Fostering Uncertainty?: A Critique of Concurrent Planning in the Child Welfare System
By: Carolyn Lipp

The reckless destruction of American families in pursuit of the goal of protecting children is as serious a problem as the failure to protect children . . . destroying the parent-child relationship is among the highest forms of state violence. It should be cabined and guarded like a nuclear weapon. You use it when you must.

—Martin Guggenheim, Co-Director of Family Defense Clinic, New York University School of Law

[C]oncurrent planning can be defined as the process of working toward family reunification while at the same time establishing an alternative plan . . . The practice goal is early permanency rather than family reunification, an important shift in emphasis.

—Linda Katz, Programme Director of Lutheran Social Services of Washington and Idaho

Each year, around 270,000 children are removed from their family’s homes and placed into the foster care system. Once children are placed in care, federal law requires that child welfare agencies both make “reasonable efforts” to reunify children with their families to find children alternative permanent homes, which can be made simultaneously or sequentially. Concurrent planning is “the process of working toward family reunification while at the same time establishing an alternative plan,” which is typically adoption by a foster family or relative. In this model, foster parents are expected to support reunification efforts while also standing ready to adopt the children in their care should reunification efforts fail. Concurrent planning is typically contrasted with

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4 42 U.S.C. § 671(a)(15)(B) (2015) (requiring that “reasonable efforts . . . be made to preserve and reunify families—(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and (ii) to make it possible for a child to safely return to the child's home”).
5 42 U.S.C. § 671(a)(15)(C) (2015) (“if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan”).
6 42 U.S.C. § 671(a)(15)(F) (“reasonable efforts to place a child for adoption or with a legal guardian . . . may be made concurrently with reasonable efforts of the type described in subparagraph (B)”).
7 Katz, supra note 2, at 10.
8 This paper will use the term “foster parents” to refer to non-relative caregivers participating in concurrent planning. Others use terms like “fost-adopt parents,” “preadoptive parents,” “alternative permanent caregivers,” and “permanent planning families.”
sequential planning, in which the possibility of reunification is first exhausted before exploring an alternative permanency option. Although the elements of concurrent planning vary widely across child welfare agencies, the majority of state statutes now authorize concurrent planning and the majority of child welfare agencies implement concurrent planning in some form.

This paper urges states to balance the twin goals of achieving permanency quickly and protecting family reunification by limiting concurrent planning to children who are deemed unlikely to reunify with their families and by clearly differentiating between those tasked with supporting reunification versus an alternative permanency option. Part I will detail the history and rise of concurrent planning in the wake of the Adoption and Safe Families Act (ASFA, P.L. 105-89) of 1997 and the purported benefits of concurrent planning. Part II will address the theoretical and empirical evidence on how concurrent planning may detract from an agency’s reunification efforts. First, concurrent planning places great weight on parental compliance with the agency’s case plan, which fails to adequately take into consideration the resource and emotional needs of parents. Second, the practical reality of resource-strapped child welfare agencies may push agencies to prioritize the alternative permanency plan at the expense of reunification. Third, concurrent planning further erodes agency’s already tenuous requirements to make “reasonable efforts” to reunify children with their families. This Part concludes with a discussion of how the dual, conflicting expectations placed on foster parents in the concurrent planning model are confusing to all parties involved and may contribute to the scarcity of high-quality foster parents. Part III proposes two main recommendations to improve how concurrent planning is implemented. First, concurrent planning should not be required for all children in care, but only for a subset of children for whom reunification is already

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11 See Part III.A, infra.

12 The paper assumes the continued existence of ASFA and the federal statutory scheme surrounding permanency planning, and its recommendations are thus addressed toward the states.
deemed unlikely based on objective criteria. Second, within a concurrent plan, there should be a clear division between those tasked with supporting reunification and those arranging an alternative permanency plan.

I. Background and Rise of Concurrent Planning

Throughout the 1970s, the child welfare system faced the growing problem of “foster care drift”: children removed from their homes were languishing in the foster care system without any clearly defined end point. In response, Congress passed the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), which created the first federal procedural rules regarding “permanency planning,” defined as “efforts to ensure that abused and neglected children are not unnecessarily placed in foster care, do not drift from foster home to foster home, but instead are provided with a permanent living situation as quickly as possible.” With similar permanency goals in mind, the Lutheran Social Services in Washington State pioneered the “concurrent planning” approach in the 1980s. Its approach, targeted at young children for whom reunification was already deemed unlikely and who were at risk of foster care drift, emphasized the need for “permanent planning families who are carefully recruited, trained, and supported in working with and mentoring the birthparents.”

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13 See Gretta Cushing & Sarah B. Greenblatt, Vulnerability to Foster Care Drift After the Termination of Parental Rights, RESEARCH ON SOCIAL WORK PRACTICE, Nov. 2009 at 694, 694.
16 Edelstein, Burge, & Waterman, supra note 15, at 103; see also ABA CENTER ON CHILDREN & THE LAW, NCJFCJ, & ZERO TO THREE, Healthy Beginnings, Healthy Futures: A Judge’s Guide, 101 (2009) [hereinafter Healthy Beginnings, Healthy Futures: A Judge’s Guide] (describing that concurrent planning was “[o]riginally developed for younger children who were at risk for foster care drift”).
In 1997, the Adoption and Safe Families Act (ASFA) paved the way for the concurrent planning revolution. To shorten the timeline for children to achieve permanency, ASFA required that agencies seek to terminate parental rights when children had been in foster care for 15 of the past 22 months. ASFA also required agencies to make “reasonable efforts” to find permanent homes for children in the event that reunification failed, and clarified that those efforts could be made concurrently with efforts to reunify. Although concurrent planning was not required, the legislation was intended to encourage concurrent planning as a tool to achieve earlier permanency. Indeed, many states responded by implementing various concurrent planning schemes to comply with ASFA’s shortened timelines. As a result, since ASFA, there has been a steady increase in the use of concurrent planning across state child welfare agencies.

As practiced today, concurrent planning involves several key components. First, the child welfare agency creates a concurrent plan by identifying caregivers who are prepared to adopt the child should reunification fail. Second, all participants receive full disclosure about the existence of the concurrent plan so that parents understand the consequences of a failure to comply with their

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17 See, e.g., Edelstein, Burge, & Waterman, supra note 15, at 103 (describing ways in which ASFA “supports concurrent planning”). The legislative push for ASFA grew out of concerns that agencies were making extraordinary efforts to reunify families at the expense of children’s well-being. For example, during congressional debates, concerns were raised that “[a]busive parents are, today . . . given a second chance, a third chance, a fourth chance, a fifth chance, and on and on . . . while they try to get their act together . . . their poor little children are shuttled from foster home to foster home.” Amy D’Andrade & Jill Duerr Berrick, When Policy Meets Practice: The Untested Effects of Permanency Reforms in Child Welfare, 33 J. SOC. & SOC. WELFARE 31, 32 (2006) (citations omitted).


