

105TH CONGRESS
1ST SESSION

S. 742

To promote the adoption of children in foster care.

IN THE SENATE OF THE UNITED STATES

MAY 14, 1997

Mr. DEWINE (for himself and Mr. HELMS) introduced the following bill; which
was read twice and referred to the Committee on Finance

A BILL

To promote the adoption of children in foster care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Adoption Promotion Act of 1997”.

6 (b) **TABLE OF CONTENTS.**—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. States required to initiate or join proceedings to terminate parental rights for certain children in foster care.
- Sec. 3. Adoption incentive payments.
- Sec. 4. Notice of reviews and hearings; opportunity to be heard.
- Sec. 5. Kinship care.
- Sec. 6. Use of the Federal Parent Locator Service for child welfare services.
- Sec. 7. Performance of States in protecting children.
- Sec. 8. Technical assistance.
- Sec. 9. Clarification of eligible population for independent living services.

Sec. 10. Coordinated services demonstration grants.

Sec. 11. Effective date.

1 **SEC. 2. STATES REQUIRED TO INITIATE OR JOIN PROCEED-**
 2 **INGS TO TERMINATE PARENTAL RIGHTS FOR**
 3 **CERTAIN CHILDREN IN FOSTER CARE.**

4 (a) IN GENERAL.—Section 475(5) of the Social Secu-
 5 rity Act (42 U.S.C. 675(5)) is amended—

6 (1) by striking “and” at the end of subpara-
 7 graph (C);

8 (2) by striking the period at the end of sub-
 9 paragraph (D) and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(E) in the case of a child who has not at-
 12 tained 10 years of age and has been in foster
 13 care under the responsibility of the State for 12
 14 months of the most recent 18 months, the State
 15 shall file a petition to terminate the parental
 16 rights of the child’s parents (or, if such a peti-
 17 tion has been filed by another party, seek to be
 18 joined as a party to the petition), unless—

19 “(i) at the option of the State, the
 20 child is being cared for by a relative;

21 “(ii) a State court or State agency
 22 has documented a compelling reason for
 23 determining that filing such a petition

1 would not be in the best interests of the
2 child; or

3 “(iii) the State has not offered to the
4 family of the child such services as the
5 State deems appropriate, if reasonable ef-
6 forts are required to be made with respect
7 to the child.”.

8 (b) LIMITATION ON APPLICABILITY.—The amend-
9 ments made by subsection (a) shall apply only to children
10 entering foster care on or after October 1, 1997.

11 **SEC. 3. ADOPTION INCENTIVE PAYMENTS.**

12 (a) IN GENERAL.—Part E of title IV of the Social
13 Security Act (42 U.S.C. 670–679) is amended by inserting
14 after section 473 the following:

15 **“SEC. 473A. ADOPTION INCENTIVE PAYMENTS.**

16 “(a) GRANT AUTHORITY.—Subject to the availability
17 of such amounts as may be provided in appropriations
18 Acts, the Secretary shall make a grant to each State that
19 is an incentive-eligible State for a fiscal year in an amount
20 equal to the adoption incentive payment payable to the
21 State for the fiscal year under this section, which shall
22 be payable in the immediately succeeding fiscal year.

23 “(b) INCENTIVE-ELIGIBLE STATE.—A State is an in-
24 centive-eligible State for a fiscal year if—

1 “(1) the State has a plan approved under this
2 part for the fiscal year;

3 “(2) the number of foster child adoptions in the
4 State during the fiscal year exceeds the base number
5 of foster child adoptions for the State for the fiscal
6 year;

7 “(3) the State is in compliance with subsection
8 (c) for the fiscal year; and

9 “(4) the fiscal year is any of fiscal years 1998
10 through 2002.

11 “(c) DATA REQUIREMENTS.—

12 “(1) IN GENERAL.—A State is in compliance
13 with this subsection for a fiscal year if the State has
14 provided to the Secretary the data described in para-
15 graph (2) for fiscal year 1997 (or, if later, the fiscal
16 year that precedes the 1st fiscal year for which the
17 State seeks a grant under this section) and for each
18 succeeding fiscal year.

