In re Jonathan*, 415 A.2d 1036, 1039 (R.I. 1980). By contrast, in a termination case, the court refused to require a finding of harm to the child as a prerequisite to termination. *In re Crystal*, 476 A.2d 1030, 1034 (R.I. 1984). The paradoxical effect of these cases was to require the state to meet a greater burden to take temporary custody than to permanently sever the parent-child relationship.

Court finds the parent is unfit.¹⁹⁰ The facts of *Kristina L.* clearly justify this holding.¹⁹¹ Although the analytic support for the court's holding is less clear, it remains an unchallenged component of Rhode Island's termination of parental rights law.¹⁹²

2. The Interrelated Interests

The court applies a "three-dimensional" framework¹⁹³ in its consideration of the conflicting rights of the parent, the child, and the state.¹⁹⁴ Although this approach recognizes the importance of parents' interests, the primary focus is on the child's best interest.¹⁹⁵ The state

190. *Kristina L.*, 520 A.2d at 579. A subsequent case established that unfitness can be found in the absence of fault—as a result of chronic mental illness, for example. *In re Rene B.*, 544 A.2d 137, 139 (R.I. 1988).

191. *Kristina L.* demonstrates one of the dangers inherent in foster care: a temporary removal is extended through no fault of the parent, the young child bonds with a nurturing foster family, and everyone balks at separating the "psychological family." See *supra* note 177 for a discussion of facts in *Kristina L.* In an earlier case, the court overturned a termination of parental rights, finding that the state social workers discouraged visitation in order to promote the relationship between the two children and their foster family. *In re LaFreniere*, 420 A.2d 82, 85 (R.I. 1980). Thus, the court's view on the state's obligation to encourage the parent-child relationship was well-established at the time of *Kristina L.*

192. Telephone Interview with Kevin Aucoin, *supra* note 8. DCYF does not view the recent amendments to § 15-7-7 as reordering the priorities established by *Kristina L.* *Id.*

193. See *In re Lester*, 417 A.2d 877, 880 (R.I. 1980) (rejecting a strict-scrutiny standard as applying a "two-dimensional" approach, "fraught with grave danger to those children whose welfare only the state may protect").

194. *Id.* *In re Lester* involved a dependency petition based on a lack of proper parental care and supervision. *Id.* at 878. See *supra* note 187 for a discussion of dependency petitions. The parent argued that the trial court should have applied a strict-scrutiny standard. *Id.* The court rejected this approach as balancing only the interests of the parent and the state. *Id.* at 879-80.

195. The court stated:

In following the three-dimensional approach, courts must be most careful in the construction of an elaborate edifice of procedural safeguards based upon strict judicial scrutiny that they do not create an impregnable constitutional bulwark behind which private tyranny may proceed undeterred [Though parents' rights are] a most essential consideration, . . . we . . . recognize that the best interests and welfare of the child outweigh all other considerations.

Id. at 880.

has a *parens patriae* interest in protecting a child's welfare.¹⁹⁶ Foster parents' rights derive from this state interest.¹⁹⁷

The court demonstrates its balancing of conflicting interests in its consideration of the "reasonable efforts" requirement.¹⁹⁸ Such efforts are necessary to ensure that a developing bond between a child and a foster family does not abrogate the child's ties to a fit natural parent.¹⁹⁹ In giving meaning to section 15-7-7's reasonable efforts requirement, the court adopted New York's statutory definition of "diligent efforts."²⁰⁰ In its application of the reasonable effort requirement, the court has demonstrated a greater willingness to deny termination petitions when the Department of Children, Youth, and Families (DCYF) fails to provide readily available or easily quantified services.²⁰¹ For example, the

196. *Id.* at 880-81.

197. *See In re Kristina L.*, 520 A.2d 574, 582 (R.I. 1987) (stating that, unless unfit, imperfect natural parents have a right superior to that of exemplary foster parents). *See also In re Peter G.*, 577 A.2d 996, 998 (R.I. 1990) (holding that DCYF's decision to allow child to move out of state with foster family without prior hearing violated natural mother's due process rights).

198. Section 15-7-7(2)(a) (Supp. 1994). "[T]he court shall find as a fact that . . . [the] parental conduct or conditions must have occurred or existed *notwithstanding the reasonable efforts* which shall be made by the agency prior to the filing of the petition to encourage and strengthen the parental relationship; . . ." *Id.* (emphasis added). *See also* 42 U.S.C. § 671(a)(15) (1994) (requiring reasonable efforts, both before and during placement, to strengthen the family relationship).

199. *See Kristina L.*, 520 A.2d at 581. For a discussion of the merits of the reasonable efforts requirement, compare Tamilia, *supra* note 52, at 212 (stating that the reasonable efforts requirement offers parents a necessary protection) with Herring, *supra* note 52, at 142-43 (discussing the delay in permanent placements for children caused by the reasonable efforts requirement).

200. *See In re Armand*, 433 A.2d 957, 962 (R.I. 1981) (quoting N.Y. SOC. SERV. LAW § 384-b.7.(f)(1)-(4) (McKinney 1992)). The New York statute defined "diligent efforts" as including, but not limited to: (1) consulting with the parent in planning reunification services; (2) providing suitable visitation arrangements; (3) providing services to ameliorate conditions preventing reunification; and (4) informing parents of the child's health, education, and progress. *Id.*

201. *See Kristina L.*, 520 A.2d at 580 (finding the state's failure to provide adequate visitation contributed to the "deep emotional ties" the child formed with the foster family); *In re Kenneth*, 439 A.2d 1366, 1369 (R.I. 1982) (affirming the denial of a termination petition because the state's reliance on a divorce decree to deny the non-custodial mother visitation was not justified); *In re LaFreniere*, 420 A.2d 82, 85 (R.I. 1980) (holding that state workers' attempts to discourage visitation were irreconcilable with the statutory duty to "encourage and strengthen" the parent-child relationship). *But see In re Armand*, 433 A.2d at 959, 962 (finding that requiring the mother to confirm visits two days in advance did not constitute a failure to make reasonable efforts).

court has denied terminations upon DCYF's failure to provide for adequate visitation.²⁰² Likewise, the court has required DCYF to assist a parent with housing when homelessness is a primary barrier to reunification.²⁰³ By contrast, parents diagnosed with major psychiatric disorders have had little success arguing a lack of reasonable efforts by DCYF.²⁰⁴ Finally, the court has held as a matter of statutory construction that section 15-7-7 does not require DCYF to provide reunification services to a parent whose rights it seeks to terminate due to conduct "of a cruel and abusive nature."²⁰⁵

IV. RHODE ISLAND'S TERMINATION OF PARENTAL RIGHTS STATUTE—PAST AND PRESENT

The termination of parental rights statute, section 15-7-7, is the central device by which Rhode Island meets its obligation to provide permanency planning²⁰⁶ for children removed from the custody of their parents due to abuse or neglect.²⁰⁷ The statute guides Family Court in

202. See *Kristina L.*, 520 A.2d at 580.

203. *In re Nicole G.*, 577 A.2d 248, 249, 251 (R.I. 1990) (ordering DCYF to provide housing assistance to reunify family).