20 Legislative hearings explicitly cited to state successes with concurrent planning in achieving earlier permanency. For example, as Mark V. Nadel, Associate Director of the Income Security Issues, Health, Education, and Human Services Division of the U.S. General Accounting Office testified, “Some states are experimenting with concurrent planning . . . By working on the two plans simultaneously, caseworkers reduce the time needed to prepare the paperwork for terminating parental rights if reunification efforts fail . . . [state officials] told us that concurrent planning was a key factor that contributed to the success of children’s being placed more quickly in permanent homes.” Encouraging Adoption: Hearing Before the Subcomm. on Ways & Means, 105th Cong. 10 (1997) (statement of Mark V. Nadel).


22 See Concurrent Planning: What the Evidence Shows, supra note 9, at 3 (“The use of concurrent planning has steadily grown over the past two decades . . . data . . . estimates that 87 percent of child welfare agencies in 1999–2000 were implementing concurrent planning”).

23 Amy C. D’Andrade, The Differential Effects of Concurrent Planning Practice Elements on Reunification and Adoption, RESEARCH ON SOCIAL WORK PRACTICE, July 2009 at 446, 447 (describing that concurrent planning involves development of concurrent plan).
with their case plan for reunification. While the concurrent plan is in place, there is frequent parent-child visitation. Finally, there are clear time limits for making permanency decisions, at which point children will be reunified or parental rights will be terminated (either through voluntary relinquishment or involuntary termination). Foster parents also sometimes serve as “resource parents” who coach the birth parents in their efforts toward reunification while also preparing to adopt the child should reunification fail.

Concurrent planning is now considered the “best practice” among child welfare experts. 38 states and D.C. currently have statutes that address concurrent planning, ranging from “general statements that simply authorize concurrent planning activity to statutes that provide, in some detail, the elements that must be included when making a concurrent permanency plan.” In 19 states, any family case plan must include concurrent efforts toward an alternative permanency goal, and eight states mandate concurrent planning from the moment a child enters foster care.

The primary benefit of concurrent planning is that children achieve permanency more quickly. Studies indicate that concurrent planning both reduces the number of moves children experience while in foster care and the time that children spend in care. Achieving early

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24 See Katz, supra note 2, at 11.
25 See id.
26 Concurrent Planning: What the Evidence Shows, supra note 9, at 2.
28 See, e.g., Gerstenzang & Freundlich, supra note 10, at 20 (“Concurrent planning, when implemented well, is best casework practice”). However, as discussed infra, concurrent planning is generally considered the best practice only for young children assessed as unlikely to reunify. See Rycraft & Benavides, supra note 15, at 260 (describing that concurrent planning is best suited for young children and is not appropriate in all cases); Nicholas Wall, Concurrent Planning - A Judicial Perspective, 11 CHILD & FAM. L. Q. 97, 106 (1999) (explaining that concurrent planning is “best fitted for children whose prospects of rehabilitation with their birth families are slim”).
29 Concurrent Planning for Permanency for Children: State Statutes, supra note 21, at 2. However, even when formal concurrent planning policies exist, Final Reports from the federal Child and Family Services Reviews indicates that often, “the policies were not being implemented as described.” Concurrent Planning: What the Evidence Shows, supra note 9, at 5. Thus, official policies may overestimate the prevalence of concurrent planning.
31 Concurrent Planning: What the Evidence Shows, supra note 9, at 5.
32 See, e.g., Gerstenzang & Freundlich, supra note 10, at 4; see also Rycraft & Benavides, supra note 15, at 258 (describing various anticipated benefits of concurrent planning).
permanency is critical, especially for young children in the process of forming a permanent attachment to a caregiver. A prolonged temporary living arrangement involving multiple moves among foster care placements is extremely harmful to children. Insecure attachment during childhood is correlated with lifelong issues related to mental health challenges, substance addiction, criminal activity, and homelessness. Thus, once a child is placed in the foster care system, it is important for the child’s development that he or she achieve permanency as soon as possible.

However, there appears to be an inherent tension between achieving permanency as quickly as possible and making every effort to reunify children with their families—a process which can take time. As a Family Court Judge reflecting on concurrent planning in the U.K. questioned, “how do we resolve this tension between the need to act swiftly to determine the child’s future and the need to ensure that before placement outside the family occurs there is no realistic prospect of a placement within it?” In sequential planning, alternative permanency options are only explored after reunification efforts are exhausted. Does simultaneously planning for alternative permanency take place at the expense of planning for reunification? The following section explores this question, and concludes that concurrent planning can undermine reunification efforts.

II. The Dark Side of Concurrent Planning

A. Effects of Removal and the Difficulty of Reunification

It is first important to identify what is at stake when a child achieves alternative permanency: termination of parental rights and the breakdown of previously intact families. An alternative permanency arrangement destroys the parent-child relationship and undermines parent’s

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33 Healthy Beginnings, Healthy Futures: A Judge’s Guide, supra note 16, at 58 (“The sooner a child is able to develop a consistent, positive attachment with a primary caregiver, the more likely he will develop the confidence and intellectual curiosity to succeed”).

34 Id. at 61.

35 Wall, supra note 28, at 99.
fundamental rights to family integrity and the right to direct the care, custody, and control of their children.\textsuperscript{36} Keeping families intact is so critical to the child welfare system that, according to children’s law experts Sankaran & Church, “[t]he belief that children should remain in their homes whenever possible is at the core of the child welfare profession. Our legal system carries the burden of ensuring that belief is upheld each time a removal petition is filed.”\textsuperscript{37} Despite this professed objective of the child welfare profession, there is growing concern about what media accounts have described as a “troubling and longstanding phenomenon: the power of Children’s Services to take children from their parents on the grounds that the child’s safety is at risk, even with scant evidence.”\textsuperscript{38} The disproportionate intervention of children’s services in poor families of color have led some to dub this practice, “Jane Crow.”\textsuperscript{39}

Removal is a deeply upsetting and life-shattering experience for children and parents alike.\textsuperscript{40} Children are suddenly placed into a foreign environment, often with strangers, without knowing why or when they will see their parents again.\textsuperscript{41} Removal “traumatizes children in complex ways,”

\textsuperscript{36} See, e.g., Santosky v. Kramer, 455 U.S. 745, 753 (1982) (“The fundamental liberty interest of natural parents in the care, custody, management of their child does not evaporate simply because they have not been model parents”); Stanley v. Illinois, 405 U.S. 645, 651 (1972) (“The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one’s children have been deemed ‘essential’”); Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 533-35 (1925) (parents have Fourteenth Amendment right to instruct their children).