19 “(2) DETERMINATION OF NUMBERS OF ADOP-
20 TIONS.—

21 “(A) DETERMINATIONS BASED ON AFCARS
22 DATA.—Except as provided in subparagraph
23 (B), the Secretary shall determine the numbers
24 of foster child adoptions and of special needs
25 adoptions in a State during each of fiscal years

1 1997 through 2002, for purposes of this sec-
2 tion, on the basis of data meeting the require-
3 ments of the system established pursuant to
4 section 479, as reported by the State in May of
5 the fiscal year and in November of the succeed-
6 ing fiscal year, and approved by the Secretary
7 by April 1 of the succeeding fiscal year.

8 “(B) ALTERNATIVE DATA SOURCES PER-
9 MITTED FOR FISCAL YEAR 1997.—For purposes
10 of the determination described in subparagraph
11 (A) for fiscal year 1997, the Secretary may use
12 data from a source or sources other than that
13 specified in subparagraph (A) that the Sec-
14 retary finds to be of equivalent completeness
15 and reliability, as reported by a State by No-
16 vember 30, 1997, and approved by the Sec-
17 retary by March 1, 1998.

18 “(3) NO WAIVER OF AFCARS REQUIREMENTS.—
19 This section shall not be construed to alter or affect
20 any requirement of section 479 or any regulation
21 prescribed under such section with respect to report-
22 ing of data by States, or to waive any penalty for
23 failure to comply with the requirements.

24 “(d) ADOPTION INCENTIVE PAYMENT.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the adoption incentive payment payable to
3 a State for a fiscal year under this section shall be
4 equal to the sum of—

5 “(A) \$4,000, multiplied by amount (if any)
6 by which the number of foster child adoptions
7 in the State during the fiscal year exceeds the
8 base number of foster child adoptions for the
9 State for the fiscal year; and

10 “(B) \$2,000, multiplied by the amount (if
11 any) by which the number of special needs
12 adoptions in the State during the fiscal year ex-
13 ceeds the base number of special needs adop-
14 tions for the State for the fiscal year.

15 “(2) PRO RATA ADJUSTMENT IF INSUFFICIENT
16 FUNDS AVAILABLE.—If the total amount of adoption
17 incentive payments otherwise payable under this sec-
18 tion for a fiscal year exceeds \$15,000,000, the
19 amount of the adoption incentive payment payable to
20 each State under this section for the fiscal year shall
21 be—

22 “(A) the amount of the adoption incentive
23 payment that would otherwise be payable to the
24 State under this section for the fiscal year; mul-
25 tiplied by

1 “(B) the percentage represented by
2 \$15,000,000, divided by the total amount of
3 adoption incentive payments otherwise payable
4 under this section for the fiscal year.

5 “(e) 2-YEAR AVAILABILITY OF INCENTIVE PAY-
6 MENTS.—Payments to a State under this section in a fis-
7 cal year shall remain available for use by the State
8 through the end of the succeeding fiscal year.

9 “(f) LIMITATIONS ON USE OF INCENTIVE PAY-
10 MENTS.—A State shall not expend an amount paid to the
11 State under this section except to provide to children or
12 families any service (including post adoption services) that
13 may be provided under part B or E. Amounts expended
14 by a State in accordance with the preceding sentence shall
15 be disregarded in determining State expenditures for pur-
16 poses of Federal matching payments under section 474.

17 “(g) DEFINITIONS.—As used in this section:

18 “(1) FOSTER CHILD ADOPTION.—The term
19 ‘foster child adoption’ means the final adoption of a
20 child who, at the time of adoptive placement, was in
21 foster care under the supervision of the State.

22 “(2) SPECIAL NEEDS ADOPTION.—The term
23 ‘special needs adoption’ means the final adoption of
24 a child for whom an adoption assistance agreement
25 is in effect under section 473.

1 “(3) BASE NUMBER OF FOSTER CHILD ADOPT-
2 TIONS.—The term ‘base number of foster child
3 adoptions for a State’ means, with respect to a fiscal
4 year, the largest number of foster child adoptions in
5 the State in fiscal year 1997 (or, if later, the 1st fis-
6 cal year for which the State has furnished to the
7 Secretary the data described in subsection (c)(2)) or
8 in any succeeding fiscal year preceding the fiscal
9 year.