204. See *In re Frederick*, 546 A.2d 160, 163 (R.I. 1988) (finding that "inappropriate pressure" by DCYF upon a mother to take medication for psychiatric conditions did not diminish DCYF's reasonable efforts to strengthen the parent-child relationship); *In re Ann Marie*, 461 A.2d 394, 395-96 (R.I. 1983) (finding that DCYF was not required to provide services to a mentally retarded mother after she attacked her husband with a cleaver in the presence of her child); *In re Kathaleen*, 460 A.2d 12, 14-15 (R.I. 1983) (finding that DCYF was not required to schedule appointment for mother required by case plan to receive counseling). By contrast, California requires that, before the state can terminate the rights of a developmentally disabled parent, the court must find that the state has tried specifically designed services, and that despite the availability of such services, it is in the child's best interests to terminate the parent's rights. See *In re Victoria M.*, 255 Cal. Rptr. 498, 499 (Cal. Ct. App. 1989).

205. *In re Jean Marie W.*, 559 A.2d 625, 632-33 (R.I. 1989) (applying the plain meaning of § 15-7-7(2)(a) to excuse DCYF from the reasonable efforts requirement when it is alleged that the parent is unfit by reason of cruel and abusive conduct). R.I. GEN. LAWS § 15-7-7(1)(b)(ii), (2)(a) (Supp. 1994).

206. See *supra* notes 31-38 and accompanying text for a discussion of permanency planning.

207. If a parent is adjudicated on an abuse or neglect petition, DCYF obtains custody of the child. R.I. GEN. LAWS § 40-11-12 (Supp. 1994). In addition, DCYF can obtain custody through a dependency petition in which DCYF alleges the parent cannot care for the child through no fault of the parent. R.I. GEN. LAWS § 14-1-34 (1994). This legal fiction is often employed when parents voluntarily seek services for their child. DCYF does not seek terminations for parents who recognize the need for additional

making its dispositions by specifying the standard of proof.²⁰⁸ Through the reasonable efforts requirement, the statute also serves as the blueprint for services which DCYF provides to children who are removed or are at risk for removal, and their families.²⁰⁹ This Part reviews the history of Rhode Island's termination of parental rights statute and examines the 1994 amendments.

A. *History of the Statute*

In 1896, the Rhode Island General Assembly enacted a law addressing the rights of natural parents when a third-party sought adoption of a child.²¹⁰ This statute was one of a package of domestic relations acts relating to marriage,²¹¹ divorce,²¹² married women's rights,²¹³ and the custody,²¹⁴ and care,²¹⁵ of children living apart from their parents. The General Assembly modified this initial act in subsequent amendments. Section 15-7-7 reflects its origin in adoption solely by its current placement in the adoption chapter.²¹⁶ The mid- to late-twentieth century modifications reflect the growth of a child welfare system, with an increasing focus upon child abuse and neglect. The General Assembly has directed the most recent amendments, in part, to

support for a particularly troubled child. Telephone Interview with Kevin Aucoin, *supra* note 8.

208. R.I. GEN. LAWS § 15-7-7(1) (Supp. 1994) (requiring the clear and convincing evidence standard).

209. See *infra* part IV.A. for a discussion of the evolution of the statutory requirement of reasonable efforts. For Rhode Island Supreme Court rulings on what constitutes reasonable efforts, see *supra* notes 198-205 and accompanying text.

210. Adoption of Children, R.I. GEN. LAWS tit. 20, ch. 192 (1896) (amended 1909) [hereinafter Adoption of Children, 1896].

211. Marriage, R.I. GEN. LAWS tit. 20, ch. 191 (1896) (amended 1909) (addressing eligibility, licenses, and solemnization).

212. Divorce, R.I. GEN. LAWS 633 tit. 20, ch. 195 (1896) (amended 1909) (addressing divorce and separation).

213. Property-Rights of Married Women, R.I. GEN. LAWS tit. 20, ch. 194 (1896) (amended 1909) (enacting the right to sell and devise property).

214. Wrongs to Children, R.I. GEN. LAWS tit. 14, ch. 115 (1896) (authorizing the seizure of exploited children); Orphans and Needy Children, R.I. GEN. LAWS tit. 20, ch. 197 (1896) (granting power to take custody of children).

215. Maintenance of Bastard Children, R.I. GEN. LAWS tit. 11, ch. 81 (1896) (amended 1915) (establishing obligations of the father).

216. See *supra* note 3.

the problems of implementing permanency planning in an era of increased maternal substance abuse.²¹⁷

The 1896 enactment allowed any person to petition to adopt a child.²¹⁸ Both parents, if living, had to consent to the adoption in writing,²¹⁹ unless they were "insane," under guardianship, or imprisoned for three years or more.²²⁰ Similarly, the courts treated parents who deserted their children or failed to provide them with support for one year as though "such parent[s] were dead."²²¹ Upon termination of the right to consent, a court could appoint a guardian to consent to the future adoption.²²²

An amendment in 1955²²³ significantly expanded the role of professional agencies²²⁴ in the placement of children for adoption.²²⁵ The statute created a right for natural parents to petition a licensed agency for voluntary termination of the right to consent to a future adoption.²²⁶ If the court found that the parents had freely joined the agency's petition, and that granting the petition was in the child's best interests, it vested the agency with the authority to consent to any subsequent adoption.²²⁷ The amendment did not change the statutory grounds for involuntary termination of the right to consent.²²⁸ However, the statute created the right for a licensed or governmental child-

217. Telephone Interview with Nancy Benoit, *supra* note 7.

218. Adoption of Children, 1896, *supra* note 210, § 1. Married persons must be joined in the petition by a spouse.

219. *Id.* § 2. The consent of a child of fourteen years or older was also required.

220. *Id.* § 3.

221. *Id.*

222. *Id.*

223. Adoption of Children, ch. 3483, §§ 1-16, 1955 R.I. Acts & Resolves 174 (amended 1962) [hereinafter Adoption of Children, 1955].

224. The 1955 amendment defined professional agencies as persons, firms, corporations or agencies licensed by the department of social welfare, or governmental child-placing agencies. *Id.* § 1.

225. *Id.* The amendment required anyone other than the natural parent to obtain a license to "place, offer to place, or assist in the placement" of a child for adoption. *Id.*

226. *Id.* § 3.