\textsuperscript{39} Id. As Mike Arsham, Executive Director of the Child Welfare Organizing Project describes, “The unfortunate reality is that in certain communities, it’s a near certainty. If you . . . live in public housing, if [your children] go to public schools, if you use publically subsidized daycare, or a public child health clinic, it’s not even a matter of ‘are you going to come to the attention of [children’s services],’ it’s closer to a matter of when . . . ” Mike Arsham, Executive Director of Child Welfare Organizing Project, interviewed in A Life Changing Visitor: When Children’s Services Knocks, NYU Family Defense Clinic, http://www.law.nyu.edu/news/family-defense-clinic-doc [hereinafter A Life Changing Visitor: When Children’s Services Knocks].

\textsuperscript{40} For a vivid description of a typical visit from child’s services in New York City, see MacFarquhar, supra note 1.

\textsuperscript{41} See, e.g., Sankaran & Church, supra note 37, at 208 (describing the temporary removal experience of a 7 year-old, an ordeal he later recalled as “the worst day of his life”).
as “it upsets all aspects of that child’s life . . . It abruptly disrupts his attachment to his primary
caregiver and it thrusts the child into a foreign system: foster care.”\textsuperscript{42} Intervention from children’s
services can permanently alter the parent-child relationship, as children hear accusations leveled
against their parents and see that their parents are powerless to protect them.\textsuperscript{43} Removing a child is
also strongly correlated with worse outcomes for children; according to one analysis focused on
marginal cases (where a strict investigator would remove a child and place them in foster care but a
lenient investigator would not), those sent to foster care “had higher delinquency rates, higher teen
birthrates, lower earnings and a higher likelihood of going to prison as an adult.”\textsuperscript{44}

The process of removal is also devastating for parents. In the words of one parent whose
children were removed by the Administration for Children’s Services (New York City’s child
welfare agency), “When they take your kids, it’s like everything stops . . . Once they take them, you
don’t have no reason to be here no more. Your kids give you purpose.”\textsuperscript{45} Similarly, another New
York City parent described sinking into a severe depression after her daughter was removed: “It
came to a point where I’d shut myself into a room and not come out, not eat.”\textsuperscript{46}

At the same time that parents are dealing with the loss of their children and may be struggling
to even muster the energy to leave the house, they must also comply with strict agency
requirements—including drug testing, mental health evaluations, parenting classes, anger
management classes, and therapy sessions. These obligations may be so inflexibly scheduled that
parents can lose their job in an effort to comply with all of the requirements.\textsuperscript{47} Judges are supposed
to ensure that “services to address a parent’s most pressing issues [are] offered from the onset of the
case.”\textsuperscript{48} However, there is a disconnect between the kind of supports that would actually help

\begin{footnotes}
\item[42] Id.
\item[43] MacFarquhar, supra note 1.
\item[44] Clifford & Silver-Greenberg, supra note 38.
\item[45] MacFarquhar, supra note 1.
\item[46] Clifford & Silver-Greenberg, supra note 38.
\item[47] MacFarquhar, supra note 1.
\end{footnotes}
parents and those that are used coercively as hoops parents must jump through to get their children back. As one parent explained, the child welfare system makes “you do a lot of hoops . . . sometimes you don’t even need it. But because they have that power they feel that they can [for example] have you do an anger management class because you’re displaying anger. Yes, I’m angry. You just removed my children.”

Accordingly, many have argued that the supports of the child welfare system should be radically reprioritized: rather than taking children away from parents and giving resources to foster families, families need support in finding livable homes, permanent jobs, and health care for their children and themselves. For example, Emma Ketteringham, Director of the Family Defense Practice at the Bronx Defenders, described a typical case of a parent charged with neglect for issues surrounding poverty, “Eline did not need parenting classes . . . She needed a home that wasn’t infested with rats . . . She needed support to care for her son’s medical needs, as well as her own. The city should have provided her . . . the financial assistance that went to the foster parents.” In short, case plan requirements often do not align with parents’ actual needs. Nonetheless, agencies place a huge emphasis on compliance with the agency plan as a precondition for reuniting with their children.

In concurrent planning, the stakes of a parent’s failure to comply with the case plan’s requirements are even higher because of the ever-present threat that, if parents fail to comply, steps are also being taken to put “Plan B” into place: allowing another family to adopt their children.

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51 Id.

52 For example, in one study on concurrent planning, both parents and foster parents interviewed expressed concerns that services provided to birth parents did not meet their needs. See Gerstenzang & Freundlich, supra note 10, at 14. See, e.g., Healthy Beginnings, Healthy Futures: A Judge’s Guide, supra note 16, at 107 (describing that, in removal cases, “much focus is on parents and their compliance with the case plan”).
As Linda Katz, who developed concurrent planning in the 1980s, explained, “[p]arents should know that only by active co-operation will they have any hope of family reunification. If they refuse services of disappear, the agency’s emphasis on early permanency will lead to acceleration of Plan B.”

Katz also emphasized that a concurrent plan should involve frequent (at least weekly) visitation, not just to support the parent-child bond but also “to highlight the parents who do not visit regularly, thus confirming the need for Plan B.” Thus, the “services” included in a case plan are not just designed to support parents, but also to expose the parents who fail to meet them as inadequate caregivers.

However, parents stress that the behavior required of them takes time, because they are often simultaneously dealing with issues related to extreme poverty, depression, or substance abuse. The vast majority of child removals involve accusations of neglect (rather than abuse), a catch-all category covering poverty, substance abuse, and untreated mental illness. Accordingly, concurrent planning seems particularly out of touch with the reality of how difficult it will be for parents to comply with the agency plan in a short timeframe. By putting pressure on parents to rapidly conform to the requirements in a case plan, concurrent planning reifies and raises the stakes of this flawed system.

