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Foster Parents and the Juvenile Courts in Georgia

A Survey Assessment About the Right to Notice and Opportunity to be Heard

Submitted to
Supreme Court of Georgia's
Child Placement Project
The Georgia Administrative
Office of the Courts

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Introduction

This paper presents the findings of a research project conducted by the Barton Child Law and Policy Clinic and supported by staff from the Supreme Court of Georgia's Child Placement Project. The purpose of the study was to answer the question, "How are Georgia juvenile courts implementing The Adoption and Safe Families Act (ASFA, 1997, PL 105-89), specifically the provision of the foster parent's right to have notice of and an opportunity to be heard at hearings?"¹ This paper also makes recommendations which could improve Georgia's compliance with ASFA.

When ASFA was passed in November 1997 it granted foster and adoptive parents, including relative caregivers, the right to receive notice of hearings relating to the children in their care and the right to be heard at those hearings. This means that to receive federal foster care funding, states are required to provide caregivers with "notice and an opportunity to be heard." The federal government later clarified that this right pertains only to periodic review and permanency hearings. ASFA also specifies that the opportunity to be heard does not *necessitate* foster parents be made a party to the case, and therefore such opportunity is not to be construed as the right to testify in court. Georgia Law mimics federal law exactly. Other states, such as California, allow foster parents to be notified of and heard at all hearings. Since federal ASFA also does not stipulate who is responsible for giving notice, how much notice should be given, and how foster/adoptive parents should be given an opportunity to be heard, much is open to interpretation for states in the application of ASFA.

¹ The term "case review system" means a procedure for assuring that . . . "the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard." 42 USCS § 675(5)(G) (2002).

Consequently, with Georgia code mirroring federal code, there is great variation in its compliance throughout Georgia's juvenile courts. Some courts allow foster parents to attend court hearings. Others do not and will call foster parents into the courtroom if and when it is deemed necessary, in order to protect the birth parents' confidentiality. Some judges want foster parents present at all hearings and will ask the foster parents for their input. Other judges, allow foster parents to be heard in person primarily at panel reviews and through other professionals, such as Court Appointed Special Advocates (CASA's) or the Department of Family and Children Services (DFCS) case managers, at permanency hearings.

With the crisis this country is facing in trying to recruit and retain enough quality foster parents for the children that come into care, research into related issues is becoming increasingly important. To better understand exactly how foster parents in Georgia are being given notice of hearings and an opportunity to be heard, court professionals, foster parents, and adoptive parents were surveyed, regarding how notice is sent and what "opportunity to be heard" meant and seeking consensus on improving this one aspect of ASFA in Georgia. This study is not scientific and was intended to serve as a catalyst for a larger public discussion: how to better serve foster parents in Georgia?

Methods

Beginning in February 2002 and ending in August of the same year, two surveys were administered, one to court professionals and one to foster/adoptive parents. At the close of the surveys, 152 foster parents and 80 court professionals had participated. The participants were self-selected, and therefore it is important to note that they are not representative of all foster parents and all court professionals. The surveys were administered primarily via the Barton Child Law and Policy Clinic website, <http://www.childwelfare.net>.

Court Professional Survey

The court professionals who participated in this survey included juvenile court judges, Special Appointed Attorney Generals (SAAG's), Guardian Ad Litem attorneys (GAL), and various other attorneys who are involved in juvenile court deprivation proceedings. The survey sample consisted of 55% judges and 45% attorneys. These individuals were sent email invitations to participate in the survey that included the web site address for the survey as well as their individual password, which was necessary to access the survey. The initial invitations resulted in only 24 completed surveys. In order to increase the sample size of the survey, staff obtained a list of court professionals' phone numbers and selected a random sample to call. Upon calling, the staff would explain the nature of the study, and ask the court professionals if they would please complete the survey at the website or allow one to be faxed to them. Most respondents filled out the survey at the Barton Clinic website.

Foster Parent Survey

The foster parents who participated in this study included private and state licensed foster and adoptive parents, as well as relative caregivers. Given the size of the foster parent population and the confidentiality of their demographic information, along with the fact that not all have easy access to computers, most of the surveys were administered to this population on paper. The survey was first passed out at a foster parent association meeting in February 2002 and then at the Georgia Foster Parent Conference in April 2002 with a total of 47 responses, 11 of which had to be eliminated since they were completed incorrectly. This sample was not large enough, so 200 more foster parents were chosen at random using the mailing addresses provided by the Division of Families and Children Services, resulting in another 116 responses. Thus, at the close of the survey on August 15, 2002, a total of 152 completed surveys were received. All reasonable efforts were made to guard against duplication of individual responses.

