

Overview of The Adoption Safe Families Act (ASFA):

Reasonable Efforts and the
Federal Child and Family
Services Review (CFSR)



Making Children
a National Priority

Summary of The Adoption And Safe Families Act of 1997

(P.L. 105-89)

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On November 19, 1997, the President signed into law (P.L. 105-89) the Adoption and Safe Families Act of 1997, to improve the safety of children, to promote adoption and other permanent homes for children who need them, and to support families. This new law makes changes and clarifications in a wide range of policies established under the Adoption Assistance and Child Welfare Act (P.L. 96-272), the major federal law enacted in 1980 to assist the states in protecting and caring for abused and neglected children. The new law:

- **Continues and Expands the Family Preservation and Support Services Program.** The Family Preservation and Support Services Program, renamed the Promoting Safe and Stable Families Program, is reauthorized through FY 2001 at the following levels: FY 1999 at \$275 million; FY 2000 at \$295 million; and FY 2001 at \$305 million. The set-asides are maintained for the Court Improvement Program, evaluation, research, training, technical assistance, and Indian tribes. State plans are now also required to contain assurances that in administering and conducting service programs, the safety of the children to be served will be of paramount concern

The new law further clarifies that for the purposes of the maintenance of effort requirement in the program, "non-federal funds" may be defined as either state or state and local funds. This change is made retroactive to the enactment of the Family Preservation and Support Services Program (P.L. 103-66) on August 10, 1993

In addition to the funds to prevent child abuse and neglect and to assist families in crisis, the program's funds specifically include time-limited reunification services such as counseling, substance abuse treatment services, mental health services, assistance for domestic violence, temporary child care and crisis nurseries, and transportation to and from these services. Adoption promotion and support services are also included and are defined as pre- and post-adoptive services and activities designed to expedite the adoption process and support families

- **Continues Eligibility for the Federal Title IV-E Adoption Assistance Subsidy to Children Whose Adoption is Disrupted.** Any child who was receiving a federal adoption subsidy on or after October 1, 1997, shall continue to remain eligible for the subsidy if the adoption is disrupted or if the adoptive parents die
- **Authorizes Adoption Incentive Payments for States.** The Act authorizes \$20 million for each of FY 1999-2003 for payments to eligible states which exceed the average number of adoptions the state completed during FY 1995-FY 1997, or in FY 1999 and subsequent years, in which adoptions of foster children are higher than in any previous fiscal year after FY 1996. The amount of the bonus is \$4,000 for each foster child adopted and \$6,000 for each adoption of a child with special needs previously in foster care. To be eligible to receive these payments for FY 2001 or FY 2002, states are required to provide health insurance coverage to any special needs child for whom there is an adoption assistance agreement between the state and the child's adoptive parents
- **Requires States to Document Efforts to Adopt.** States are required to make reasonable efforts and document child specific efforts to place a child for adoption, with a relative or guardian, or in another planned permanent living arrangement when adoption is the goal. The law also clarifies that

reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to reunify a child with his or her family

- **Expands Health Care Coverage to Non-IV-E Eligible Adopted Children with Special Health Care Needs.** States are required to provide health insurance coverage for any child with special needs for whom there is an adoption assistance agreement between the state and the adoptive parents and whom the state has determined could not be placed for adoption without medical assistance because the child has special needs for medical, mental health, or rehabilitative care. The health insurance coverage can be provided through one or more state medical assistance programs including Medicaid and must include benefits of the same type and kind as provided under Medicaid. The state may determine cost sharing requirements
- **Authorizes New Funding For Technical Assistance to Promote Adoption.** The U.S. Department of Health and Human Services (HHS) may provide technical assistance to states to promote the adoption, or other alternative permanent placement, of foster children. The technical assistance may include guidelines for expediting termination of parental rights; encouraged use of concurrent planning; specialized units and expertise in moving children toward adoption; risk assessment tools for early identification of children at risk of harm if returned home; encouraged use of fast tracking for children under age one into pre-adoptive placements; and programs to place children into pre-adoptive placements prior to termination of parental rights. At least half of the appropriated funds are reserved for providing technical assistance to the courts
- **Addresses Geographic Barriers to Adoption.** States are required to assure that the state will develop plans for the effective use of cross-jurisdictional resources to facilitate timely permanent placements for children awaiting adoption. The state's Title IV-E foster care and adoption assistance funding is conditioned on the state not denying or delaying a child's adoptive placement, when an approved family is available outside of the jurisdiction with responsibility for the child. Funding is also conditioned upon the state granting opportunities for fair hearings for allegations of violations of the requirements. The U.S. General Accounting Office must study and report to Congress on how to improve procedures and policies to facilitate timely adoptions across state and county lines
- **Establishes Kinship Care Advisory Panel.** HHS is required to prepare and submit, by June 1, 1999, a report for Congress on the extent of the placement of children in foster care with relatives and to convene an advisory panel on kinship care to review and comment on the report before it is submitted
- **Issues Sense of Congress on Standby Guardianship.** It is the Sense of Congress that states should have laws and procedures to permit a parent who is chronically ill or near death to designate a standby guardian for their child, without surrendering their own parental rights. The standby guardian's authority would take effect upon the parent's death, mental incapacity, or physical debilitation and consent
- **Establishes New Time Line and Conditions for Filing Termination of Parental Rights.** Federal law did not require states to initiate termination of parental rights proceedings based on a child's length of stay in foster care. Under the new law, states must file a petition to terminate parental rights and concurrently, identify, recruit, process and approve a qualified adoptive family on behalf of any child, regardless of age, that has been in foster care for 15 *out of the most recent 22 months*. A child would be considered as having entered foster care on the earlier of either the date of the first judicial finding of abuse or neglect, or 60 days after the child is removed from the home