B. Concurrent Planning is Inconsistent with the Reality of Resource-Strapped Child Welfare Agencies

54 Katz, supra note 2, at 11.
55 Id.
56 Gerstenzang & Freundlich, supra note 10, at 14.
57 Nationally, around ¾ of children receiving a child protective services investigation response were involved in the child welfare system due to neglect rather than abuse. See U.S. DEP’T. OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2015, CHILDREN’S BUREAU (2017) http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/child-maltreatment, at ii. For a critique of “neglect” as a catch-all category, see, e.g., Ketteringham, supra note 50.
Addressing the underlying poverty issues that trigger removal in the first place is particularly unlikely in concurrent planning, because agencies are simultaneously diverting funds and resources to support a foster family’s long-term adoption plan. Theoretically, a concurrent planning scheme involves “intensive resources deployed for each alternative.”58 However, as “[s]tates have continued to cut funding necessary for child welfare services,” child welfare agencies across the country are severely underfunded.59 The reality of resource-strapped agencies means that, practically, agencies are forced to choose which families to really support.60

Deploying supports to foster families is already quite costly. In New York City, in which concurrent planning is required, the agency may pay around $1,000 per month to a foster family for each child in their care.61 For medically complicated children, foster care payments are even higher; a foster parent can receive up to $1,289 per month for “special children” and $1,953 per month for “exceptional children.”62 As one New York City parent, who felt it was unfair that the agency was helping the foster parent find housing to live with her children, expressed, “[the agency] moved this [foster parent] three times, and every time the apartment’s getting bigger . . . But you can’t help the biological mother who’s showing you that she wants her kids? If they would have done that for me in the first place, I wouldn’t be in the situation that I’m in now, and I’d have my kids.”63 Ideally, concurrent planning would support both families in finding livable housing, and would provide each of them with the resources to do so. However, the resource demands of a

59 Daniel L. Hatcher, The Poverty Industry: How Foster Care Agencies Exploit Children in Their Care, TALK POVERTY (June 24, 2016), https://talkpoverty.org/2016/06/24/poverty-industry-foster-care-agencies-exploit-children-care/; see also Sankaran & Church, supra note 37, at 213 (“so long as child welfare agencies remain underfunded, overburdened and susceptible to the same biases that affect anyone, errors in judgment will occur and mistakes will be made.”).
60 See, e.g., Gerstenzang & Freundlich, supra note 10, at 8 (finding that, among child welfare experts, there was a perception of concurrent planning as “de-emphasizing” reunification).
61 The Administration for Children’s Services (ACS) policy “requires that concurrent planning begin when a child is first removed from his/her parent or relative’s home and continues when the child enters foster care and throughout the life of the case.” CITY OF NEW YORK, ADMINISTRATION FOR CHILDREN’S SERVICES, PERMANENCY PLANNING, 3 (2013). For the $1,000 statistic, see Ketteringham, supra note 50 (describing $1,000/month payment in specific case).
62 MacFarquhar, supra note 1.
63 Id.
well-implemented concurrent planning system on these agencies is simply incompatible with the reality of limited funding. Instead, by investing long-term supports toward foster parents, concurrent planning may motivate agency personnel to prioritize alternative permanency over reunification.64

Finally, concurrent planning itself requires additional resources to implement successfully. Across the country, although children’s services staff are generally supportive of concurrent planning, “they also emphasize that concurrent planning is stressful . . . and necessitates additional training and support to implement the process effectively.”65 In addition to extra training, concurrent planning is “resource intensive” on agency personnel because it requires either “two social workers per case—one to pursue reunification efforts and one adoption possibilities—or a single worker who simultaneously works toward both plans, which may necessitate caseload reductions.”66 Finally, additional resources are needed to adequately recruit, train, and support foster families through their challenging roles.67 For these reasons, “it is challenging for struggling, understaffed agencies to implement such vigorous and demanding [concurrent planning] programs.”68 One study, based on interviews with child welfare experts in New York State, found that “necessary supports and services for concurrent planning can be inadequate.”69 These additional supports, which likely will be

64 Gerstenzang & Freundlich, supra note 10, at 8; Karin Malm, Roseana Bess, Jacob Leos-Urbel, Robert Green & Teresa Markowitz, Running to Keep in Place: The Continuing Evolution of Our Nation’s Child Welfare System, Urban Institute, 16 (Oct. 1 2001), https://www.urban.org/research/publication/running-keep-place (“Recent research findings have cautioned that when agencies implement concurrent planning they often tend to focus on adoption and minimize reunification”).

65 Concurrent Planning: What the Evidence Shows, supra note 9, at 9; see also Elizabeth Monck, Jill Reynolds & Valerie Wigfall, Using Concurrent Planning to Establish Permanency for Looked after Young Children (2004) 9 CHILD AND FAMILY SOCIAL WORK 321, at 330 (“using concurrent planning ‘requires some programmatic and philosophical changes (never an easy undertaking in large, complex systems)’”) (citations omitted).

66 D’Andrade & Berrick, supra note 17, at 43.

67 Id. For a discussion of the challenging roles of foster parents in concurrent planning, see Part II.D, infra

68 Edelstein, Burge, & Waterman, supra note 15, at 105; see also Concurrent Planning: What the Evidence Shows, supra note 9, at 10 (explaining that caseworkers must have “sufficient supports . . . and experience in order to meet the more complex demands of concurrent planning practice”).

69 D’Andrade, supra note 23, at 457 (citing Gerstenzang & Freundlich, supra note 10).
increasingly hard to come by in the current political climate, may detract from resources deployed to support reunification.\(^\text{70}\)

C. “Reasonable Efforts to Reunify” Requirements are Already at Risk

The risk that concurrent planning could undermine reunification efforts is particularly troublesome because evidence suggests that the requirement that agencies make “reasonable efforts” to reunify is already at risk.\(^\text{71}\) First, although state agencies are required to demonstrate that reasonable efforts have been made to reunite a child with his or her family, the federal incentive structure of the Adoption Assistance and Child Welfare Act of 1980 discourages judges from making a negative “reasonable efforts” determination. If judges do not find that agencies’ have made the requisite “reasonable efforts,” agencies are penalized for this failure; federal Title IV-E funds are withheld to pay for that child’s stay in foster care.\(^\text{72}\)

Despite the fact that judges are supposed to ask, “Is the agency making reasonable efforts to rehabilitate the family and eliminate the need for placing the child?” there remains a huge disconnect between theory and practice.\(^\text{73}\) Judges do not wish to deprive agencies of federal funding, and are thus extremely reluctant to make a negative reasonable efforts determination. One report found that “judges admit they often routinely approve requests to remove children even when they do not believe the agency has made an adequate case.”\(^\text{74}\) Another survey of over 1,200 juvenile court


\(^{71}\) For the statutory provisions regarding “reasonable efforts,” see 42 U.S.C. § 671(a)(15)(B) (2015) (“reasonable efforts shall be made to preserve and reunify families” both prior to removal and “to make it possible for a child to safely return to the child’s home”); 42 U.S.C. § 672(a)(2)(A)(ii) (2010) (requiring that judicial order authorizing removal be based on finding of reasonable efforts).