The findings presented below from both survey groups are sorted into two categories: 1. *Foster Parents' Receipt of Notice* and 2. *Foster Parents' Receipt of the Opportunity To Be Heard*. After presenting the findings from each survey group, there is a comparison of the results followed by an analysis of the survey results concerning the use of standardized forms. The paper concludes with a discussion of recommendations.

Findings

Court Professional's Knowledge and Opinions

As stated previously, the federal law ASFA grants foster parents the right to be given notice of and an opportunity to be heard at periodic review and permanency hearings only. Given that the Georgia code follows the same language of federal ASFA, foster parents and relative caregivers are not likely to be included at all hearings as they are not parties to the case.

Foster Parents' Receipt of Notice

In answering the questions regarding who is giving notice of hearings to foster parents, how, and which hearings, there is some confusion among court professionals. The majority of the respondents said DFCS provides notice in their jurisdiction, usually by mail or telephone and primarily for periodic review and permanency hearings. However, in viewing survey question #3, "How is notice being given in your jurisdiction? (Check all that apply)," 40 % of the court professionals who participated responded with '*regular mail from court*', 43.8% responded with '*regular mail from DFCS*', and 43.8% responded with '*phone call from DFCS*.' Moreover, when asked who they believed was responsible for giving notice, 43.8% said DFCS is, while only 18.8% said it was the court, and another 18.8% said they do not know. Almost half the respondents did not know how much notice was being given and approximately 32% said they were given 7-14 days notice. When asked if foster parents were informed of their right to an

opportunity to be heard, 33% said they did not know compared to only 25% who said 'always' and 23% who said 'most of the time.' The responses to the above questions indicate an overall lack of clarity among court professionals as to who is and should be responsible for giving notice of hearings to foster parents, how that notice is being given, and whether there is any notice being given to foster parents regarding their right to an opportunity to be heard.

Foster Parents' Receipt of the Opportunity to Be Heard

The second half of the survey began by asking court professionals what they would like the phrase "an opportunity to be heard" to mean, with the intention of understanding what they preferred before asking what actually occurs. More than half of the respondents, 57.5%, said they would like the opportunity to be heard to mean '*speak in court.*' Another third of the respondents were almost evenly split between having the foster parents' concerns verbalized either in writing to the judge (8.8%), by the CASA/GAL (10%), or by the DFCS case manager (8.8%). Quite a few respondents were not satisfied with having to pick only one of the above methods and wrote that any of the above methods, or a combination of them depending on the hearing, should be made available to foster parents. When asked how foster parents were currently being given the opportunity to be heard, and were allowed to choose all applicable answers, 73.8% of the sample chose '*in person.*' Thus, how the opportunity to be heard is being provided appears to reflect the preferences stated by most court professionals.

To gain more perspective of how the opportunity to be heard is being conducted in the courtroom, court professionals were asked to describe how often and in what manner information from foster parents is being included at hearings. Most of the judges stated that they ask foster parents for their input or will allow them to speak if the foster parents' ask to do so. Most of the lawyers include information from interviews with foster parents as deemed relevant to their case, sometimes even calling them as witnesses. One respondent said that she infrequently includes foster parents information because foster parents are often disruptive to the progress of the case and use the courtroom to complain about DFCS. Other court officials and DFCS caseworkers outside of this study have made similar comments to the staff doing this study. In reviewing the written responses, there was a consistent theme that foster parents rarely attend hearings, and that when they attend they do not always exercise their right to be heard. Again, it is important to keep in mind that Georgia law does not explicitly give foster parents the right to attend a hearing in person.

Foster/Adoptive Parent's Knowledge and Opinions

Foster Parents' Receipt of Notice

To gain insight into how foster parents are exercising their rights, as stipulated by ASFA, it is important to first know if they are aware of these rights. Thus, at the beginning of the survey foster parents were asked if they were familiar with ASFA. Most of the foster parents responded with either no (41%) or somewhat (38%), while only a few firmly responded with yes (21%).

When asked what hearings they received notice of, there was a large difference between periodic reviews and permanency hearings. Many of the foster parents replied that they received notice of panel reviews (62%) and periodic reviews by judges (36.8%), but only a small number replied that they received notice of permanency hearings (22.4%). Almost 18% of the foster parents surveyed responded that they do not receive notice for any hearing. As for the consistency of the notice they are given for the above hearings, the majority of the foster parents replied that they received notice '*always*' (36.8%) or '*most of the time*' (28.9%). Again, roughly 18% of the respondents said they received notice '*rarely or never*'.