10 “(4) BASE NUMBER OF SPECIAL NEEDS ADOPT-
11 TIONS.—The term ‘base number of special needs
12 adoptions for a State’ means, with respect to a fiscal
13 year, the largest number of special needs adoptions
14 in the State in fiscal year 1997 (or, if later, the 1st
15 fiscal year for which the State has furnished to the
16 Secretary the data described in subsection (c)(2)) or
17 in any succeeding fiscal year preceding the fiscal
18 year.

19 “(h) LIMITATIONS ON AUTHORIZATION OF APPRO-
20 PRIATIONS.—

21 “(1) IN GENERAL.—For grants under this sec-
22 tion, there are authorized to be appropriated to the
23 Secretary \$15,000,000 for each of fiscal years 1999
24 through 2003.

1 “(2) AVAILABILITY.—Amounts appropriated
2 under paragraph (1) are authorized to remain avail-
3 able until expended, but not after fiscal year 2003.”.

4 (b) DISCRETIONARY CAP ADJUSTMENT FOR ADOPT-
5 TION INCENTIVE PAYMENTS.—

6 (1) SECTION 251 AMENDMENT.—Section
7 251(b)(2) of the Balanced Budget and Emergency
8 Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)) is
9 amended by adding at the end the following:

10 “(I) ADOPTION INCENTIVE PAYMENTS.—

11 Whenever a bill or joint resolution making ap-
12 propriations for fiscal year 1999, 2000, 2001,
13 or 2002 is enacted that specifies an amount for
14 adoption incentive payments for the Depart-
15 ment of Health and Human Services—

16 “(i) the adjustments for new budget
17 authority shall be the amounts of new
18 budget authority provided in that measure
19 for adoption incentive payments, but not to
20 exceed \$15,000,000; and

21 “(ii) the adjustment for outlays shall
22 be the additional outlays flowing from such
23 amount.”.

24 (2) SECTION 606 AMENDMENT.—Section 606 of
25 the Congressional Budget Act of 1974 (2 U.S.C.

1 665e) is amended by adding at the end the follow-
2 ing:

3 “(f) ADOPTION INCENTIVE PAYMENTS ADJUST-
4 MENT.—

5 “(1) COMMITTEE REQUIREMENTS.—

6 “(A) NEW BUDGET AUTHORITY AND OUT-
7 LAYS.—

8 “(i) IN GENERAL.—When the Com-
9 mittee on Appropriations reports an appro-
10 priation measure for fiscal year 1999,
11 2000, 2001, 2002, or 2003 that specifies
12 an amount for adoption incentive payments
13 for the Department of Health and Human
14 Services, or when a conference committee
15 submits a conference report thereon, the
16 chairman of the Committee on the Budget
17 of the Senate or House of Representatives
18 (whichever is appropriate) shall—

19 “(I) make adjustments for the
20 amounts of new budget authority pro-
21 vided by that appropriation measure
22 for such payments, which shall be the
23 amount of new budget authority pro-
24 vided in that measure for adoption in-

1 centive payments, but not to exceed
2 \$15,000,000; and

3 “(II) make adjustment for out-
4 lays, which shall be in an amount
5 equal to the additional outlays flowing
6 from such amount.

7 “(ii) REVERSAL.—If the adjustments
8 referred to in the preceding sentence are
9 made for an appropriations measure that
10 is not enacted into law, then the chairman
11 of the Committee on the Budget of the
12 House of Representatives shall, as soon as
13 practicable, reverse those adjustments.

14 “(iii) PUBLICATION.—The chairman
15 of the Committee on the Budget of the
16 House of Representatives shall submit any
17 adjustments made under this subpara-
18 graph to the House of Representatives and
19 have such adjustments published in the
20 Congressional Record.

21 “(B) ADJUSTMENTS REFERRED TO.—The
22 adjustments referred to in this paragraph con-
23 sist of adjustments to—

24 “(i) the discretionary spending limits
25 for that fiscal year as set forth in the most

1 recently adopted concurrent resolution on
2 the budget;

3 “(ii) the allocations to the Committees
4 on Appropriations of the Senate and the
5 House of Representatives for that fiscal
6 year under sections 302(a) and 602(a);
7 and

8 “(iii) the appropriate budgetary ag-
9 gregates for that fiscal year in the most re-
10 cently adopted concurrent resolution on the
11 budget.