This new requirement applies to children entering foster care in the future and to children already in care. For children already in care, states are required to phase in the filing of termination petitions beginning with children for whom the permanency plan is adoption or who have been in care the longest. One third must be filed within six months of the end of the state's first legislative session following enactment of this law, two-thirds within 12 months and all of them within 18 months. A state must also file such a petition if a court has determined that an infant has been abandoned (as defined in state law) or if a court has determined that a parent of a child has assaulted the child, or killed or

assaulted another one of their children. Exceptions can be made to these requirements if: (1) at the state's option, a child is being cared for by a relative; (2) the state agency documents in the case plan which is available for court review, a compelling reason why filing is not in the best interest of the child; or (3) the state agency has not provided to the child's family, consistent with the time period in the case plan, the services deemed necessary to return the child to a safe home

- **Sets New Time Frame for Permanency Hearings.** Former federal law required a dispositional hearing within 18 months of a child's placement into out-of-home care. The new law establishes a permanency planning hearing for children in care that occurs within 12 months of a child's entry into care. At the hearing, there must be a determination of whether and when a child will be returned home, placed for adoption and a termination of parental rights petition will be filed, referred for legal guardianship, or another planned permanent living arrangement if the other options are not appropriate
- **Modifies Reasonable Efforts Provision in P.L. 96-272.** States continue to be required to make reasonable efforts to preserve and reunify families. In making decisions about the removal of a child from, and the child's return to, his or her home, the child's health and safety shall be the paramount concern. The *reasonable efforts requirement does not apply in cases in which a court has found that*:
 - the parent has subjected the child to "aggravated circumstances" as defined in state law (including but not limited to abandonment, torture, chronic abuse, and sexual abuse);
 - the parent has committed murder or voluntary manslaughter or aided or abetted, attempted, conspired or solicited to commit such a murder or manslaughter of another child of the parent;
 - the parent has committed a felony assault that results in serious bodily injury to the child or another one of their children; or
 - the parental rights of the parent to a sibling have been involuntarily terminated

In these cases, states would **NOT** be required to make reasonable efforts to preserve or reunify the family but are required to hold a permanency hearing within 30 days and to make reasonable efforts to place the child for adoption, with a legal guardian, or in another permanent placement

- **Requires States to Check Prospective Foster and Adoptive Parents for Criminal Backgrounds.** States are required to provide procedures for criminal record checks for any prospective foster or adoptive parents, before the parents are approved for placement of a child eligible for federal subsidies. When a criminal record check reveals a felony conviction for child abuse or neglect, spousal abuse, another crime against a child (including child pornography), rape, sexual assault, or homicide, final approval of foster or adoptive parent status shall not be granted. In a case of a felony conviction for physical assault, battery, or a drug-related offense that was committed in the past five years, approval could not be granted. States can opt out of this provision either through a written notice from the Governor to HHS, or through state law enacted by the state legislature
- **Requires Notice of Court Reviews and Opportunity to be Heard to Foster Parents, Preadoptive Parents and Relatives.** A foster parent, any preadoptive parent or relative caring for a child must be given notice of, and an opportunity to be heard in, any review or hearing involving the child. This provision does not require that any foster or preadoptive parent or relative be made a party to such a review or hearing
- **Directs States to Establish Standards to Ensure Quality Services.** By January 1, 1999, states are required to develop and implement standards to ensure that children in foster care placements in public and private agencies are provided quality services that protect the safety and health of the children
- **Requires Assessment of State Performance in Protecting Children.** HHS will develop, in consultation with governors, state legislatures, state and local public officials and child welfare advocates, a set of outcome measures to be used to assess the performance of states in operating child protection and child welfare programs to ensure the safety of children and a system for rating the performance of states with respect to the outcome measures. HHS must submit an annual report to