Generally, more than half of the respondents (52.6%) said they received notice from DFCS, usually by regular mail (61.2%) but sometimes by phone (34.2%), and within 7 - 14 days before the hearing (45.4%). Those who responded that they did not receive notice for any hearing went from 11.8% up to 13.8% when answering the question regarding how much notice they typically received. A number of foster parents said they received fewer than seven days' notice (15%) and a few replied that they received fewer than two days' notice (6.6%). Such little notice could impact a foster parent's ability to arrange to be present at the hearing or arrange to have their concerns verbalized to the court in some other manner. Moreover, even with 45% of foster parents receiving at least 7 -14 days of notice, almost 60% said that before hearings, they are not given information about their right to have an opportunity to be heard.

Foster Parents' Receipt of the Opportunity to Be Heard

When foster parents were asked what they would like the phrase "opportunity to be heard" to mean, more than half (52.6%) replied with, '*to speak in court,*' while few preferred to '*submit something in writing to the judge*' (12.5%). Fewer than a fourth (15%) of the respondents wanted their concerns to be verbalized by the DFCS case manager compared to only 5.9% who wanted their concerns verbalized by the CASA or GAL. With so many foster parents complaining in their comments about the lack of inclusion and positive communication they receive from case managers, it is noteworthy that this method received more preference than that of a written letter or via CASA/GAL. However, given that quite a few were not content with choosing one option, those numbers might change if foster parents were asked to rank order each option listed.

When looking at the results of the question, "For what proceedings are you given the opportunity to be heard?" more than half of the foster parents surveyed said '*periodic reviews by panel.*' Only 13.8% said they were given the opportunity to be heard at permanency hearings, and 28% replied that they are not given the opportunity to be heard for any hearings. The number of foster parents who replied that they are not given the opportunity to be heard goes down slightly when asked how they are given the opportunity to be heard (23% vs. 28%). Still, more than half of the foster parents surveyed (55.9%) said they are given the opportunity to be heard in person at panel reviews. As for court hearings in front of a judge, foster parents said they are given the opportunity to be heard through the DFCS case manager (36.8%), while only a few are called as formal

witnesses (14.5%) and even fewer are heard in person by the judge but not as a formal witness (6.6%).

After all the questions aimed at assessing the specifics of how foster parents are receiving notice of hearings and being given the opportunity to be heard, it was important to assess their feelings on the matter. Thus, foster parents were asked if they felt they had an adequate opportunity to participate in the hearing process, to which most replied with 'no' (69.1%), and if there was a relationship between their ability to participate and their desire to continue fostering, to which more than half replied with 'yes' (58.6%).

The next question asked foster parents to describe that relationship if they replied yes. Upon review of the various descriptions, several things stood out. First, this question should have been rephrased, as many foster parents did not necessarily describe '*how their ability to participate related to their desire to continue foster parenting*' (which is how the question should have been stated). Instead, most described their frustrations about not being included in the hearing process. This information is still very relevant to the topic. The central theme foster parents revealed is that as caregivers, they know the child better than anyone else, so their knowledge and opinions should be included and respectfully considered. Foster parents also indicated that they do not receive adequate support from the child welfare system. One last and very significant theme found throughout all the responses is that when their input is not sought out foster parents feel ineffective. In fact, one foster parent replied that if they cannot have any input as to the best interest of the child then they might as well be "a low paid babysitter." Below are several of the responses that articulate the above-mentioned themes rather well:

- "The more consideration given for my opinion makes me feel as if I am effective in being a foster parent and foster parents are the ones who know the most about the children."
- "One wants to feel that his/her time invested in a child's nurturing is sincerely considered as well as recognized as an effective team player; an advocate for the best interest of the child in foster care. This is my sole reason for providing my time and care."
- "I am able to foster parent but my desire is diminishing because I don't feel I'm listened to in what's best for the child; and what's best for the child is not a priority."
- "We feel we are not receiving help when we do speak. Foster parents are not given the credibility for what they observe with the children."
- "I feel that as a foster parent at times I know the child better than anyone else involved. I often feel left out of very important decisions being made for these children. I am basically not allowed to advocate for the child, it is very frustrating."
- "Knowing that we are heard makes a parent feel like they have a direction or effect on a child's future. Foster parents need to know that they are leaving an impact on the system or process."