12 “(C) APPLICATION.—The adjusted discre-
13 tionary spending limits, allocations, and aggre-
14 gates under this paragraph shall be considered
15 the appropriate limits, allocations, and aggre-
16 gates for purposes of congressional enforcement
17 of this Act and concurrent budget resolutions
18 under this Act.

19 “(2) REPORTING REVISED SUBALLOCATIONS.—
20 Following the adjustments made under paragraph
21 (1), the Committees on Appropriations of the Senate
22 and the House of Representatives may report appro-
23 priately revised suballocations pursuant to sections
24 302(b) and 602(b) of this Act to carry out this sub-
25 section.

1 (1) IN GENERAL.—The Secretary of Health and
2 Human Services shall—

3 (A) not later than March 1, 1998, convene
4 the advisory panel provided for in subsection
5 (b)(1) and prepare and submit to the advisory
6 panel an initial report on the extent to which
7 children in foster care are placed in the care of
8 a relative (in this section referred to as “kin-
9 ship care”); and

10 (B) not later than November 1, 1998, sub-
11 mit to the Committee on Ways and Means of
12 the House of Representatives and the Commit-
13 tee on Finance of the Senate a final report on
14 the matter described in subparagraph (A),
15 which shall—

16 (i) be based on the comments submit-
17 ted by the advisory panel pursuant to sub-
18 section (b)(2) and other information and
19 considerations; and

20 (ii) include the policy recommenda-
21 tions of the Secretary with respect to the
22 matter.

23 (2) REQUIRED CONTENTS.—Each report re-
24 quired by paragraph (1) shall—

1 (A) include, to the extent available for each
2 State, information on—

3 (i) the policy of the State regarding
4 kinship care;

5 (ii) the characteristics of the kinship
6 care providers (including age, income, eth-
7 nicity, and race);

8 (iii) the characteristics of the house-
9 hold of such providers (such as number of
10 other persons in the household and family
11 composition);

12 (iv) how much access to the child is
13 afforded to the parent from whom the
14 child has been removed;

15 (v) the cost of, and source of funds
16 for, kinship care (including any subsidies
17 such as medicaid and cash assistance);

18 (vi) the goal for a permanent living
19 arrangement for the child and the actions
20 being taken by the State to achieve the
21 goal;

22 (vii) the services being provided to the
23 parent from whom the child has been re-
24 moved; and

1 (viii) the services being provided to
2 the kinship care provider; and

3 (B) specifically note the circumstances or
4 conditions under which children enter kinship
5 care.

6 (b) ADVISORY PANEL.—

7 (1) ESTABLISHMENT.—The Secretary of Health
8 and Human Services, in consultation with the Chair-
9 man of the Committee on Ways and Means of the
10 House of Representatives and the Chairman of the
11 Committee on Finance of the Senate, shall convene
12 an advisory panel which shall include parents, foster
13 parents, former foster children, State and local pub-
14 lic officials responsible for administering child wel-
15 fare programs, private persons involved in the deliv-
16 ery of child welfare services, representatives of tribal
17 governments and tribal courts, judges, and academic
18 experts.

19 (2) DUTIES.—The advisory panel convened pur-
20 suant to paragraph (1) shall review the report pre-
21 pared pursuant to subsection (a), and, not later than
22 July 1, 1998, submit to the Secretary comments on
23 the report.

1 **SEC. 6. USE OF THE FEDERAL PARENT LOCATOR SERVICE**
2 **FOR CHILD WELFARE SERVICES.**

3 Section 453 of the Social Security Act (42 U.S.C.
4 653) is amended—

5 (1) in subsection (a)—

6 (A) by striking “or enforcing child custody
7 or visitation orders” and inserting “or making
8 or enforcing child custody or visitation orders”;
9 and

10 (B) in paragraph (1)—

11 (i) by striking the comma at the end
12 of subparagraph (C) and inserting “; or”;
13 and

14 (ii) by inserting after subparagraph
15 (C) the following:

16 “(D) who has or may have parental rights
17 with respect to a child,”; and

18 (2) in subsection (c)—

19 (A) by striking the period at the end of
20 paragraph (3) and inserting “; and”; and

21 (B) by adding at the end the following:

22 “(4) a State agency that is administering a pro-
23 gram operated under a State plan under subpart 1
24 of part B, or a State plan approved under subpart
25 2 of part B or under part E.”.