227. *Id.* The licensed child-placement agency could not file the petition before the child was three months old. *Id.*

228. *Id.* § 5. See *supra* text accompanying notes 220-21 for a discussion of the statutory grounds for involuntary termination.

placement agency to petition the court for involuntary termination of the natural parents' rights.²²⁹ The statute also required that a hearing on such a petition must occur no less than six months before the adoption hearing.²³⁰

The General Assembly passed section 15-7-7 in 1962.²³¹ The statute retained the existing grounds for involuntary termination,²³² and created an additional ground based upon mental incompetence resulting in the "incapacity to provide care for a prolonged or indeterminate period."²³³ The court determined mental incompetence based upon the testimony of two psychiatrists.²³⁴ The statute did not define the difference between insanity, for which termination did not require expert testimony, and mental incompetence.²³⁵

The next modification to section 15-7-7 occurred in 1970.²³⁶ The statute clarified that termination based upon the failure to support²³⁷ one's child required a finding that the parent had the financial capacity to provide such support.²³⁸ The statute created a new ground for termination if the court determined that a parent "permanently neglected" a child.²³⁹ A court could find permanent neglect if the parent failed to

229. Adoption of Children, 1955, *supra* note 223, § 5.

230. *Id.*

231. Adoption of Children, ch. 106, § 1, 1962 R.I. Acts & Resolves 470, 472 (amending Rhode Island's general laws in chapter 15-7-7) (amended 1970). This Note cites to the session laws for the 1962 and 1970 enactments.

232. "If either parent be insane, or under guardianship, or imprisoned . . . for a term not less than three (3) years, or has wilfully deserted for one (1) year . . . or has neglected to provide proper care and maintenance for the child for one (1) year . . ." *Id.* § 1, at 472-73.

233. *Id.* § 1, at 473.

234. *Id.* § 1, at 473-74.

235. *Id.* It is possible that "insane" referred to confined persons, while "incompetent" persons remained in the community. See *supra* note 232 for the specific language.

236. Adoption of Children, ch. 132, § 1, 1970 R.I. Pub. Laws 532, 538 (amended 1980) [hereinafter Adoption of Children, 1970].

237. See *supra* text accompanying note 221.

238. Adoption of Children, 1970, *supra* note 236, § 1, at 538, 539. This change reflected the holding of *In re LaPorte*, 236 A.2d 264 (R.I. 1967), which interpreted the earlier version of the statute to prevent termination based on failure to support by parents without financial ability. *LaPorte*, 236 A.2d at 267-68.

239. Adoption of Children, 1970, *supra* note 236, § 1, at 538, 539.

“maintain contact with and plan for the future” of a child placed in the state’s care for a year or more.²⁴⁰ The parental failure must have occurred notwithstanding reasonable efforts made by the state to reunify and strengthen the family.²⁴¹

The General Assembly substantially restructured section 15-7-7 in 1980.²⁴² The amended statute recognized several grounds for the involuntary termination of parental rights to the child—parental neglect,²⁴³ parental unfitness due to “conduct or conditions” which are “seriously detrimental to the child,”²⁴⁴ lack of remediation of the conduct or conditions which led to the initial removal of the child,²⁴⁵ and desertion.²⁴⁶ In addition, the statute required the state to make reasonable efforts to strengthen the parent-child relationship, thus complying with the AACWA.²⁴⁷ Finally, the statute established that

240. *Id.* § 1, at 540. The statute allowed the state to file an ex parte petition to request a determination of permanent neglect before one year expired. *Id.* This definition of the “permanently neglected child” closely parallels New York’s definition. See N.Y. SOC. SERV. LAW § 384-b.7(a) (McKinney 1992).

241. Adoption of Children, 1970, *supra* note 236, at 540.

242. Adoption of Children, ch. 364, § 2, 1980 R.I. Pub. Laws 1436 (amended 1988) [hereinafter Adoption of Children, 1980]. In 1980 the legislature structured its public laws as enumerated subsections; the remainder of this Note cites the enumerated subsections of the public law.

243. *Id.* § 15-7-7(a). The parental neglect ground derived from the failure-to-provide-support ground. See *supra* text accompanying note 221.

244. Adoption of Children, 1980, *supra* note 242, § 15-7-7(b)(1)-(3). The conduct or conditions include parental emotional and mental illness, retardation, extended institutionalization (including imprisonment), cruel or abusive conduct toward a child, and substance abuse resulting in lack of proper care. *Id.* DCYF sought terminations most often for parents whose mental illness impaired their capacity to provide adequate care. Telephone Interview with Nancy Benoit, *supra* note 7.

245. Adoption of Children, 1980, *supra* note 242, § 15-7-7(c). This provision replaced the 1970 amendment “permanent neglect” ground, and thus is different from the “seriously detrimental” conduct and conditions. See *supra* notes 239-41 and accompanying text for a discussion of the “permanent neglect” ground. Section 15-7-7(c) eventually evolved to address those children who remain in care for a statutorily defined period and for whom the state deems reunification in the foreseeable future improbable. See *infra* notes 292-96 and accompanying text for later versions of § 15-7-7(c).

246. Adoption of children, 1980, *supra* note 242, § 15-7-7(d). Lack of contact for six months is prima facie evidence of desertion. *Id.*

247. *Id.* § 15-7-7 [unnumbered preamble]. The Assembly placed the reasonable efforts requirement in the preamble to the 1980 amendment; thus DCYF had to demonstrate that it had made such efforts without regard for the grounds upon which the termination was being sought. The Assembly restricted this overbroad requirement in

all findings must meet the clear and convincing standard of evidence,²⁴⁸ and that the court must give primary consideration to the child's needs.²⁴⁹ DCYF sought terminations most often for parents whose mental illness impaired their capacity to provide adequate care.²⁵⁰ The focus upon conduct or conditions may reflect the legislature's attempts to distinguish between those noninstitutionalized parents who could, with support, adequately care for their children and those who could not.

In 1988, the Rhode Island General Assembly restricted the reasonable efforts requirement.²⁵¹ The amendment excluded from the requirement terminations based on desertion,²⁵² and cruel or abusive conduct.²⁵³ In addition, the amended statute no longer required DCYF to continue its reasonable efforts once it filed a termination petition, though parents retained visitation rights pending the hearing.²⁵⁴

In summary, prior to the 1994 amendments, section 15-7-7 provided for the involuntary termination of parental rights upon the following grounds: failure to provide support despite financial ability to do so,²⁵⁵ placement of a child in the care of DCYF for at least six months with no probable reintegration into the parent's home in the "foreseeable

1988.

248. *Id.* § 15-7-7(d). This is the evidentiary standard the United States Supreme Court set in *Santosky*. See *supra* note 156 for discussion of the Court's rationale.

249. Adoption of Children, 1980, *supra* note 242, § 15-7-7(d) ("[T]he court shall give primary consideration to the physical, psychological, mental and intellectual needs of the child . . ."). See *infra* notes 297-307 and accompanying text for the 1994 amendments to this requirement.