Congress on state performance including recommendations for improvement. The first report is due May 1, 1999. Outcome measures include length of stay in foster care and number of foster placement adoptions; and, to the extent possible, are to developed from data available from the Adoption and Foster Care Analysis and Reporting System (AFCARS)

- **Directs Development of Performance-Based Incentive Funding System.** HHS, in consultation with public officials and child welfare advocates, is required to develop and recommend to Congress a performance-based incentive system for providing payments under Title IV-B and Title IV-E of the Social Security Act by February 1999, and to submit a progress report on the feasibility, timetable and consultation process for conducting such a study by May 1998
- **Expands Child Welfare Demonstration Waivers.** Under previous law, HHS has authority to approve up to ten child welfare demonstration waivers. Eight states (CA, DE, IL, IN, MD, NC, OH, OR) have received approval to date. This new law authorizes HHS to conduct up to 10 demonstration projects per year from FY 1998 through 2002. Specific types of demonstrations to be considered include: projects designed to identify and address reasons for delay in adoptive placements for foster children; projects designed to address parental substance abuse problems that endanger children and result in placement of a child in foster care; and projects designed to address kinship care. Eligibility for these waivers is not available if a state fails to provide health insurance coverage to any child with special needs for whom there is in effect an adoption assistance agreement
- **Requires Study on the Coordination of Substance Abuse and Child Protection.** HHS will prepare a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to this population, and the outcomes resulting from the provision of such services, including recommendations for legislation needed to improve coordination in providing such services
- **Authorizes the Use of the Federal Parent Locator Service.** Child welfare agencies can now use the Federal Parent Locator Service to assist in locating absent parents
- **Extends Independent Living Services.** Young people who are no longer eligible for federal foster care assistance because their savings and assets exceed \$1,000, will still be eligible for independent living services, provided their assets do not exceed \$5,000
- **Funding Source.** The provisions of this law are partially funded (\$40 million over four years) from an adjustment to the \$2 billion Federal Contingency Fund for State Welfare Programs, created by the 1996 welfare law (P.L. 104-193). HHS is also required to make recommendations to Congress by March 1, 1998, for improving the operation of the Contingency Fund for State Welfare Programs
- **Effective Date:** The provisions of this new law became effective on November 19, 1997, except for the provisions dealing with termination of parental rights, disrupted adoptions, and the definition of nonfederal funds under family preservation. States have until the close of the next regular session of the state legislature to pass any state laws to comply with the new state plan requirements imposed by this law.

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<p>ACF Administration for Children and Families</p>	<p>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families</p>	
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PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-B and Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

SUBJECT: NEW LEGISLATION -- Public Law 105-89, The Adoption and Safe Families Act of 1997

LEGAL AND RELATED REFERENCES The Adoption and Safe Families Act of 1997 (Public Law 105-89), Titles IV-B and IV-E, Section 403(b), Section 453, and Section 1130(a) of the Social Security Act

PURPOSE: The purpose of this Program Instruction (PI) is to inform States of new legislation amending titles IV-B and IV-E of the Social Security Act and provide guidance for implementing the new law. This PI also provides the effective dates for implementing Public Law 105-89 and early notification of the impact of the new law on State Automated Child Welfare Information Systems (SACWIS).

OVERVIEW: This Program Instruction transmits Public Law 105-89 and a compilation of titles IV-B and IV-E, as amended by the Adoption and Safe Families Act of 1997 (ASFA). It also provides guidance for States' early implementation of the law. The PI is divided into three parts: Part I contains principles to assist States in understanding the new provisions and integrating the law into ongoing reforms of the child welfare system; Part II stipulates the effective dates of the new legislation; and Part III discusses how the law may impact States' SACWIS and other information systems.