1 **SEC. 7. PERFORMANCE OF STATES IN PROTECTING CHIL-**
2 **DREN.**

3 The Secretary of Health and Human Services, in con-
4 sultation with the American Public Welfare Association,
5 the National Governors' Association, and persons or orga-
6 nizations devoted to child advocacy, shall—

7 (1) develop a set of outcome measures (includ-
8 ing length of stay in foster care, number of foster
9 care placements, and number of adoptions) that can
10 be used to assess the performance of States in oper-
11 ating child protection and child welfare programs
12 pursuant to parts B and E of title IV of the Social
13 Security Act to ensure the safety of children;

14 (2) to the maximum extent possible, the out-
15 come measures should be developed from data avail-
16 able from the Adoption and Foster Care Analysis
17 and Reporting System;

18 (3) develop a system for rating the performance
19 of States with respect to the outcome measures, and
20 provide to the States an explanation of the rating
21 system and how scores are determined under the
22 rating system;

23 (4) prescribe such regulations as may be nec-
24 essary to ensure that States provide to the Secretary
25 the data necessary to determine State performance
26 with respect to each outcome measure, as a condi-

1 tion of the State receiving funds under part E of
2 title IV of the Social Security Act;

3 (5) on May 1, 1999, and annually thereafter,
4 prepare and submit to the Congress a report on the
5 performance of each State on each outcome meas-
6 ure, which shall examine the reasons for high per-
7 formance and low performance and, where possible,
8 make recommendations as to how State performance
9 could be improved.

10 **SEC. 8. TECHNICAL ASSISTANCE.**

11 (a) IN GENERAL.—The Secretary of Health and
12 Human Services may, directly or through grants or con-
13 tracts, provide technical assistance to assist States and
14 local communities to reach their targets for increased
15 numbers of adoptions and, to the extent that adoption is
16 not possible, alternative permanent placements, for chil-
17 dren in foster care.

18 (b) LIMITATIONS.—The technical assistance provided
19 under subsection (a) shall support the goal of encouraging
20 more adoptions out of the foster care system, when adop-
21 tions promote the best interests of children, and shall in-
22 clude the following:

23 (1) The development of best practice guidelines
24 for expediting termination of parental rights.

1 sets, not to exceed \$5,000, which are otherwise regarded
2 as resources for purposes of determining eligibility for
3 benefits under this part)” before the comma.

4 **SEC. 10. COORDINATED SERVICES DEMONSTRATION**
5 **GRANTS.**

6 (a) **AUTHORITY TO MAKE GRANTS.—**

7 (1) **IN GENERAL.—**The Secretary of Health and
8 Human Services (in this section referred to as the
9 “Secretary”) may make not more than 10 dem-
10 onstration grants under this section to juvenile
11 courts with jurisdiction over localities within a State
12 that have the authority to remove children, tempo-
13 rarily or permanently, from the custody of the par-
14 ents or legal guardians of such children and to place
15 such children in foster care or other out-of-home
16 care, in order to assist the coordination of support
17 services for children and youth.

18 (2) **APPLICATIONS.—**In order to receive a grant
19 under this section, a juvenile court described in
20 paragraph (1) shall submit an application to the
21 Secretary at such time, in such manner, and accom-
22 panied by such information as the Secretary may
23 reasonably require.

24 (b) **USE OF FUNDS.—**

1 (1) IN GENERAL.—Funds received under this
2 section may only be used to pay for up to 80 percent
3 of the expenditures incurred with respect to the co-
4 ordination of support services for children and
5 youth.