\(^{72}\) 42 U.S.C. § 671(a)(15) (2015) (describing that, “[i]n order for a State to be eligible for payments under this part,” the states must ensure that agencies make reasonable efforts to avoid the need for removal and make it possible for the child to return home); D’Andrade & Berrick, supra note 17, at 33 (explaining that agency must make reasonable efforts to reunify to receive Title IV-E funds). For a critique of this federal funding scheme, see Sankaran & Church, supra note 37, at 226-29.


\(^{74}\) Sankaran & Church, supra note 37, at 227.
judges found that less than 4% had ever made a negative reasonable efforts finding. Yet another study found that 40.5% of judges made reasonable efforts findings even when they believed that the agency had not made reasonable efforts. In short, this federal funding scheme “only works if judges remain disinterested in the effects of denying federal funding to these agencies,” but judges have “refus[ed] to play this role.”

This failure to hold agencies to task for making reasonable efforts to reunify children is crucial because concurrent planning rests on the notion that the court will question agency’s efforts to reunify children. As Linda Katz explained of her agency’s pioneering experience with concurrent planning, “[t]he court will question our efforts and must be persuaded . . . that parents were treated fairly . . . Only after this is achieved does the agency proceed to ask that Plan B [alternative permanency] be officially sanctioned.” The concurrent planning system only works if every actor plays their part in ensuring that the “Plan A” of reunification is truly the first goal, and that falls apart if courts fail to require that agencies make reasonable efforts to keep families together.

In addition to the federal incentive structure undermining the “reasonable efforts” requirement, the expedited timeline of ASFA also makes it less likely that parents will ever get their children back. States are required to file for termination of parental rights in most cases where a child has been in foster care for 15 out of the past 22 months to speed up adoptions. In a sequential planning model,

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75 Id.
76 Id.
77 Id. at 229.
78 Katz, supra note 2, at 12.
caseworkers theoretically would have 15 months to support parents in reunification before they are required to seek to terminate parental rights. A concurrent approach divides that time and attention, further reducing the limited time during which parents can “rehabilitate” themselves before the government seeks to terminate their parental rights. Indeed, the majority of caseworkers interviewed in one study reported feeling that “they did not have sufficient time to meet the needs of the children and families on their caseloads when concurrent planning was utilized” and they lacked “adequate time to do all that was needed to effectively implement concurrent planning.” Thus, concurrent planning’s emphasis on securing an alternative permanency option may render it even easier to neglect “Plan A” of reunification, which they must do anyway if the child has been in foster care for 15 of the past 22 months, in favor of “Plan B.”

Finally, throughout the child welfare process, the odds can seem stacked against parents. For example, the agency must prove a parent is unfit only by a preponderance of the evidence, and that evidence can include an old drug habit (even if the parent has been clean for years), or a diagnosis of depression. As one parent explained, “When you’re in the child welfare system, you’re guilty until proven innocent . . . and you’re never really proven innocent.” Even after reunifying with their children, parents are still under the supervision of children’s services, and their children can be taken away from them again. If that re-removal takes place in the same 22-month period, ASFA’s clock resumes, and it may be a short time before children’s services then seeks to terminate parental

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79 42 U.S.C. § 675(4)(E) (2016). There are three exceptions to the provision: if “the child is being cared for by a relative”; there is a documented, court reviewable “compelling reason for determining that filing such a petition would not be in the best interests of the child,” or “the State has not provided to the family of the child . . . such services as the State deems necessary for the safe return of the child to the child’s home.” 42 U.S.C. §§ 675(4)(E)(i)-(iii) (2016).

80 Gerstenzang & Freundlich, supra note 10, at 15; see also D’Andrade & Berrick, supra note 17, at 46 (concurrent planning may threaten reunification if “social workers fail to provide adequate reunification services due to time constraints”).

81 MacFarquhar, supra note 1.


83 Healthy Beginnings, Healthy Futures: A Judge’s Guide, supra note 16, at 121 (explaining post-permanency supports and the necessity of the “postplacement supervision period” after reunification).
In short, concurrent planning may further undermine parents’ already precarious opportunity to reunify with their children by exerting additional pressure on agencies to find alternative permanency options within the already tight ASFA timeline.

**D. Dual Expectations for Foster Parents Can Be Unrealistic and Harmful**

The conflicting roles and responsibilities expected of foster parents participating in concurrent planning can make it difficult to recruit high-quality foster parents and can create tensions with birth parents. In a concurrent planning model, foster parents serve a dual role: they must be “willing to make a permanent commitment to a child placed in their home . . . while at the same time work cooperatively with the agency and family of origin to effect reunification.”85 In some jurisdictions, the role of foster parents is even broader: they are trained as “resource parents” who serve as “parenting coaches and mentors” to the birth parents to support them in their reunification efforts. 86 Proponents of concurrent planning view this dual role as a challenging, but ultimately achievable, role for foster parents. Linda Katz, who developed the concurrent planning model, recognized the “difficult role” of foster parents and explained that “their role is inevitably painful but necessary for the child’s well-being.”87 Similarly, the National Council of Juvenile and Family Court Judges’ Guide writes that “[f]or concurrent planning to succeed, foster/adoptive families . . . must understand and distinguish between their multiple roles. They must be willing to make a long-term commitment to the child and mentor the birth family toward reunification.”88 From a theoretical standpoint, is difficult to imagine how any person could navigate this role: is it possible for

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84 See, e.g., Healthy Beginnings, Healthy Futures: A Judge’s Guide, supra note 16, at 11 (noting that a third of infants who exit the child welfare system subsequently re-enter care); D’Andrade & Berrick, supra note 17, at 32 (noting the high rate of re-entry into care after children have been reunified).
85 Concurrent Planning: What the Evidence Shows, supra note 9, at 10; see also Rycraft & Benavides, supra note 15, at 258 (“Pre-adoptive parents are expected to work toward family reunification, facilitate visitation, and mentor birthparents. It is obvious that the foster parent role is much more demanding under the concurrent planning model.”) (citations omitted).
87 Katz, supra note 2, at 11.
someone to truly support parents in their efforts to reunify while also hoping to adopt their children?\textsuperscript{89}