INFORMATION:

PART I. THE ADOPTION AND SAFE FAMILIES ACT OF 1997

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997. This legislation, passed by the Congress with overwhelming bipartisan support, represents an important landmark in Federal child welfare law. It establishes unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being. The passage of this new law gives us an unprecedented opportunity to build on the reforms of the child welfare system that have begun in recent years in order to make the system more responsive to the multiple, and often complex, needs of children and families. The law reaffirms the need to forge linkages between the child welfare system and other systems of support for families, as well as between the child welfare system and the courts, to ensure the safety and well-being of children and their families. The law also gives renewed impetus to dismantle the myriad barriers that may exist between children waiting in foster care and permanency. By implementing the new law in the context of an ongoing commitment to strengthening all aspects of the child welfare system, we will make a meaningful difference in the lives of children in foster care and in the lives of children who must come into contact with the child welfare system in the future.

ASFA embodies a number of key principles that must be considered in order to implement the law:

- **The safety of children is the paramount concern that must guide all child welfare services.** The new law requires that child safety be the paramount concern when making service provision, placement and permanency planning decisions. The law reaffirms the importance of making reasonable efforts to preserve and reunify families, but also now exemplifies when States are not required to make efforts to keep children with their parents, when doing so places a child's safety in jeopardy.
- **Foster care is a temporary setting and not a place for children to grow up.** To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions that shorten the timeframe for making permanency planning decisions, and that establish a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- **Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.** The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families, that agencies and courts can make informed decisions about parents' ability to protect and care for their children.
- **The child welfare system must focus on results and accountability.** The law makes it clear that it is no longer enough to ensure that procedural safeguards are met. It is critical that child welfare services lead to positive results. The law requires numerous tools for focusing attention on results, including an annual report on State performance; the creation of an adoption incentive payment for States designed to support the President's goal of doubling the annual number of children who are adopted or permanently placed by the year 2002; and a requirement for the Department to study and make recommendations regarding additional performance-based financial incentives in child welfare.
- **Innovative approaches are needed to achieve the goals of safety, permanency and well-being.** The law recognizes that we do not yet have all of the solutions to achieve our goals. By expanding the authority for child welfare demonstration waivers, the law provides a mechanism to allow States greater flexibility to develop innovative strategies to achieve positive results for children and families.

There is much to be done in the coming months as we work together to implement this multi-faceted new law. This Program Instruction is the first of the communications that the Department will send to assist the States in meeting the requirements of ASFA. We will also be consulting with State representatives and other experts in the field to help guide our work in implementing the new law. Working together, we have the opportunity to dramatically improve the lives of children and families.

PART II. EFFECTIVE DATES FOR IMPLEMENTING PUBLIC LAW 105-89:

General Effective Date of Public Law 105-89

The effective date of Public Law 105-89 is November 19, 1997. States are expected to comply with the provisions of the law as of that date, with the exceptions noted below.

Exceptions to Effective Date: Determination of Required State Legislation

A limited period of delay is permitted when the Secretary determines that a State must enact legislation to comply with certain State plan requirements. Section 501(b) of Public Law 105-89 authorizes the Secretary to determine those State plan requirements that will necessitate State legislation.

Delayed Effective Date

A "delayed effective date" will apply only to those requirements that the Secretary has determined require State legislation. The "delayed effective date" is defined in Section 501(b) as the beginning of the calendar quarter following the close of the State's first regular legislative session.

Following is a list of new or amended State plan requirements contained in titles IV-B and IV-E, as amended by ASFA:

Title IV-B, Subparts 1 and 2:

- Including safety in case plan and case review requirements [section 422(b)(10)]
- Developing plans to facilitate adoptions across State and county jurisdictions [section 422(b)(12)]
- Requiring assurances that the safety of children shall be of the paramount concern [section 432(a)(9)]

Title IV-E:

- Clarification of the reasonable efforts requirement [section 471(a)(15)]
- Criminal record checks for prospective foster and adoptive parents [section 471(a)(20)]
- Health insurance coverage for children with special needs [section 471(a)(21)]
- State standards to ensure quality services for children in foster care [section 471(a)(22)]
- State requirement to initiate or join proceedings within a specified time to terminate parental rights for certain children in foster care [section 475(5)(E) and (F)]*

Transition Rule

The requirement in section 475(5)(E) and (F) of the Act to initiate proceedings to terminate parental rights (TPR) is phased in over time according to the transition rule in section 103(c) of ASFA. This transition rule is separate from the "delayed effective date" described above. Separate guidance on implementing this transition will be forthcoming to the Regional Offices and States.