Comparing Responses of Court Professionals and Foster/Adoptive Parents

Looking at the results from both surveys, there are some parallel points between the opinions of court professionals and foster parents that should be considered. As shown in the graphs below, both the survey groups would prefer foster parents to be given the opportunity to be heard in person. Also, both survey groups believe that foster/adoptive parents are presently given the opportunity to be heard in person. The similarities end when considering the proceedings for which foster parents are receiving this opportunity. The foster parents expressed that they are heard in person mostly at panel reviews and very little at court hearings, specifically permanency hearings. Unfortunately, it is difficult to pinpoint the degree to which the two groups diverge, since court professionals were not asked to specify at which hearings foster parents are given the opportunity to be heard in person. Still, given that so many of the court professionals commented that foster parents rarely attend court hearings and foster parents said that they received notice of and had an opportunity to be heard at permanency hearings quite infrequently, it is obvious that there is a discrepancy between what the two groups perceive is taking place.

How *Should* Foster/Adoptive Parents Be Given the Opportunity to Be Heard

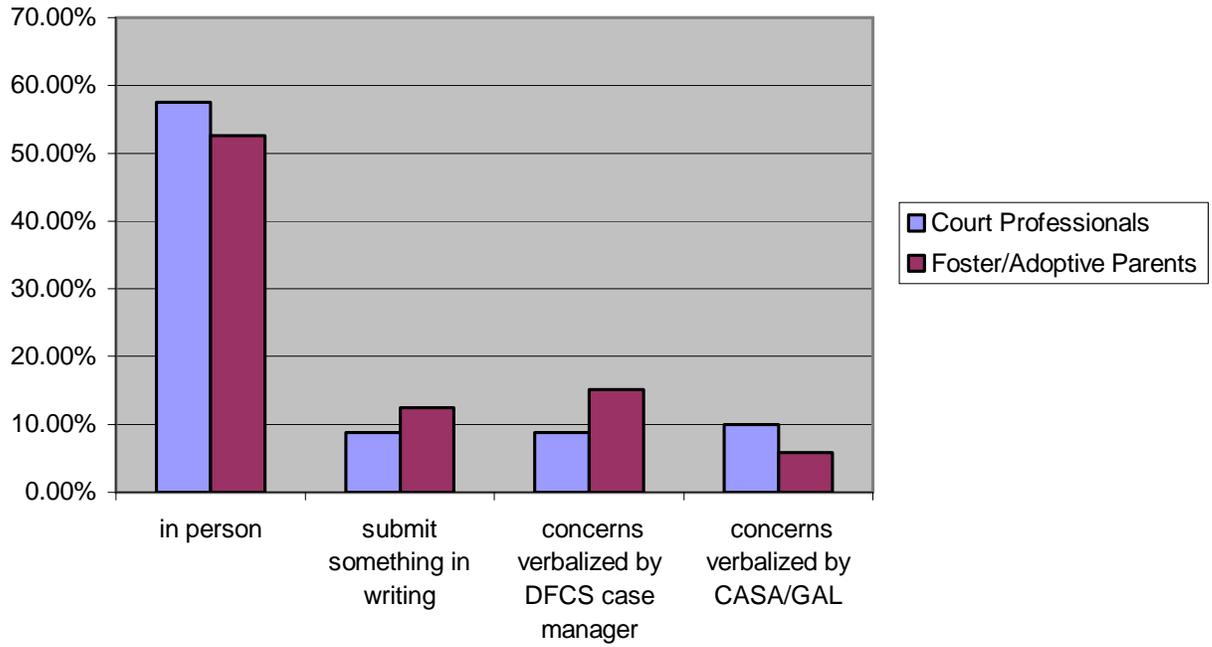


Figure 1

How Are Foster/Adoptive Parents Currently Given the Opportunity To Be Heard

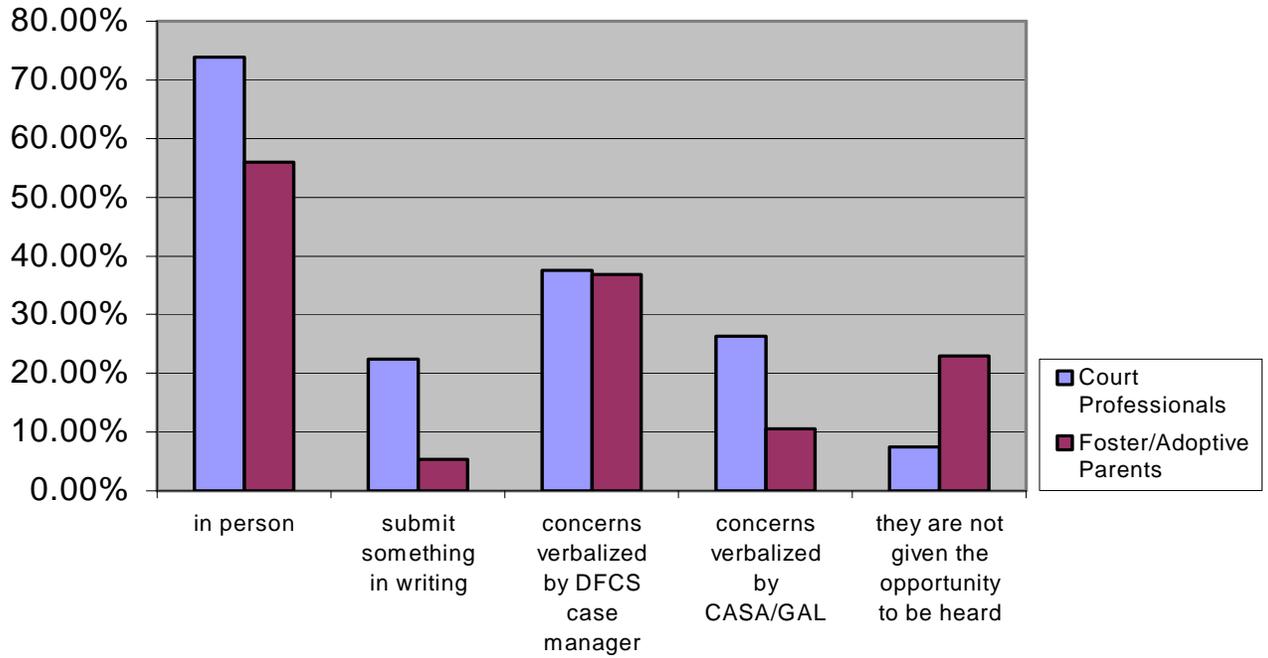


Figure 2

Proceedings for which Foster Parents Feel They are Given the Opportunity to be Heard