250. Telephone Interview with Nancy Benoit, *supra* note 7.

251. Termination of Parental Rights, ch. 289, § 15-7-7, 1988 R.I. Pub. Laws 584.

252. *Id.* § 15-7-7(d).

253. *Id.* § 15-7-7(b)(2).

254. *Id.* § 15-7-7(d). The 1988 amendments to the reasonable efforts requirements are a somewhat unsatisfactory compromise between competing interests. The amendments protect children by not having them participate in reunification programs with parents who have caused serious trauma; and, plainly the state cannot make reasonable efforts with a parent it cannot locate. However, ceasing reunification efforts once the state has filed a petition to terminate while permitting visitation perpetuates an uneasy status quo, with all parties facing court-ordered cessation of the relationship. Visitation is an incident of the parent's residual rights, however, and cannot be withheld until termination of those rights. See *supra* note 4 for a discussion of residual rights.

255. Termination of Parental Rights, § 15-7-7(a).

future;²⁵⁶ abandonment;²⁵⁷ and parental unfitness as evidenced by “conduct or conditions seriously detrimental to the child.”²⁵⁸ Such conduct or conditions included emotional or mental illness, mental deficiency, and imprisonment;²⁵⁹ cruel or abusive conduct toward a child;²⁶⁰ and substance abuse that interfered with the parent’s ability to provide care.²⁶¹ All grounds, with the exception of cruel or abusive conduct, required the court to find that DCYF made reasonable efforts to strengthen the parent-child relationship before petitioning to terminate rights.²⁶² The court must give the child’s best interests primary consideration.²⁶³

B. *The 1994 Amendments*

The Drafting Commission wrote the 1994 amendments to section 15-7-7 to redress several problems DCYF encountered in implementing the permanency planning principles.²⁶⁴ For example, children may wait in state care for five years for “permanent” homes.²⁶⁵ As children grow older, their chances of adoption diminish.²⁶⁶ In addition, DCYF

256. *Id.* § 15-7-7(c).

257. *Id.* § 15-7-7(d).

258. *Id.* § 15-7-7(b).

259. *Id.* § 15-7-7(b)(1).

260. *Id.* § 15-7-7(b)(2).

261. *Id.* § 15-7-7(b)(3).

262. *Id.* § 15-7-7(b)(3). Once DCYF filed a termination petition, the reasonable efforts requirement was suspended. *Id.* § 15-7-7(d).

263. The statute directs the court to “give primary consideration to the physical, psychological, mental and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions. . . .” *Id.* § 15-7-7(d).

264. The child welfare system’s responsibilities to vulnerable children can be divided into two categories: detecting and investigating abuse and neglect, and caring for the children it has determined to be abused or neglected. *See* R.I. GEN. LAWS § 40-11-1 (1988) (defining the state’s policy toward abused and neglected children). The public will direct their dissatisfaction with a child welfare agency against perceived inadequacies in each category. However, the state’s failure to promote the well-being of children it has removed from families for their own protection meets with greater outrage than the failure to protect a child the state had no reason to know was at risk. *See, e.g.,* David Van Biema, *Abandoned to Her Fate: Neighbors, Teachers and the Authorities All Knew Elisa Izquierdo Was Being Abused*, TIME, Dec. 11, 1995, at 32.

265. Macris, *supra* note 7, at A17.

266. *Id.*

was unable to prevent violent parents from inflicting harm on subsequent children.²⁶⁷ Finally, DCYF workers were confused about what constituted reasonable efforts.²⁶⁸ These issues concerning the implementation of the state's permanency-planning efforts co-existed with the state's ongoing problems of scarce placement resources, large caseloads, and an inefficient departmental structure.²⁶⁹

The General Assembly made four significant changes to section 15-7-7: First, parents with chronic substance abuse problems face a higher burden than under the prior law.²⁷⁰ Second, parents who lose custody of a child due to abuse or neglect, and whose rights to another child were previously terminated, may have their rights to the current child terminated if the court finds that the parents "continue[] to lack the ability or willingness to respond to [rehabilitive] services"²⁷¹ Third, parents whose child has been in the custody of DCYF for twelve months and who have been offered services to correct the conditions that led to placement may have their rights terminated if the court does not find "a substantial probability that the child will be able to return to the parents [sic] care within a reasonable period of time"²⁷² Fourth, trial courts must examine the child's adjustment to foster care when it

267. *Id.* In 1984, a jury convicted a mother in the death of her four-year-old son. Upon release from prison, she began a second family. Despite DCYF's involvement with the family, the mother again abused one of her children. *Id.* This case demonstrates another serious impediment to the delivery of child welfare services: a court did not hear the abuse petition until 19 months after DCYF removed the children. The termination hearing has yet to occur. *Id.*

268. *Id.* This confusion apparently resulted in the recent death of another child who the state placed with his biological father at the conclusion of a paternity determination. *Id.* This occurred despite DCYF's earlier petition to terminate the father's rights on abandonment grounds. *Id.* The DCYF workers believed that they had to make a reunification effort with the boy's father. *Id.*

269. The General Assembly made modifications to DCYF's staffing requirements and internal organization in earlier legislation. Telephone Interview with Nancy Benoit, *supra* note 7.

270. R.I. GEN. LAWS § 15-7-7(1)(b)(iii) (Supp. 1994). "The child has been placed in the legal custody or care of [DCYF] and the parent has a chronic substance abuse problem and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time" *Id.* See *infra* notes 278-79 and accompanying text for a discussion of the evidentiary requirements.

271. R.I. GEN. LAWS § 15-7-7(1)(b)(iv).

272. § 15-7-7(1)(c).

considers the child's needs.²⁷³ This Part considers each change in turn.

1. Substance Abuse

Maternal substance abuse has replaced parental mental illness as the primary reason the state seeks termination of parental rights.²⁷⁴ The 1994 amendment reflects the state's concern with the high rate of failure among substance-abusing parents attempting to comply with treatment programs.²⁷⁵ The prior statute stated merely that the state could establish parental unfitness by "[e]xcessive [substance] use . . . to the extent that the parent loses his ability or is unwilling to properly care for the child."²⁷⁶ DCYF was required to make reasonable efforts to strengthen the parent-child relationship.²⁷⁷ Under the amended version, a parent whose child has been in the state's custody for twelve months²⁷⁸ has to overcome the prima facie case of chronic substance abuse.²⁷⁹

273. § 15-7-7(3). "[T]he court shall give primary consideration to the physical, psychological, mental, and intellectual needs of the child insofar as that consideration is not inconsistent with other provisions of this chapter." *Id.*

274. Telephone Interview with Nancy Benoit, *supra* note 7. The state removes many infants at birth due to the presence of drug metabolites in their blood. *See, e.g., In re Jean Marie W.*, 559 A.2d 625, 632 (R.I. 1989). It also removes older children, not as a consequence of a parent's drug use, per se, but because the drug use results in improper care. R.I. GEN. LAWS § 15-7-7(1)(b)(iii) (1988). Thus, the children may have extended exposure to marginal conditions before the time DCYF intervenes.