Action Required

The Administration for Children and Families (ACF) Regional Offices, on behalf of the Secretary, and based on the State certification will determine where State legislation is necessary to comply with title IV-B and title IV-E State plan requirements. States that require legislation should submit the attached certification indicating those State plan requirements that will necessitate State legislation. The certification must include the estimated "delayed effective date" in accordance with Section 501(b) of ASFA. States that do not require any legislation must also submit the certification indicating that State legislation is not necessary and that a "delayed effective date" is not applicable. All certifications must be signed by the designated State agency official and submitted to the ACF Regional Office no later than February 13, 1998.

PART III. POTENTIAL IMPACT OF PUBLIC LAW 105-89 ON SACWIS:

The intent of this section is to advise States of potential implications of ASFA on their SACWIS **and not to imply that any action must to be taken by the States at this time**. The SACWIS functional requirements delineated in ACF's Action Transmittal ACF-OISM-001 (2/24/95) remain in effect.

We strongly encourage the State program and system staff to discuss the possible implications for the State's SACWIS as the State implements ASFA.

Listed below are sections of ASFA that may have possible implications for a State's SACWIS. This list may not identify every conceivable consequence of the new law on SACWIS:

1. Section 101: SACWIS may need to be modified to appropriately record and track the "reasonable efforts" requirements identified in subsection (A), the "aggravated" or other circumstances identified in subsection (D) and the timely completion of the permanency hearing identified in subsection (E). [title IV-E, sections 471(a)(15) and 475(5)(C)]
2. Section 103: SACWIS may need to be modified to track the "total" number of months a child has been in foster care to conform with section 475(5)(E) and determine the beginning of foster care, as defined in section 475(5)(F). Also, SACWIS may need to be modified to assist the State in implementing the transition rule outlined in section 103(c). States should note that the "beginning of foster care" as defined in section 475(5)(F) should not be confused with the AFCARS data element 21, "date of latest removal from the home," which remains the same as defined in 45 CFR 1355.40, Appendix A. [title IV-E, section 475(5)(E) and (F)]
3. Section 104: The notice generation function of a State's SACWIS may need to be expanded to ensure that the applicable parties "are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child." Considering that SACWIS is currently required to generate notices, we would not expect this to cause a significant change to the design of the system. [title IV-E, section 475(5)(G)]
4. Section 105: If the State child welfare agency elects to use the Federal Parent Locator Service (FPLS) for child welfare services, it may need to modify its current interface with the State's title IV-D Child Support Enforcement system. We would expect that the benefits of pursuing this option would include enhancing a State's capacity to identify other family caretakers with whom the child could be placed, and expediting termination of parental rights when reunification is not an option and a suitable relative placement is not available. [title IV-D, section 453(a)(2),(c)]
5. Section 106: If a State chooses to conduct criminal background checks on foster and adoptive parents, and the State uses its SACWIS to process foster care or adoptive home applications, SACWIS may be modified to record the results of the background check. [title IV-E, section 471(a)(20)]
6. Section 107: In the case of a child for whom the permanency plan is adoption or placement in another permanent home, SACWIS may need to be modified to appropriately record and track "the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child ... and to finalize the adoption or legal guardianship." [title IV-E, section 475(1)(E)]
7. Section 307: SACWIS may need to be modified to maintain the prior eligibility information on behalf of

children with special needs whose initial adoption has been dissolved or whose adoptive parents have died. [title IV-E, section 473(a)(2)]

INQUIRIES TO: ACF Regional Offices

/s/

James A. Harrell
Deputy Commissioner
Administration on Children, Youth, and Families

* The requirement to initiate or join proceedings to terminate parental rights is treated as a State plan requirement under section 103(c)(4) of Public Law 105-89.