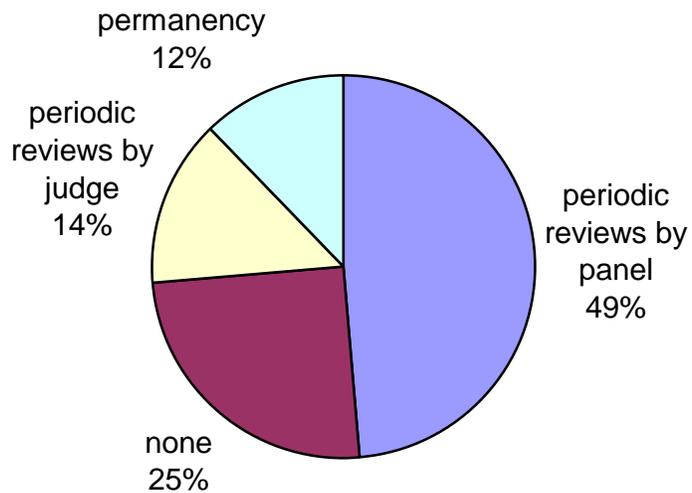


Figure 3

Court Proceedings for which Foster/Adoptive Parents Receive Notice

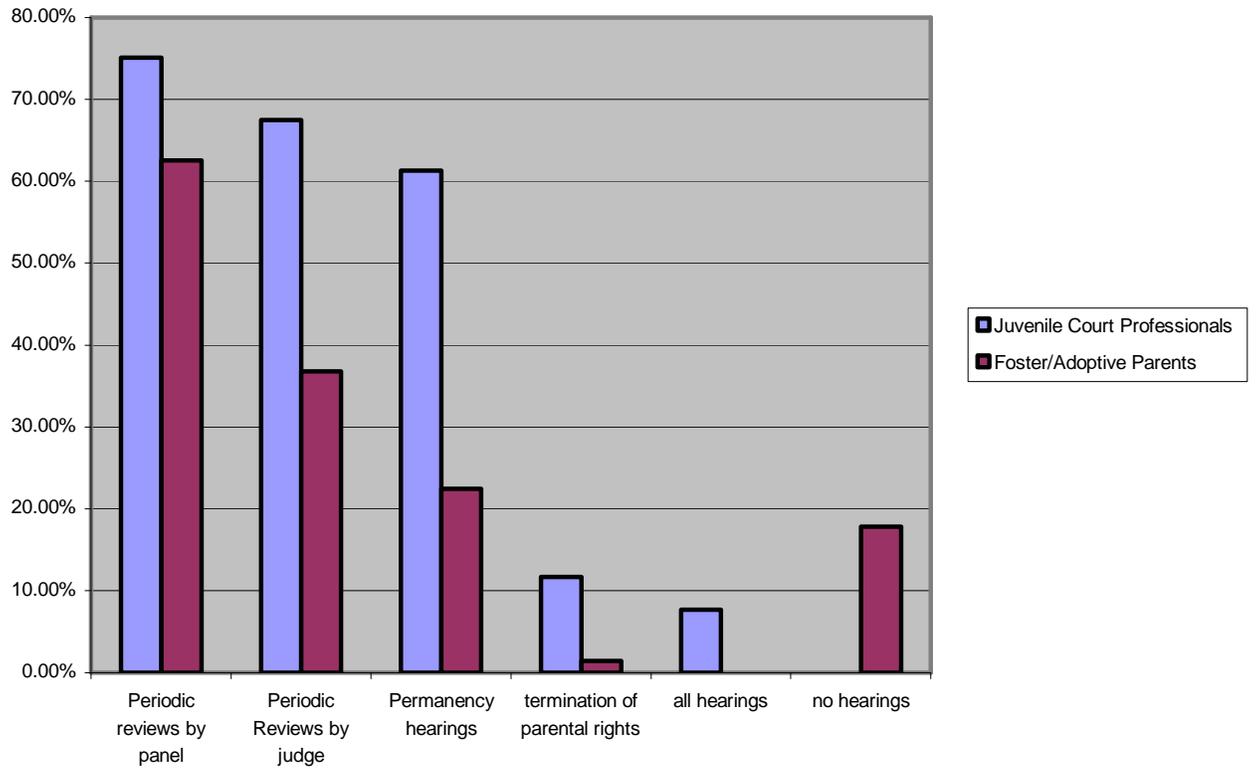


Figure 4

Support for the Use of Standardized Forms for Giving Notice and Receiving Caregiver Information

In order to gauge how open court professionals and foster/adoptive parents are to making improvements in the application of ASFA, both surveys closed with two questions concerning the use of standardized forms. The first question asked if respondents would support the use of a form that would give caregivers notice of the hearings as well as their right to the opportunity to be heard. This idea received strong support from both court professionals and foster parents.