275. *See Macris, supra* note 7, at A17.

276. Termination of Parental Rights, ch. 289, § 15-7-7(b)(iii), 1988 R.I. Pub. Laws 584.

277. *Id.* § 15-7-7(d).

278. The 12-month limit brings § 15-7-7 into conformity with the shortened limit for holding a dispositional hearing under R.I. GEN. LAWS § 40-11-12.1 (Supp. 1994). *See supra* note 7 for a discussion of changes made to the statutes related to the termination of parental rights.

279. R.I. GEN. LAWS § 15-7-7(1)(b)(iii) (Supp. 1994). "The fact that a parent has been unable to provide care for a child for a period of twelve (12) months due to substance abuse shall constitute prima facie evidence of a chronic substance abuse problem." *Id.* Cf. IOWA CODE ANN. § 232.116.1(k)(2)-(3) (West 1994) (requiring, in addition to a chronic substance abuse problem preventing the child's timely return, a finding that the parent is a "danger to self or others as evidenced by prior acts"); MINN. STAT. ANN. § 260.221.1(b)(5)(i)-(v) (West Supp. 1995) (creating a presumption that reasonable efforts have failed for parents who have been offered appropriate substance abuse services, have failed to achieve success, and have continued to abuse chemicals); NEB. REV. STAT. § 43-292(4) (1993) ("The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, . . . which conduct is found . . . to be seriously detrimental to the . . . juvenile . . ."); TENN. CODE ANN. § 37-1-147(e)(4)

DCYF is still required to make reasonable efforts to strengthen the parental relationship.²⁸⁰

The amendment effectively shortens the length of time within which a substance-abusing parent must demonstrate her rehabilitation in order to regain custody. Parents will have difficulty overcoming the prima facie case for at least two reasons: first, successful treatment of chronic substance abuse requires multiple interventions, and it is common for patients to experience relapses;²⁸¹ second, most patients require an initial period of inpatient treatment.²⁸² Few facilities provide this service to women receiving public assistance, and eligible patients face long waiting lists.²⁸³ The amended statute requires parents to affirmatively prove their fitness despite such barriers to treatment. This increased burden appears justified, however, based upon the high treatment failure-rate.²⁸⁴ In addition, DCYF's initial intervention with the family occurs only when the parent's substance abuse has become so extreme as to result in substantiated allegations of abuse or neglect. Thus, children have been exposed to a deteriorating environment for unknown periods of time prior to being removed. One should note, however, that the legislature has opted to respond to maternal substance abuse by strengthening the termination statute, rather than by improving the treatment options.²⁸⁵

(1991) (parental substance use is a factor to be considered in determining the likelihood of child's return home in the near future).

280. R.I. GEN. LAWS § 15-7-7(2)(a) (Supp. 1994).

281. Telephone Interview with Adrienne McGowan, LICSW, Substance abuse private practitioner and consultant (Feb. 22, 1995).

282. Lenette Azzi-Lessing & Lenore J. Olsen, *Substance Abuse—Affected Families in the Child Welfare System: New Challenges, New Alliances*, 41 SOCIAL WORK 15, 16 (1996).

283. Telephone interview with Adrienne McGowan, *supra* note 281.

284. *See supra* note 274 and accompanying text.

285. One interesting option is to create treatment facilities in which mothers can reside with their children. This arrangement maintains the parent-child relationship and may serve to sustain the mother's recovery. This approach also presents treatment providers with the opportunity to model necessary child-care skills. Rhode Island has two such facilities. Telephone Interview with Adrienne McGowan, *supra* note 281. *See also* Azzi-Lessing & Olsen, *supra* note 282, at 16 (“[A] family-centered approach would assist [substance-abusing] women in carrying out their roles as parents and focus on the needs of their children.”).

2. Prior Termination of Parental Rights

This addition represents an innovation in the Rhode Island statute.²⁸⁶ Under prior enactments, courts could not find the parents' conduct toward other children to be a sufficient basis to terminate parental rights to a child currently before the court.²⁸⁷ Parents presumably faced the termination of rights to all then-living children if their abusive conduct toward one child resulted in lengthy imprisonment.²⁸⁸ However, the "cruel or abusive" conduct provision did not extend to children born subsequent to a parent's imprisonment.²⁸⁹ Nor did this provision address a situation in which

286. R.I. GEN. LAWS § 15-7-7(1)(b)(iv) (Supp. 1994). "[T]he court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to respond to services which would rehabilitate the parent. . . ." *Id.* The statute does not require that DCYF make reasonable efforts to strengthen the relationship prior to filing the petition. *See id.* § 15-7-7(2)(a) (listing those grounds for which DCYF must demonstrate it made reasonable efforts). Section 15-7-7(1)(b)(iv) permits DCYF to file a petition immediately upon taking custody of a child whose parent has demonstrated prior unfitness.

Many states have a more relaxed standard based upon prior abuse or neglect of another child, seemingly without requiring a prior termination of rights. *See, e.g.*, COLO. REV. STAT. ANN. § 19-3-604(1)(b)(IV) (West Supp. 1994) ("Gravely disabling injury or death of a sibling due to proven parental abuse or neglect" is evidence that "no appropriate treatment plan can be devised to address [parental] unfitness. . ."); DEL. CODE ANN. tit. 13, § 1103(a) (5)a.1 (1993) (listing "a history of neglect, abuse or lack of care of this child or other children by this parent" as a factor in termination based upon parent's inability to plan for the child's needs); FLA. STAT. ANN. § 39.464(1)(c)-(d) (West Supp. 1996) (conduct toward the child or other children which demonstrates a threat to "the life or well-being of the child irrespective of the provision of services" is a circumstance justifying petition). Iowa permits termination based upon a prior adjudication of physical or sexual abuse against another child in the family, IOWA CODE ANN. § 232.116.1.c(1) (West 1994), or prior termination. *Id.* § 232.116.1.f(2). In Maine, a parent's conviction for a violent crime against a child creates a rebuttable presumption of unfitness. ME. REV. STAT. ANN. tit. 22, § 4055.1-A(B)(1)-(12) (West Supp. 1995).

287. *See supra* notes 223-54 and accompanying text for a discussion of prior enactments. But *see* note 289 *infra* for a discussion of R.I. GEN. LAWS § 15-7-7(1)(b)(ii) (Supp. 1994).