Attachments:

[Attachment A - The Adoption and Safe Families Act of 1997 \(Public Law 105-89\)](#)

[Attachment B](#) - Compilation of Titles IV-B and IV-E of the Social Security Act

[Attachment C](#) - Certification of Required State Legislation

[Attachment D](#) - ACF Regional Office list



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IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT (ASFA) ON JUDICIAL RESOURCES AND PROCEDURES

Mark Hardin, ABA Center on Children and the Law

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New Requirements for State Courts in Child Abuse and Neglect Cases

The Adoption and Safe Families Act of 1997, Public Law 105-89 (ASFA) presents a number of major challenges for state courts. State compliance with the law is a condition of state eligibility for funding to public child welfare agencies. The law, which is designed to achieve more timely decisions and stronger safety guarantees for abused and neglected children, includes the following new provisions that affect courts:

- In certain extreme cases of child abuse and neglect, courts are authorized to decide that states need not provide services to reunify families. ASFA §101(a), 42 U.S.C. §671(a)(15)(D).
- Once it is decided that the plan for a foster child is no longer reunification, agencies are required to make reasonable efforts to secure a new permanent home for the child. Courts are to monitor these efforts. ASFA §101(a), 42 U.S.C. §671(a)(15)(C).
- After a child enters foster care, earlier and more decisive hearings are required to determine a permanent plan (e.g., return home, adoption) for the child. ASFA §302, 42 U.S.C. §675(5)(C).
- After a child has been in foster care for 15 of the last 22 months, the state must -- subject to certain exceptions -- petition for the termination of parental rights. ASFA §103(a)(3), 42 U.S.C. §675(5)(E).
- Foster parents, preadoptive parents, and relative caretakers must be given notice and the opportunity to speak in court hearings, but need not be made parties to the proceedings. ASFA §104, 42 U.S.C. §675(5)(G).

New Demands on State Court Resources

The new requirements make new demands on state court resources in a number of specific ways. First, courts are expected to decide, early in the case, whether reunification services are required. Requests for court decisions that such services are not required will require more, earlier, contested hearings. It will also trigger earlier permanency hearings and, in turn, earlier termination of parental rights hearings.

Second, permanency hearings are required at 12 months, several months earlier than in the past. Further,

permanency hearings are to be more decisive and comprehensive hearings than before. For example, in the absence of compelling circumstances to the contrary, the court is to order the initiation of termination proceedings. The court is also expected to thoroughly review all permanency options. Additional court and attorney time is required.

Third, there are now deadlines for filing or joining in termination petitions. As a result, petitions will be filed earlier in each case, causing a temporary bulge in termination hearings and a higher proportion of termination proceedings will be contested. There will be additional appeals of termination decisions.

Fourth, foster parents, preadoptive parents, and relative caretakers now must receive notice and have the opportunity to participate in court hearings in child abuse and neglect cases. This will require both additional court time and additional time and costs for court staff.

To meet these new resource demands, courts may need to reconsider their internal budgets, allocations of judges, and budget requests to state legislatures. Besides needing additional judge time, they may also need more specialized court staff, further funding for court appointed attorneys, and automated systems to monitor, among other things, the timeliness of judicial decisions.

New Procedural Issues for State Courts

There are a number of important procedural issues for state courts to resolve in implementing the new federal requirements. Depending on the state, these procedural issues might be addressed through legislation, court rules, case law, and court forms. The following is a list of some of the key procedural areas presented by ASFA.

First, states must adopt procedures for determining, early in the case, whether to require the state to provide services to reunify a family with a child in foster care. For example, the state must decide:

- At what precise stage of the court process is this decision to be made?
- Who initiates this decision? Can the judge inquire about whether reunification services should be required?
- Are there ways of ensuring that the agency and court will have enough information, early in the case, to make an informed decision about providing reunification services? For example, such information might include parents' criminal records, mental health histories, and past substance abuse treatment records.
- What procedural protections should apply in connection with the decision? Should the rules of evidence apply? What should be the burden of proof?
- Must there be repeated and duplicative hearings concerning whether reunification services are required? ASFA seems to call for the following sequence of hearings: an initial decision that reunification services are not required, a permanency hearing within 30 days (in which the decision may be reexamined), and a termination of parental rights hearing. Can these proceedings be consolidated or at least the early hearings be conducted as preliminary proceedings?
- What are the grounds for deciding, early in the case, that reunification services will not be provided? Note that legislatures must enact such grounds. The grounds may or may not be similar to grounds for terminating parental rights.

Second, states must adopt procedures for earlier and more decisive permanency hearings. For example, the state will need to consider:

- What notice and reports should be provided prior to the hearing? When should they be required?
- Will court oversight of agency efforts to preserve the family need to occur earlier and more rigorously to make it possible for courts to decide upon permanent plans at permanency hearings?
- Should judicial findings be required at permanency hearings? If so, should agency reports be formatted to address issues for inclusion in judges' findings?
- If judicial findings should be required, how should they be organized to encourage more decisive permanency

hearings?