6 (2) NON-FEDERAL SHARE.—The percentage of
7 expenditures described in paragraph (1) that is not
8 paid for with funds received under this section shall
9 be supplied from sources other than the Federal
10 Government and may be made in cash or in kind,
11 fairly evaluated, and may include payment through
12 equipment or services.

13 (c) LOCAL SERVICE DELIVERY COORDINATION
14 COUNCIL.—

15 (1) REQUIREMENTS.—A juvenile court that re-
16 ceives a grant under subsection (a) shall, in conjunc-
17 tion with other local social service and law enforce-
18 ment agencies, establish a local service delivery co-
19 ordination council that consists of not more than 15
20 members and should include the following:

21 (A) The chairperson of the county board of
22 commissioners or his or her designee.

23 (B) The director of the local child protec-
24 tion and welfare agency.

1 (C) The superintendent of the largest local
2 school system serving students within the juris-
3 diction of the juvenile court.

4 (D) The director of the local public health
5 agency.

6 (E) A public safety representative, such as
7 the local chief of police, sheriff, or prosecutor.

8 (F) A child development specialist.

9 (G) The director of the local substance
10 abuse treatment board.

11 (H) The director of the local mental health
12 service agency.

13 (I) The director of the local mental retar-
14 dation service agency.

15 (J) A representative of private, not-for-
16 profit agencies that serve children in the com-
17 munity.

18 (K) Such other individuals as may be ap-
19 propriate, such as representatives of private
20 charitable organizations.

21 (2) PLANS.—Each local service delivery coordi-
22 nation council established under this subsection shall
23 develop a coordinated service delivery plan that in-
24 cludes the establishment of—

1 (A) formal channels of communication be-
2 tween public agencies and organizations respon-
3 sible for service delivery to children and youth;

4 (B) cooperative service delivery agreements
5 between public agencies and organizations re-
6 sponsible for children and youth services, in-
7 cluding private charitable organizations; and

8 (C) procedures to better coordinate inter-
9 agency budgeting and planning for children and
10 youth services.

11 (d) REPORTS.—

12 (1) BY JUVENILE COURTS.—Each juvenile
13 court that receives a grant under subsection (a) shall
14 submit a report to the Secretary that includes—

15 (A) a description of the local coordinated
16 service delivery plan developed under subsection
17 (c)(2);

18 (B) a timetable for implementation of the
19 local coordinated service delivery plan;

20 (C) the identification of any Federal,
21 State, or local regulations that impede local co-
22 ordinated service delivery to children and youth;

23 (D) recommendations for administrative or
24 legislative action to provide for greater coordi-

1 nation of local service delivery to children and
2 youth;

3 (E) an accounting of the local budget sav-
4 ings, if any, resulting from the implementation
5 of the local coordinated service delivery plan de-
6 veloped under subsection (c)(2); and

7 (F) any other information the juvenile
8 court may deem appropriate.

9 (2) BY THE SECRETARY.—The Secretary shall
10 annually submit a report to the appropriate commit-
11 tees of Congress on the success of the demonstration
12 grants made under this section.

13 (e) AUTHORIZATIONS OF APPROPRIATION.—There is
14 authorized to be appropriated to carry out this section
15 \$10,000,000 for each of the fiscal years 1998, 1999, and
16 2000.

17 **SEC. 11. EFFECTIVE DATE.**

18 (a) IN GENERAL.—The amendments made by this
19 Act shall take effect on October 1, 1997.

20 (b) DELAY PERMITTED IF STATE LEGISLATION RE-
21 QUIRED.—In the case of a State plan under part B or
22 E of title IV of the Social Security Act which the Secretary
23 of Health and Human Services determines requires State
24 legislation (other than legislation appropriating funds) in
25 order for the plan to meet the additional requirements im-

1 posed by the amendments made by this Act, the State plan
2 shall not be regarded as failing to comply with the require-
3 ments of such part solely on the basis of the failure of
4 the plan to meet such additional requirements before the
5 1st day of the 1st calendar quarter beginning after the
6 close of the 1st regular session of the State legislature that
7 begins after the date of the enactment of this Act. For
8 purposes of the previous sentence, in the case of a State
9 that has a 2-year legislative session, each year of such ses-
10 sion shall be deemed to be a separate regular session of
11 the State legislature.

○