288. *See* Termination of Parental Rights, ch. 289, § 15-7-7(b)(1), 1988 R.I. Pub. Laws 584. "The parent is unfit by reason of . . . imprisonment of such [a] duration as to render it improbable for the parent to care for the child for an extended period of time." *Id.*

289. *Id.* § 15-7-7(b)(2) (a finding of parental unfitness may be based upon cruel or abusive conduct toward "any child"). On its face, section 15-7-7(b)(2) appeared to

DCYF obtained custody of several children, but was able to substantiate the grounds for termination for only one child. Under the amended version, DCYF may file for the termination of parental rights to all children upon an adjudication of abuse or neglect to any one of them.²⁹⁰ As a result of the reduced standard,²⁹¹ this amendment allows DCYF to move quickly in addressing the siblings of a child to whom the court has previously terminated parental rights.

3. Twelve Months in DCYF's Custody or Care²⁹²

The General Assembly has made two significant amendments to this provision: First, the length of time a child must remain in DCYF's care before filing a petition to terminate parental rights has increased from six months to twelve.²⁹³ Second, the amendment eliminates the requirement that DCYF make reasonable efforts and replaces it with a requirement to offer services.²⁹⁴ The drafters seem to have directed

permit DCYF to seek termination of parental rights to all children if a parent was adjudicated of such conduct toward any child in the family. *Id.* There are two potential weaknesses for using the cruel or abusive conduct provision as a ground for terminating rights to other children. First, it does not apply to those children whose parents have been neglectful of other children. *Id.* § 15-7-7(a). Second, it is ambiguous as to whether the child for whom DCYF seeks termination must be in its custody. The effect of the new provision may be to narrow the application of the cruel or abusive conduct ground to the abused child alone.

290. R.I. GEN. LAWS § 15-7-7(1)(b)(iv) (Supp. 1994). DCYF still must have custody of each child for whom it seeks a termination of parental rights. *Id.* This requires a prior finding of abuse or neglect. Telephone Interview with Kevin Aucoin, *supra* note 8.

291. In place of the reasonable efforts requirement, the court must find that the parent is unwilling or unable to respond to services, and that further services are unlikely to result in reunification in a timely manner. § 15-7-7(1)(b)(iv) (Supp. 1994).

292. The prior version applied to a child "in the care of a licensed or governmental child placement agency, either voluntarily or involuntarily, for a period of at least six (6) consecutive months . . ." Termination of Parental Rights § 15-7-7(c). The Rhode Island Supreme Court has interpreted "care" in this provision to mean "care and custody." *In re Antonio G.*, 657 A.2d 1052, 1059 (R.I. 1995). The amended version requires the child to be "placed in the legal custody or care" of DCYF. R.I. GEN. LAWS § 15-7-7(1)(c) (Supp. 1994). This would appear to require an adjudication of abuse or neglect.

293. *Compare* Termination of Parental Rights § 15-7-7(1)(c) (requiring that a child be in DCYF's care for six consecutive months).

294. R.I. GEN. LAWS § 15-7-7(1)(c) (Supp. 1994). "[T]he parents were offered or received services to correct the situation which led to the child being placed . . ." *Id.* *Compare* Termination of Parental Rights § 15-7-7(c) (requiring the "failure of the parent

this provision toward those cases in which a combination of factors have delayed the child's return home, while no single factor is sufficient to result in termination.

The impact of this modification depends on the circumstances in which DCYF relies upon this ground. If, for example, DCYF historically relied upon this ground to terminate the rights of minimally compliant substance abusers, the new substance abuse amendment would address this class of cases.²⁹⁵ The amended ground could, however, permit DCYF to terminate the rights of any parent whom DCYF perceives as making slow progress toward full compliance with a case plan. For example, DCYF could move to terminate the rights of a chronically homeless parent, without providing any housing assistance.²⁹⁶

4. The Child's Adjustment to Foster Care

This amendment expands the prior directive to the court to consider the child's "physical, psychological, mental, and intellectual needs."²⁹⁷ The purpose of this amendment is not, as it appears on its face, to promote the interest of the foster family over that of the natural parents. Rather, the drafters thought that evidence of a child's attachment to a

to effect a lasting adjustment after reasonable efforts by available social agencies for such an extended duration of time that it appears reasonable that no lasting adjustment can be affected").

295. See *supra* notes 274-85 and accompanying text.

296. See *In re Nicole G.*, 577 A.2d 248, 251 (R.I. 1990) (holding that Family Court may order DCYF to provide housing assistance in keeping with the reasonable efforts requirement).

297. R.I. GEN. LAWS § 15-7-7(3) (Supp. 1994). The amendment states:

Such consideration [of the child's best interest] shall include the following: If a child has been placed in foster family care, . . . the court shall determine whether the child has been integrated into the foster family to the extent that the child's familial identity is with the foster family and whether the foster family is able and willing to permanently integrate the child into the foster family. . . . [T]he court should consider: (1) the length of time child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child; (2) the reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

Id. Compare IOWA CODE ANN. § 232.116.2.b (West 1994) (using substantially similar language). Massachusetts does not separately consider parental conduct and other factors contributing to the child's best interest: a child's attachment to a substitute caretaker is a factor of equal weight to the parent's abuse or neglect of a child. MASS. GEN. L. ch. 210, § 3(c)(i)-(xiii) (1994). Nevada specifies that the ultimate goal of parental termination is adoption by the child's foster family. NEV. REV. STAT. § 128.108 (1991).

foster family indicated the degree to which the child had attenuated her attachment to the natural parents.²⁹⁸ Thus, terminating parental rights would not run contrary to the child's best interests.²⁹⁹

This provision has substantial implications for the manner in which DCYF administers case-management services to children, parents, and foster families prior to considering the termination petition. The amended version creates two potential problems: first, it may reduce the safeguards against DCYF workers unconsciously acting on impermissible bases,³⁰⁰ and second, it may increase the pressure on foster parents to adopt a child who has been in their care.

DCYF social workers have primary responsibility for communicating to all parties the intended nature of the foster relationship—temporary and in support of, not detrimental to, the child's return home.³⁰¹ The workers must balance the conflicting interests of the parent, child, foster family, and state.³⁰² Furthermore, they must balance those interests in the context of an ongoing interaction, in contrast to the single moment of time the court considers at a termination proceeding. Workers must manage their natural desire to see a child remain in an environment that can meet the child's needs more adequately than the parent can. A worker who believes that indications of the child's adjustment increases the likelihood of the child becoming available for adoption by the foster family may unintentionally encourage the development of a permanent relationship, at the expense of the bond with the natural parent.³⁰³

298. Telephone Interview with Nancy Benoit, *supra* note 7.

299. *Id.*

300. The Rhode Island Supreme Court has stated:

[E]ven though it may be in a child's best interest to live with a family of comfortable means . . . this standard may not justify the state's intervention into a family relationship

....

. . . [W]orkers must take care not to impose their own values regarding proper familial relationships on the families they meet in the course of their work.

In re Kristina L., 520 A.2d 574, 581 (R.I. 1987).