- Can permanency hearings be designed to help ensure that states meet their 15 month deadlines for either filing termination of parental rights proceedings or providing written explanations why termination proceedings are not appropriate?

Third, states must adopt procedures to ensure the participation of foster parents, preadoptive parents, and relative caretakers of abused and neglected children. For example, they will need to decide:

- Who should provide the notice to the foster parents, preadoptive parents, and relative caretakers and what should be the courts' role in overseeing such notice?
- What should be the procedures to allow foster parents, preadoptive parents, and relative caretakers to speak at hearings?
- Should foster parents, preadoptive parents, and relative caretakers be able to be present throughout the court hearings? Should they be permitted to become parties under specific conditions?

ASFA cannot succeed without effective judicial leadership. Individual judges must follow both the letter and the spirit of ASFA. They must have high expectations of the parties and develop an efficient and fair court process. In turn, state supreme courts and state court administrators must communicate to the courts that they expect full implementation of ASFA and that they will do their best to provide the resources to make it possible.

¹Any recommendations set forth in this handout have not been adopted by the American Bar Association House of Delegates or Board of Governors and therefore do not represent official policy of the American Bar Association.

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SAFE FAMILIES ACT IN MICHIGAN

A N O V E R V I E W

One of the major challenges facing state courts in child protective proceedings is understanding and complying with the requirements of federal law, especially the Adoption and Safe Families Act (ASFA) and related regulations. A federal review by HHS found room for improvement in Michigan's compliance with various objectives regarding child and family issues. While some problems identified in the review are not under the judicial branch's control, other problems are.

This article discusses ASFA requirements that apply to courts, comparable Michigan statutory provisions, and the report of an expert work group convened to respond to the federal review as it involves the courts. The work group's recommendation for court rule improvements are before the Supreme Court, following the release of the proposed rules for notice and comment.

ADOPTION AND SAFE FAMILIES ACT (ASFA)

This 1997 statute (PL 105-89), amending the 1980 Adoption Assistance and Child Welfare Act, imposes many requirements on states for processing their abuse and neglect cases. ASFA conditions federal funding, both for the administrative costs of the system and for foster care and adoption subsidies, on compliance with the federal requirements. While a few provisions involve time limits, many more requirements describe the kind of system that the state must set up. Most requirements affect the agency that runs the system—in Michigan, the Family Independence Agency (FIA)—rather than the courts. Nonetheless, some of ASFA's provisions do affect how courts handle abuse and neglect cases.

SUBSTANTIVE REQUIREMENTS

ASFA requires a substantial showing before a court or agency may remove a child from the parents' home. Once a court or agency takes jurisdiction, the statute and regulations require states to proceed expeditiously. The two key factors in the initial stage of acquiring jurisdiction are the "contrary to the welfare of the child" test and the "reasonable efforts" standard.

42 USC 672(a)(1) provides that a child may not be removed from the home unless the court determines that staying in the

home is contrary to the child's welfare. The statute also provides that reasonable efforts must be made to preserve and reunify families before placing the child in foster care. Those reasonable efforts can be excused because of aggravating circumstances, generally that the parents have committed a crime involving the child.¹ The "contrary to the welfare of the child" determination must appear in the first court order authorizing the child's removal.² The court must also determine that reasonable efforts to prevent removal have been made (or were not required) within 60 days after the child's removal.³

In Michigan, the Juvenile Rules package that took effect May 1, 2003, is aimed at complying with federal requirements. New MCR 3.903(3) defines "contrary to the welfare of the child." MCRs 3.963(B)(1)–(2), 3.965(C)(2)–(3), and 3.980(B) require a "contrary to the welfare of the child" finding as a basis for the court order taking custody of a child. Rules 3.965(D), 3.973(F)(3), and 3.980(B) incorporate the reasonable efforts requirement.

CASE PROCESSING REQUIREMENTS

Federal law also imposes a number of requirements for permanency plans, case reviews, and initiation of termination of parental rights (TPR) proceedings.