Would you support the use of a standardized form to give foster/adoptive parents notice of hearings and their right to the opportunity to be heard?

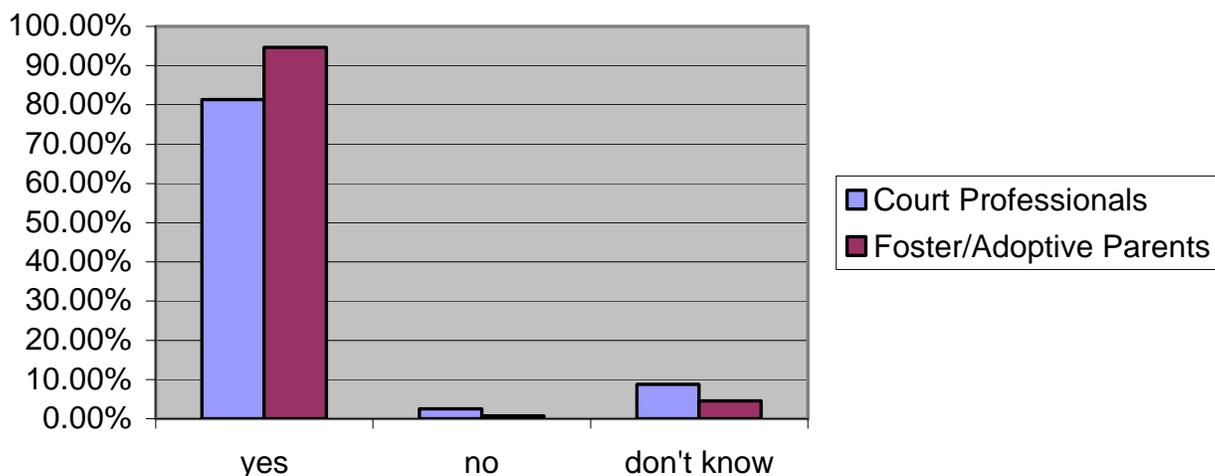


Figure 5

The second question asked if they would support the use of a form that would assist caregivers in giving relevant information to the court. This idea received a fair showing of support as well. Fewer court professionals firmly supported such a form, some responding that it would depend on how the form was designed and used. There were several comments that it should not take the place of the foster parents being heard in person, but rather serve as a supplement or an alternative if foster parents are unable to attend the hearing.

Would you support the use of a standardized form that would assist foster/adoptive parents in providing relevant information to the court?