301. See *Smith v. Organization of Foster Families*, 431 U.S. 816, 857-58 (1977) (Stewart, J., concurring).

302. See *supra* notes 129-46 (discussing the *Smith* decision).

303. Case reports indicate that children may become tearful or disruptive shortly before or after visits with a parent. These are normal reactions as a child adjusts to being, in essence, a citizen of two households. A skillful worker can help a foster parent

The second problem which may arise under this amendment affects those children placed in long-term foster care. Once DCYF takes custody of a child, it may turn to relatives, especially grandparents, to provide care for the child.³⁰⁴ Often the relatives can manage the additional expense only through the foster care board.³⁰⁵ When a child is adopted, the state no longer provides that money. If the prior relationship with a relative helps the child to adjust to living apart from his parents, and evidence of that adjustment increases the likelihood of termination, the state may expect the foster parents to adopt the child.³⁰⁶ If the foster parents refuse, the state will move the child to a pre-adoptive foster home³⁰⁷ to begin the process all over again.

The legislature has attempted to protect against this outcome through changes to two related statutes. First, the new guardianship act permits foster families to retain care of the child with financial support from DCYF,³⁰⁸ while relieving DCYF of the obligation to provide case-management services.³⁰⁹ Both the parent and DCYF must consent to the guardianship.³¹⁰ This disposition does not result in the termination of the parent's rights.³¹¹ Second, the General Assembly amended the statute governing dispositional hearings to prevent the termination of parental rights for children under age ten placed with relatives who are willing to provide a home on a long-term basis but are unwilling to adopt.³¹²

DCYF may not want to pursue the guardianship alternative. The child welfare system has understood permanency planning to require the

understand that such signs do not necessarily indicate that the child's visits with his parent are bad for him. This understanding will help the foster parent to feel less conflicted about the child's parent, and more supportive of maintaining that relationship. See *supra* note 177 (discussing the facts of *Kristina L.*) A child's behavior has evidentiary implications as well: a worker who believes that this behavior is a manifestation of the parent's inadequacy will present that information in court to the detriment of the parent.

304. Telephone Interview with Nancy Benoit, *supra* note 7.

305. Homer, *supra* note 20, at 196.

306. Telephone Interview with Kevin Aucoin, *supra* note 8.

307. *Id.*

308. R.I. GEN. LAWS §§ 40-11-12, -12.3 (Supp. 1994).

309. Telephone Interview with Nancy Benoit, *supra* note 7.

310. R.I. GEN. LAWS § 40-11-12.

311. Telephone Interview with Nancy Benoit, *supra* note 7.

312. R.I. GEN. LAWS § 40-11-12.1(5)(d)(iii).

placement of a child either with the natural parent or an adoptive family.³¹³ The guardianship plan depends upon recognition of a third alternative: it permits a child to maintain a legal relationship with the natural parent while residing with another family which is able to meet the child's needs on an ongoing basis.³¹⁴ This option may be preferable to the "more secure" adoption which, in actuality, requires severance of yet another familial relationship. DCYF has no incentive to seek guardianship in appropriate cases, however, because it will continue to bear the expense of board payments.³¹⁵ Thus, Family Court judges, guardians, and foster families will bear the onus in pursuing this option.

V. THE IMPACT OF AMENDED SECTION 15-7-7 ON CHILD WELFARE SERVICES

The permanency planning effort recognizes two routes to achieving its goal of permanent relationships for children removed from their parents: first, the state may restore the natural family unit by providing services to strengthen the parent-child relationship;³¹⁶ or second, the state may move to legally terminate the parent-child relationship it determines to be irretrievably broken, thereby providing the child with the opportunity to form a legal tie to a subsequent permanent caretaker.³¹⁷ The state selects the applicable route to permanence after determining the natural parent's ability to become a functioning parent.³¹⁸ The reasonable efforts requirement ensures that the state engages in actual fact-finding of parental ability.³¹⁹ This requirement also attempts to ensure that the court does not find a parent inadequate based upon an impermissible bias against poor, illiterate, minority, or other disfavored parents.³²⁰

313. See *supra* notes 29-59 (discussing permanency planning).

314. R.I. GEN. LAWS § 40-11-12.1(5)(d)(iii).

315. *Id.* § 40-11-12.3.

316. See *supra* notes 44 and 53 and accompanying text.

317. See *supra* note 70 and accompanying text.

318. See R.I. GEN. LAWS § 15-7-7 (Supp. 1994).

319. See *supra* notes 198-99 and accompanying text for a discussion of the functions of the reasonable efforts requirement.

320. See *supra* notes 164-66 and accompanying text for a discussion of potential bias against natural parents.

DCYF has had fifteen years of experience with the implementation of permanency planning principles.³²¹ Rhode Island has struggled to discern the difference between fit and unfit parents.³²² As a result of the uncertainty inherent in this process, terminations occur only after several years of state involvement.³²³ This lengthy process yields what is arguably the worst of both worlds: the state finally terminates the parent-child relationship after years of unsatisfactory reunification attempts, and the children are old enough to be considered unadoptable.³²⁴ In pursuit of reunification, the children have lost an uncountable number of temporary homes and families. In effect, this policy leave these children with no parent but the state.

The Rhode Island General Assembly enacted the 1994 amendments to the termination of parental rights statute with the goal of increasing the speed and number of terminations.³²⁵ The amendments have proven effective in this regard: DCYF has filed increasing numbers of termination petitions since the enactment of the amendments.³²⁶ The appropriateness of these terminations hinges upon the following three factors: (1) the degree to which the courts require DCYF to make reasonable efforts in order to ensure that it dissolves only those irretrievably broken families;³²⁷ (2) the age of the children at the time of the termination;³²⁸ and (3) the development of sufficient numbers of appropriate adoptive homes and post-adoption services.

The amendments narrow the reasonable efforts requirements for

321. Congress enacted the AACWA in 1980. Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C.). The 1980 amendments to R.I. GEN. LAWS § 15-7-7 brought the statute into compliance with the federal mandates. See *supra* notes 242-50 and accompanying text for the version of § 15-7-7 in effect in 1980.

322. See *supra* part III.B.1 for a discussion of Rhode Island's requirement of unfitness as a precursor to termination of parental rights.

323. Macris, *supra* note 7, at A17.

324. See *id.*

325. Telephone Interview with Kevin Aucoin, *supra* note 8.

326. Macris, *supra* note 7, at A17.

327. See *supra* notes 198-205 and accompanying text for a discussion of the reasonable efforts requirement.

328. See, e.g., Macris, *supra* note 7, at A17 (discussing the impact of age upon a child's potential for adoption).

parents falling into two categories:³²⁹ (1) those whose rights to another child were terminated in the past³³⁰ and (2) those who have not regained custody after their child has spent twelve months in DCYF's care.³³¹ The first category in effect permits the court to recognize the reasonable efforts made by DCYF in its earlier interventions with a family—efforts that failed to reunify the parent and child.³³² The amendment, however, requires the court to determine the utility of further services in remedying the current parent-child relationship.³³³ This requirement may reduce the risk of an erroneous present termination.