Indeed, empirical studies show that supporting the parent while also maintaining a desire to adopt the parent’s children is extremely difficult for foster parents. Studies “commonly point[] to the recruitment, preparation, and support of foster/adoptive families as one of the most challenging aspects of concurrent planning.”\textsuperscript{90} Since foster parents are encouraged to consider adoption from the start, they are also prompted to form attachments to the children placed with them. Their hopes to adopt the child are necessarily pitted against the hopes of the child’s biological parents.\textsuperscript{91} One study, conducted with twenty-six families in the U.K., found that all foster families “were experiencing an unsettling degree of uncertainty.”\textsuperscript{92} While they hoped to adopt a young child, “[t]hey had also chosen to take the risk that the adoption might not happen.”\textsuperscript{93} A study conducted in New York found that foster parents wanted more time to get to know the children in their care and receive full information about them before committing to adopt them.\textsuperscript{94} The difficulty of the foster parent role translates into issues in recruiting high-quality foster parents, as agencies find it “difficult to find families who are willing and ready to perform the dual function of facilitating family reunification as well as adoption.”\textsuperscript{95}

This dual role is also confusing for caseworkers, who must simultaneously help parents reunite

\textsuperscript{89} In fact, some jurisdictions require this of potential adoptive parents participating in concurrent planning. For example, in Maine, concurrent planning is only used if “potential adoptive parents have expressed a willingness to support the rehabilitation and reunification plan.” ME. REV. STAT. tit. 22, § 4041(1-A)(D) (2017).
\textsuperscript{90} Concurrent Planning: What the Evidence Shows, supra note 9, at 10.
\textsuperscript{91} MacFarquhar, supra note 1. Evidence indicates that the majority of foster families who participate in concurrent planning do so because they hope it will increase their chances of adopting. Rycraft & Benavides, supra note 15, at 259.
\textsuperscript{92} Kenrick, supra note 58, at 39.
\textsuperscript{93} Id.
\textsuperscript{94} Gerstenzang & Freundlich, supra note 10, at 10.
\textsuperscript{95} Edelstein, Burge, & Waterman, supra note 15, at 104-05. In one study of 51 counties in California, the majority of counties “reported difficulty recruiting foster/adoptive families.” Concurrent Planning: What the Evidence Shows, supra note 9, at 10 (citations omitted). Yet another study of six counties in California found “an insufficient number of families willing and able to become foster/adoptive families,” which researchers speculated may be due to the “emotional risks involved in concurrent planning.” Id. at 10-11 (citations omitted). See also Rycraft & Benavides, supra note 15, at 259 (describing difficulty of recruiting foster parents); D’Andrade & Berrick, supra note 17, at 43 (“The emotionally taxing nature of fost-adopting may result in agencies having some difficulty recruiting these special caregivers.”).
with their children and help the foster family prepare to adopt that parent’s children. Interviews with caseworkers reveal that they “often experience difficulty grappling with the tension inherent in attempting to reunite a child with his or her family while also working on an alternative permanent plan.”\textsuperscript{96} Agency and court staff asked in one study about why they wanted to limit concurrent planning expressed concerns about “the duality of the caseworker’s role negatively affecting reunification.”\textsuperscript{97} In another study, caseworkers said they perceived concurrent planning as “essentially, anti-reunification and pro-adoption.”\textsuperscript{98} As one caseworker explained, once the “Plan B” is introduced to parents at the outset of the case, “often you will actually see the parents’ faces like, ‘What? I thought you were on my side.’ . . . And you get all the anger, and all that type of emotion coming out. . . . It’s a hard conversation to have, early in the case.”\textsuperscript{99} For this reason, child welfare experts recommend assigning two caseworkers to each concurrent planning case: one for the birth family, and one for the foster family.\textsuperscript{100}

Finally, the dual role of foster parents is difficult for birth parents; interviews with parents reveal difficulties in relating to foster parents and tensions related to the presence of foster parents during their parent-child visits.\textsuperscript{101} Thus, in addition to detracting from reunification efforts, the concurrent planning “dual role” approach puts foster parents in an impossibly difficult role. Concurrent planning can both undermine trust between birth parents and case workers and increase tensions between foster

\textsuperscript{96} Concurrent Planning: What the Evidence Shows, supra note 9, at 9 (citations omitted). For this reason, “[t]he use of concurrent planning requires highly trained agency personnel to recruit resource families who fully understand what they are getting into. Failure to do so could cause more harm than benefit for all the parties involved.” Rycraft & Benavides, supra note 15, at 262.
\textsuperscript{97} Concurrent Planning: What the Evidence Shows, supra note 9, at 11.
\textsuperscript{98} Gerstenzang & Freundlich, supra note 10, at 13.
\textsuperscript{99} Id. at 16.
\textsuperscript{100} This recommendation is proposed in Concurrent Planning: What the Evidence Shows, supra note 9, at 10. However, resource constraints would make this approach difficult to implement. See Rycraft & Benavides, supra note 15, at 259 (“Although the separation of tasks may be worthy of consideration and eliminate potential obstacles, the lack of resources and personnel, especially in public agencies, would make it difficult to implement this model.”).
\textsuperscript{101} Gerstenzang & Freundlich, supra note 10, at 16.
parents and birth parents.\textsuperscript{102}

E. Empirical Studies Show Concurrent Planning Can Detract from Reunification

Empirical studies on concurrent planning have been limited, and largely consist of qualitative studies based on surveys, focus groups, and interviews.\textsuperscript{103} However, research suggests that elements of concurrent planning, like “full disclosure” of the concurrent plan to all parties and an explanation of the consequences of a parent’s failure to comply, are associated with a reduced likelihood of reunification.\textsuperscript{104} For example, a 2009 study of 885 children in California showed that, contrary to the belief that full disclosure of the concurrent plan would motivate birth parents, full disclosure was associated with a lower likelihood of reunification.\textsuperscript{105} To explain this result, the researchers observed it was “possible that such discussions dishearten parents and hinder reunification, regardless of the skill with which they are undertaken.”\textsuperscript{106} Similar studies have found that concurrent planning may be more likely to result in adoption than reunification, as compared to sequential planning.\textsuperscript{107} For example, one 1999 study reviewing 204 case records of children in San Mateo and Santa Clara, California found that only 5% of concurrent planning cases resulted in reunification, as compared to 46% of non-concurrent planning cases.\textsuperscript{108}

\textsuperscript{102} Research has also pointed to potentially harmful effects of concurrent planning on older children. For example, one study explained the risks of “trapping older children in the middle while reunification services are being provided . . . the child could feel forced to keep secrets, feel anxious, feel the need to act out during visits, feel responsible for the adult’s emotional wellbeing, or have loyalty conflicts.” Rycraft & Benavides, \textit{supra} note 15, at 260.