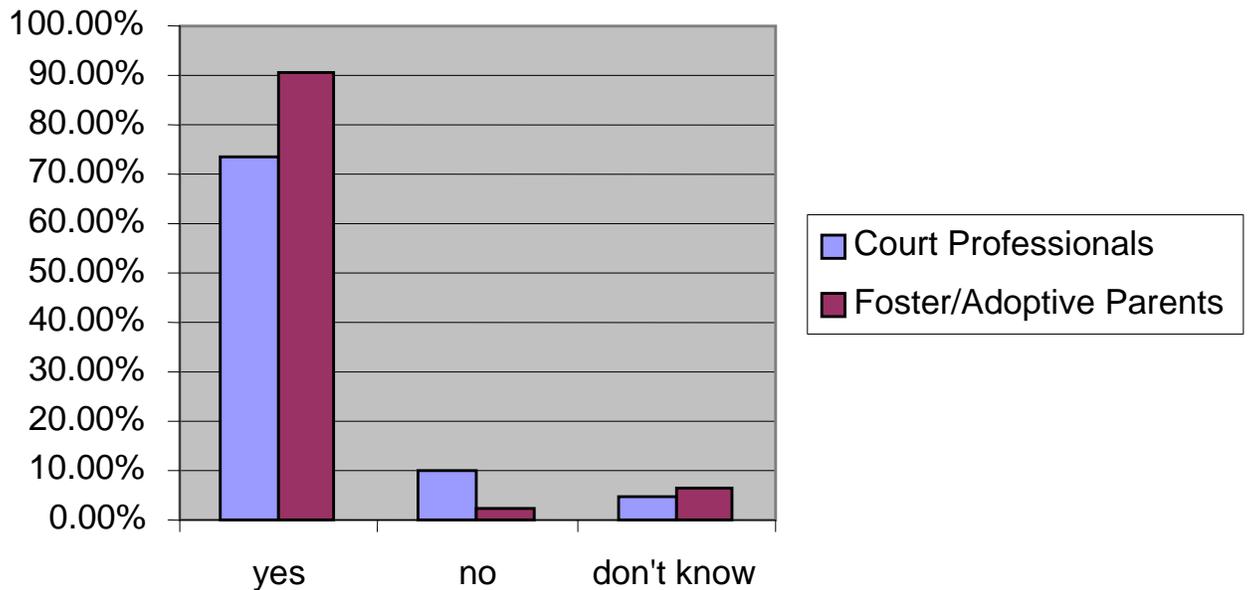


Figure 6

Discussion and Recommendations

This exploratory study was successful in revealing the perspectives of both court professionals and foster parents concerning the right of foster parents to have notice of hearings and an opportunity to be heard. Most importantly, it provides a baseline of knowledge concerning the subject, which should generate a dialogue among policy makers, court professionals, DFCS foster care case managers, DFCS training curriculum developers, and foster/adoptive parents.

Recommendation 1: Continuing education for all involved about foster parents' notice and opportunity to be heard.

The surveys show that there are gaps in the system's ability to ensure that the rights established by ASFA for foster parents are sustained. First of all, there is a tremendous difference of opinion regarding foster parents' level of involvement in court proceedings. While both the court professionals and foster parents surveyed expressed that there is a low level of foster parent participation, the foster parents feel they are excluded while the court professionals may believe

that foster parents are not exercising their rights. The fact that almost a quarter of the foster parents surveyed said they received notice of permanency hearings, and less than one fifth said they had an opportunity to be heard at those hearings is an indication that there is a failure in the system's ability to ensure this opportunity is afforded to foster parents. Also, it must be noted that a fair number of foster parents reported not receiving notice of any hearings at all, and that more than half said that before hearings, they are not informed of their right to an opportunity to be heard. Of course, it may be that foster parents are indeed informed of this right, although it may only be briefly included in their initial training.

Recommendation 2: Clarify who is responsible for providing notice

An interesting factor discovered when the foster parent survey was first administered at a foster parent association meeting is that private foster care providers receive notice to a lesser degree than state foster care providers do. Reportedly, private agency foster parents receive notice from their caseworkers who receive notice by DFCS. According to one such private foster care case manager who took the survey but could not be included in this study, she rarely receives notice of hearings unless she asks about them. One other important finding is the apparent confusion regarding who is and should be responsible for giving notice to foster parents. In order to make giving notice a more consistent process, it may be wise to identify a responsible party and define a uniform notification process (how much notice should be given, how it should be given), perhaps by legislation, policy or rule. The inconsistency with which notice is reportedly provided, combined with the differing levels of foster parent inclusion expressed by judges and attorneys, is evidence that there is much room for improvement in making the provision of notice and opportunity to be heard meaningful for foster parents.