By contrast, reducing the reasonable efforts requirement for parents in the second category is far more problematic. In essence, the statute permits a court to order a termination because a child "lingered" in care, without examining the impact of DCYF action—or inaction—upon that length of placement. Whether a parent complied with DCYF's reasonable efforts is one source of information regarding their fitness.³³⁴ Thus, if DCYF must only "offer"³³⁵ services, this will deprive the court of information necessary to determine the parent's fitness. Unless the court examines *why* the parent did not comply with DCYF's reasonable efforts, there may be an increased risk of terminations based upon impermissible factors, such as poverty.³³⁶ This would result, for example, if DCYF required a parent to participate in a reunification program in another town, but did not provide the parent with transportation.³³⁷

329. The substance abuse amendment creates a shift in the burden, while retaining the reasonable efforts requirement. R.I. GEN. LAWS § 15-7-7(1)(b)(iii) (Supp. 1994). See *supra* part IV.B.1.

330. R.I. GEN. LAWS § 15-7-7(1)(b)(iv). See *supra* part IV.B.2.

331. R.I. GEN. LAWS § 15-7-7(1)(c). See *supra* part IV.B.3.

332. If previous terminations were based upon cruel or abusive conduct, then DCYF is not required to make reasonable efforts. See R.I. GEN. LAWS § 15-7-7(2)(a) (excluding this ground from the reasonable efforts requirement).

333. *Id.* § 15-7-7(1)(b)(iv).

334. See *supra* notes 204-05 and accompanying text.

335. R.I. GEN. LAWS § 15-7-7(1)(C) ("[T]he parents were offered or received services to correct the situation . . .").

336. See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982), (describing the risks to poor or minority parents in termination proceedings).

337. Although the Office of the Public Defender represents parents at termination hearings, parents are not represented at Family Court reviews or dispositional hearings. Compare R.I. R. JUV. P. 17(d) (1994) (directing DCYF to report to Family Court regarding

The impact of the recent increase in terminations will vary with the age of the children. A child's chances of being adopted diminish as the child grows older.³³⁸ This may result from a combination of factors: adoptive parents often want to start with an infant; those who are willing to consider older children may be concerned that an older child has been exposed to damaging environments;³³⁹ older children who have been in the child welfare system for extended periods may have learned to distrust the promise of permanence. For those children just entering DCYF's care, amendments which speed the process for younger children will mitigate these risks.³⁴⁰ However, for those children who have been awaiting the resolution of their cases for long periods, DCYF should closely examine the likelihood of a successful adoption for each child.³⁴¹ If it appears that the chief barrier to adoption is not the child's legal tie to a parent, Family Court should consider permitting the child to maintain that tie, while extending DCYF's custody to permit the child to remain in substitute care.³⁴² The court may ask older children their wishes under these circumstances.³⁴³

In order for adoption to become a real alternative, Rhode Island will have to expend resources to locate adequate adoptive families. Furthermore, the state must recognize that the successful creation of a

service plan; no requirement for counsel for parents) with R.I. R. JUV. P. 18(c)(4) (requiring appointment of counsel for termination hearing). The court reviews a parent's progress toward fulfillment of the DCYF case plan at these hearings. See R.I. R. JUV. P 17(d). If DCYF is not providing sufficient support to a parent, that fact may not come to the attention of the court unless the parent addresses the deficiency. The records established at reviews are relied upon at termination hearings.

338. Macris, *supra* note 7, at A17.

339. "[T]he older children get, and the more emotional baggage they accumulate, the less attractive they are to prospective parents." *Id.*

340. R.I. GEN. LAWS § 40-11-12.1(5)(d) (Supp. 1994) (requiring termination petition be filed at 12 months for child aged 10 or younger). See *supra* text accompanying note 312.

341. See, e.g., CAL. WELF. & INST. CODE § 366.26(c)(1) (West Supp. 1996) (requiring clear and convincing evidence that a child will be adopted as a prerequisite for termination).

342. The guardianship provision applies only to those children placed with relatives. R.I. GEN. LAWS § 40-11-12.1(5)(d)(iii) (Supp. 1994).

343. Section 15-7-7(3) directs the court to consider "the reasonable preference of the child, if the court determines that the child has sufficient capacity" in determining the degree to which a child has become integrated into a foster home. R.I. GEN. LAWS § 15-7-7(3) (Supp. 1994).

family is not sealed with a court decree. Post-adoption services will be especially critical for those children who have been in DCYF's care for extended periods. The AACWA does not provide funding for post-adoption services, unless the state has designated the child as having special needs.³⁴⁴ It would be short-sighted to hasten ill-considered adoptions simply because the new statute permits that result. The formation of a family by legal decree is an undertaking fraught with difficulties under the best of circumstances. With proper planning and support the adoptive family and child may negotiate these difficulties. Failure to provide that support is likely to result in yet another failed home for a child, and devastation to yet another family.

VI. CONCLUSION

The AACWA of 1980 had two principal goals: first, to ensure that children establish permanent bonds with caretakers;³⁴⁵ and second, to prevent unnecessary separations of parents and children.³⁴⁶ These goals reflect the ordering of familial relationships seen in various United States Supreme Court decisions:³⁴⁷ Fit parents have a compelling interest in the care and custody of their children.³⁴⁸ The state has a *parens patriae* interest in protecting children from abuse or neglect.³⁴⁹ The child has an interest in growing up in an environment free of harm.³⁵⁰ Clearly these goals are intertwined, and, at times, conflict.³⁵¹ In addition to wrestling with these conflicting interests, Rhode Island has struggled to implement each of the AACWA's goals because of inadequate resources.³⁵²

Rhode Island's recent amendments to its child welfare statutes in general, and the termination of parental rights statute in particular, reflect

344. 42 U.S.C. § 673(c)(2) (1994).

345. *Id.* § 625(a)(1)(C)-(F).

346. *Id.* § 625(a)(1)(C).

347. See *supra* part III.A for a discussion of the pertinent constitutional doctrine.

348. See *supra* text accompanying note 108.

349. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

350. See *supra* note 99 and accompanying text.

351. See *supra* part III.B.2 (discussing Rhode Island's analysis of these conflicting interests).

352. See *supra* note 55-59 and accompanying text for a discussion of funding inequities and the AACWA.

the state's experience with permanency planning since the passage of the AACWA sixteen years ago. The amendments attempt to refine the circumstances under which the state may seek terminations, with the goal of increasing the speed with which the state makes such determinations.³⁵³ By shortening the period of time during which a court examines a parent's fitness, the state moves closer to protecting the child's interests. However, speed is only one element in meeting the needs of children in the state's care. Rhode Island must find and support alternative adoptive homes if the 1994 amendments to section 15-7-7 are to yield a true benefit.

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353. See *supra* note 9 and accompanying text.

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