\textsuperscript{103} \textit{Concurrent Planning: What the Evidence Shows}, \textit{supra} note 9, at 5 (“The recent literature on concurrent planning yields little in the way of outcomes or evidence-based practice . . . Most available studies consist of tracking permanency outcomes or gleaning qualitative information from focus groups, surveys, or interviews”). This is due to the “lack of a standardized implementation and reporting system,” which makes concurrent planning “exceptionally difficult to assess.” Rycraft & Benavides, \textit{supra} note 15, at 260.

\textsuperscript{104} \textit{See generally D’Andrade, \textit{supra} note 23.}

\textsuperscript{105} \textit{Id.}

\textsuperscript{106} \textit{Id.} at 453.

\textsuperscript{107} These studies are summarized in Gerstenzang & Freundlich, \textit{supra} note 10, at 4-5.

However, not all concurrent planning approaches have this effect. In San Mateo’s recent experiment with concurrent planning, which arose out of concerns that a low number of children were being reunified with their families, a greater percentage of children were reunited with their families after concurrent planning was implemented. ¹⁰⁹ This suggests that the issue is not necessarily the fact that alternative permanency is planned at the same time as reunification, but the underlying philosophy and goals motivating the child welfare agency. The next section will detail recommendations for implementing a concurrent planning approach without overly detracting from reunification efforts.

III. Recommendations

A. States Should Permit Concurrent Planning Only When There is a Poor Prognosis for Reunification

When concurrent planning was developed in the 1980s, the original vision was to target families who had already been assessed as having a poor prognosis for reunification.¹¹⁰ To balance the dual goals of achieving permanency quickly and protecting family reunification, concurrent planning approaches should be restored to this original limited purpose: achieving permanency for children who are unlikely to reunify with their families.¹¹¹ This can be accomplished by carving out an initial time period in which only reunification is pursued, and then using concurrent planning only when a parent is deemed to have a poor prognosis of reunification based on objective criteria.

¹⁰⁹ In San Mateo County, 74% of children were reunited with 12 months (compared with 65% statewide) and 47% of adopted children achieved permanency within 12 months (compared with 27% statewide). See Healthy Beginnings, Healthy Futures: A Judge’s Guide, supra note 16, at 102-03. Similarly, after North Dakota implemented a concurrent planning scheme, 92% of children with the goal of reunification were returned to their families (compared with 51% nationally). Concurrent Planning: What the Evidence Shows, supra note 9, at 12.

¹¹⁰ See, e.g., Edelstein, Burge, & Waterman, supra note 15, at 103-04 (“This approach was designed for the very young child whose family’s chronic problems (often neglect associated with poverty and drug or alcohol abuse) left the child languishing in out-of-home care”).

¹¹¹ As a Judge reflecting on concurrent planning in the U.K. explained, “My anxieties about [concurrent planning] remain the need to choose the cases appropriate for it with care . . . concurrent planning is best fitted for children whose prospects of rehabilitation with birth families are slim.” Wall, supra note 28, at 108; see also Rycraft & Benavides, supra note 15, at 260 (“Some child and family situations are appropriate for concurrent planning while others are not. The correct identification of children is a challenge for program administrators.”); D’Andrade & Berrick, supra note 17, at 43 (“it makes sense to target this challenging and resource-intensive practice toward those families least likely to reunify . . . requiring concurrent planning for all cases seriously distorts the model”) (citations omitted).
Across the country, states have implemented far-reaching concurrent planning statutes that apply without taking into account the family’s prognosis for reunification. Eight states require concurrent planning from the moment the child enters the foster care system.\(^\text{112}\) For example, Alabama’s statute states, “Concurrent planning . . . should occur from the time of \textit{initial engagement with a family} rather than sequentially thereafter.”\(^\text{113}\) Illinois’ statute similarly emphasizes the importance of achieving early permanency as soon as possible: “The legislature recognizes that the best interests of the child require that the child be placed in the most permanent living arrangement \textit{as soon as is practically possible}. To achieve this goal . . . [the agency must] conduct concurrent planning so that permanency may occur at the earliest opportunity.”\(^\text{114}\) Other statutes do not specify a preference between reunification and the alternative permanency options, simply stating that reunification may be either the “primary or secondary plan.”\(^\text{115}\) Statutes that require concurrent planning for all children in care without clearly prioritizing reunification exemplify the concurrent planning model’s “important shift in emphasis” from reunification to early permanency; achieving permanency “at the earliest opportunity” will, in some cases, necessarily come at the cost of exhausting efforts toward reunification.\(^\text{116}\)

Another group (23 states and D.C.) allow concurrent planning, but do not require it.\(^\text{117}\) For example, in Alaska, the agency “\textit{may} develop and implement an alternative plan for the child while . . . also making reasonable efforts to return the child to the child’s family.”\(^\text{118}\)

\(^\text{112}\) The eight states are: Alabama, Hawaii, Idaho, Illinois, Mississippi, Missouri, Oklahoma, and Virginia. \textit{Concurrent Planning for Permanency for Children: State Statutes, supra note 21, at 2.}

\(^\text{113}\) ALA. ADMIN. CODE r. 660-5-47-.02 (2017) (emphasis added).