Recommendation 3: Adopt a standardized form for foster parents.

A majority of court professionals and foster/adoptive parents indicated that they would support the use of a standardized form that would give foster parents notice of the hearings as well as their right to an opportunity to be heard. As both survey groups seem to prefer that foster parents be heard 'in person,' it would seem that bridging the gap between what both groups want and what is currently taking place may not be difficult at all. For example, in Troup County, Georgia, a notification form designed by Judge Michael Key (see appendix) has been in use for the past two years. This form not only gives foster parents notice of the hearing but also informs them that they have a right to be heard and lists the available options by which they are afforded that opportunity. As for instituting the use of a standardized form for receiving caregiver information, there is enough support for the idea to warrant further investigation by the juvenile court system into what such a form might include, the form's design, and how it should be included in the hearing process.

Recommendation 4: Provide for regular meetings and training opportunities between DFCS and the foster parents both at a state and local level to improve communication (not to talk about individual cases, but about system process improvement).

Another gap in the foster care system concerns the foster parents' right to an opportunity to be heard and has a huge impact on the crisis of foster care mentioned in the beginning of this paper. This gap is the communication between foster parents and DFCS case workers. Many of the foster parents surveyed talked about knowing the children they care for best but not being heard or considered in the decision-making process, which makes foster parents feel ineffective. In fact, there is enough anecdotal evidence to suggest that a deep rift has developed between the foster parents and DFCS, owing mostly to a historical lack of communication between the two groups. There are several key issues that hinder good communication between DFCS and the foster parents. First, foster parents often do not have a clear understanding and regard for the birth parent's right to confidentiality or the fact that case managers must walk the fine line of giving foster parents adequate information about the case without breaching the birth parent's confidentiality. Second, there is a lot of concern on behalf of court professionals and DFCS case managers that foster parents, especially those seeking to adopt, become too personally invested in the case and are often very disruptive when reunification with the birth family is the goal for the child. On the other hand, if reunification is the goal, and the foster parents have cause to be concerned, there should be some forum where their concerns are not only heard but also respectfully addressed. This is where the breakdown seems to occur. The case managers and court officials are on one side feeling disrupted and nagged by foster parents who are often too involved and do not understand the system's policies. At the same time, the foster parents often feel ignored, demeaned, and left out of the entire process by those with the least knowledge about the children whose fate they are deciding.

In order to address this communication gap, improvements should be made in the training curriculum for all parties concerning the role each plays in a way that *personalizes* the significance and challenges of each one. This study suggests that foster parents need better training regarding legislation such as ASFA, the policies of DFCS, and how such policies affect their rights. Thus, a more in depth evaluation of the foster parent training curriculum regarding the right to receive notice of hearings and an opportunity to be heard should be considered. With that said, DFCS case managers need to have equal training regarding the Model Approach to Partnership in Parenting (MAPP) that foster parents receive, so they can better empathize and communicate with the foster parents. Joint workshops could be developed that give foster parents and DFCS workers a chance to "walk in each others' shoes." A true "partnership in parenting" necessitates understanding, trust, and empathy on behalf of each partner for the other's contributions and limitations. Further research that includes DFCS case managers and supervisors is imperative to defining the issues involved more accurately.

For example, the use of focus groups, which involves a free exchange of thoughts, would allow for a better understanding of how court officials and DFCS case workers perceive the foster parents role and whether this is congruent with the foster parents' perception of their role. Focus groups could also clarify whether court officials believe foster parents choose not to exercise their right to an opportunity to be heard or do not exercise this right for other reasons, such as not being well informed about it. This kind of information could correct for misperceptions held by each community, thereby improving the relationships among them.

Other efforts to improve these relationships, if developed with input from foster parents, the courts, and the local DFCS agencies, could form the basis for a more effective system. Since the abused and neglected children who come into care cannot speak for themselves, they deserve to have as many advocates as they can. Having well-informed and effective advocates should be the goal of all communities. Thus, enhancing the training curriculum for those who work in the foster care system is the best means to that end.

In conclusion, this assessment has shown that most court professionals and foster parents agree that foster parents should receive notice of hearings and have an opportunity to be heard. Clarifying who is responsible for making sure that happens and defining a uniform process by which it happens appear to be essential. This assessment has also identified a number of issues that need to be addressed to make sure that information from foster parents is obtained as well as showing a strong preference for a standardized form within our courts (at least as a starting point). As the courts continue to move toward improving the implementation of ASFA, increased attention to foster parents will take concerted effort. Since the participation of foster parents appears to be beneficial for the foster care system overall, it is ultimately beneficial for the children for whom the system cares.