\(^\text{114}\) Ch. 20 ILL. COMP. STAT. § 505/5(I-1) (2017) (emphasis added). \textit{See also MISS. CODE ANN. § 43-15-13(2)(f) (2017) (describing that Department \textit{“shall implement concurrent planning . . . so that permanency may occur at the earliest opportunity”}). (Emphasis added).}

\(^\text{115}\) \textit{See N.C. GEN. STAT. § 7B-906.2 (b) (2016).}

\(^\text{116}\) \textit{See Katz, supra note 2, at 10; Ch. 20 ILL. COMP. STAT. § 505/5(I-1) (2017).}

\(^\text{117}\) These states are: Alaska, Arizona, Arkansas, Colorado, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, Washington, and Wyoming. \textit{See Concurrent Planning for Permanency for Children: State Statutes, supra note 21, at 2.}

\(^\text{118}\) ALASKA STAT. § 47.10.086(e) (2017) (emphasis added).
statute is preferable to statutes that require concurrent planning in all circumstances, these vague statutes leave it to individual agencies and caseworkers to decide when to apply concurrent planning. Evidence suggests that state legal codes containing “vague or ambiguous wording” have caused difficulties in implementation. The lack of guidance leads to inconsistencies across the state that may allow biases to affect agency and judicial decision-making. It is well-documented that huge racial disparities exist in the family court system and that implicit biases affect judicial decision-making. Thus, there should be greater specificity detailing the objective circumstances under which concurrent planning should be applied. A preferable approach would be to tie concurrent planning to specific, objective factors relating to the prognosis for reunification. It is important that concurrent planning is tied to the family’s prognosis for reunification and that the prognosis is based on clearly defined, objective criteria rather than left to agency or judicial discretion.

Finally, to respond to the time pressures agencies are under to achieve permanency while ensuring that reunification is given a fair try before alternatives are explored, statutes should carve out an initial time period during which only reunification is pursued. For example, Connecticut and Florida have similar statutes requiring that a family be assessed after a child has been in care for six months; if at that point, reunification seems unlikely, a concurrent plan is developed.

119 It is important to note that agencies within these states may still have more specific requirements limiting the use of concurrent planning to families with a low chance for reunification. For example, agencies frequently use tools, such as assessment checklists, to “identify families that have little chance for reunification,” based on objective factors such as whether the parent’s rights to another child have been involuntarily terminated. Concurrent Planning: What the Evidence Shows, supra note 9, at 7-8.
120 D’Andrade & Berrick, supra note 17, at 41.
121 Id. at 37 (“without explicit guidelines or empirical data to guide decision making, the likelihood that reunification exception will be administered inequitably across states, counties, and populations is great.”).
122 Black parents are investigated for abuse and neglect at twice the rate of White parents, and Black children are more likely than White children to be removed from their parents, placed in foster care, and less likely to eventually be reunified with their parents or achieve permanency. See Nancy B. Miller & Candice L. Maze, Right from the Start: The CCC Preliminary Protective Hearing Benchcard, NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (2010), at 3 (“Children of color experience disparate decision-making in investigation, substantiation, removal, placement in foster care and final permanency determinations.”). For a general analysis on the effect of implicit bias on judicial decision-making, see Kang, et. al., Implicit Bias in the Courtroom, 59 UCLA L. Rev. 1124 (2012).
Connecticut statute provides: “Within six months of out-of-home placement, the [agency] shall complete an assessment of the likelihood of the child's being reunited . . . based on progress made to date. The [agency] shall develop a concurrent permanency plan for families with poor prognosis for reunification.”

However, while the statute requires concurrent planning at the six-month mark at the latest, agency officials also have discretion to develop a concurrency plan before that point. A better statute would prohibit concurrent planning before the six-month mark. For example, a statute might say something to this effect: “Reunification should be pursued vigorously for the first six months a child is in care. After a child has been in care for six months, the agency shall complete an assessment of the likelihood of reunification. If there is a poor prognosis for reunification [based on objective, clearly outlined criteria], agencies shall develop a concurrent permanency plan.” Setting a deadline would ensure that agencies dedicate their resources toward reunification services for the first six months. Even at the six-month mark, a concurrent plan would only be developed for families assessed as having an objectively poor prognosis for reunification. This recommendation would balance children’s need to achieve early permanency with the competing need to ensure that, before alternatives are explored, every effort is made to reunify the child with his or her family.

B. In a Concurrent Plan, Ensure a Clear Division between Those Tasked with Supporting Reunification and an Alternative Permanency Plan

Within any concurrent plan, there should be a clear division between those tasked with supporting reunification (i.e. birth parents, caseworkers) and those supporting the alternative

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124 CONN. GEN. STAT. § 17a-110a(d) (2017).
125 Id.
126 While beyond the scope of this paper, it is critical that the poor prognosis metrics be reliable and evidence-based. See D’Andrade & Berrick, supra note 17, at 45 (“The validity and reliability of the poor prognosis indicators will be important for states and agencies hoping to target concurrent planning toward families less likely to reunify, in order to maximize scarce resources and limit the emotional burden for caregivers.”).
permanency plan (i.e. foster parents, caseworkers). First, foster parents should not be tasked with serving as “parenting coaches” or “mentors” for the child’s birth parents. As discussed supra, it is unrealistic to encourage prospective adoptive parents to form attachments to children while simultaneously asking them to be on the frontline supporting reunification. Moreover, relationships between foster parents and birth parents can often be antagonistic, as their goals are “at cross-purposes with each other.”¹²⁷ The relationship often involves judging one another’s parenting choices, and parents frequently report difficulties relating to foster parents and frustrations with how they are treating their children.¹²⁸ Rather, if the agency assigns a birth parent a parenting coach, that person should be someone separate from their child’s foster parent.

Second, the same caseworker should not be tasked with both supporting reunification for the birth family and supporting permanency for the foster family. As discussed supra, it is difficult—both practically and emotionally—for caseworkers to support the birth family and a potential adoptive family simultaneously. When they are entrusted with doing both, their relationship with birth parents can suffer from a loss of trust.¹²⁹ Thus, when a concurrent plan is implemented, agencies should assign a separate caseworker with overseeing and supporting the concurrent plan. This separation may help to mitigate the difficulties that caseworkers face in implementing concurrent planning.

¹²⁸ See, e.g., Gerstenzang & Freundlich, supra note 10, at 16 (describing that parents report difficulties relating to foster parents); MacFarquhar, supra note 1 (describing how foster parent disparaged birth parent in front of her children).
IV. Conclusion

Although concurrent planning practices have been remarkably successful in achieving early permanency for children, its “important shift in emphasis” from family reunification to early permanency means that its successes can come at the expense of reunification efforts.130 This essay has attempted to highlight ways in which concurrent planning can detract from reunification efforts and provide concrete recommendations for states and agencies implementing concurrent planning policies. The promise of concurrent planning to achieve early permanency should never lead us to lose sight of the core belief of the child welfare system: “that children should remain in their homes whenever possible.”131

129 Gerstenzang & Freundlich, supra note 10, at 16.
130 Katz, supra note 2, at 10.
131 Sankaran & Church, supra note 37, at 210.