In general, a “case plan” must be developed within 60 days after the child is removed from the home (45 CFR 1356.21(g)(2)). A status review must take place at least every six months.⁴ Permanency planning hearings must be held within 12 months after the child enters foster care and at least every 12 months thereafter.⁵ When a court has determined that reasonable efforts are not required to reunify the family (i.e., because of aggravated conduct), a permanency planning hearing must be held within 30 days.⁶

Generally, when a child has been in foster care for 15 of the last 22 months, the state must initiate termination of parental rights proceedings.⁷ But three exceptions excuse initiation of termination proceedings: (1) at the state’s option, the child is being cared for by a relative; or (2) the state agency’s case plan documents a compelling reason why a termination petition would not be in the child’s best interests; or (3) the state has not provided the services deemed necessary within the time period set out in the case plan. Where a court has ruled that reasonable efforts to avoid removal are not required (i.e., aggravated abuse situations), termination proceedings must begin within 60 days of that determination.⁸

Michigan statutes and court rules adopt most of these provisions. MCL 712A.18f provides that a case service plan must be provided to the court and the parties before the court enters an order of disposition in an abuse and neglect case. The plan must be updated at 90-day intervals. The Michigan statute also requires more frequent status reviews than mandated by federal law: every 91 days⁹ or every 182 days where a placement is considered permanent.¹⁰ MCL 721A.19a(1) requires a permanency planning hearing within one year after the initial petition is filed, in contrast to the federal law, which measures the time from placement in foster care. New MCR 3.975(C) incorporates those provisions. A related provision is found in MCL 722.954b, which directs the supervising agency—not the court—to strive for a permanent placement within 12 months after the child’s removal from the home.

Unlike ASFA, the Michigan statutes do not provide for a shorter time limit for holding a permanency planning hearing where the court or agency determines that reasonable efforts to avoid removal are not required. MCR 3.976(B)(1) does, however, require the initial permanency planning hearing within 28 days of the determination.

Under MCL 712A.19a(7), if the court determines at a permanency planning hearing that the child should not be returned to the parent, the court must order the agency to initiate termination proceedings 42 days after the permanency planning hearing (unless the court finds that termination is clearly not in the child’s best interests). MCR 3.976(E)(2) repeats that provision. If that determination is made at the first permanency planning hearing, which must be within 12 months of the filing of the initial petition, the federal 15-month requirement would be met. Both the federal and the Michigan procedures contemplate that permanency planning hearings may take place periodically, which could go well beyond the 15-month limit for initiating TPR proceedings. However, if one of the three federal exceptions listed above applies, the federal requirement would not be violated.

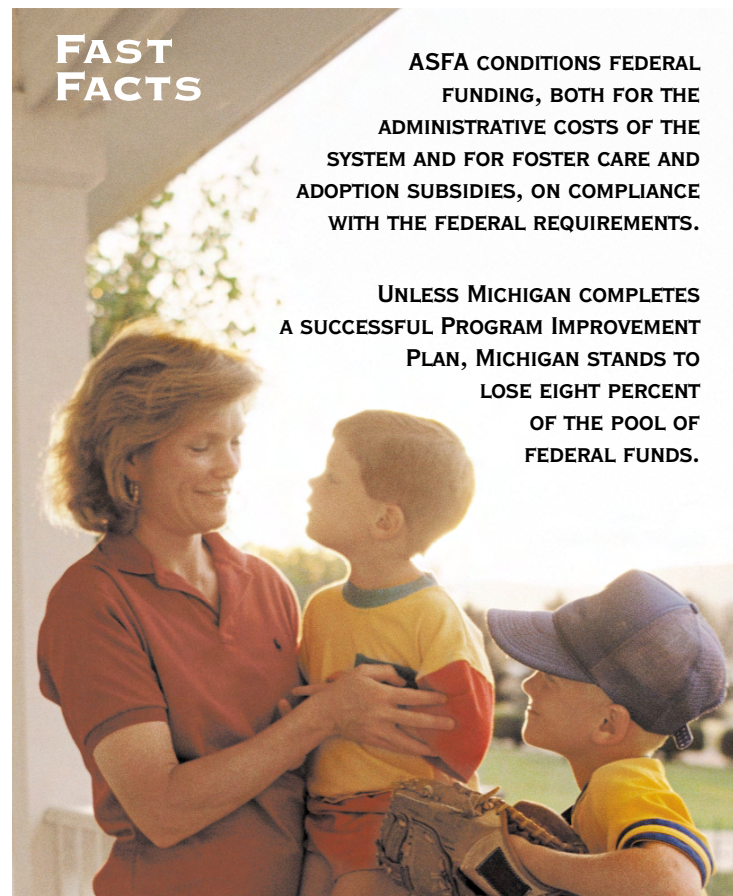
The Michigan statute does not explicitly require the filing of a termination petition within 60 days of a determination that reasonable efforts to avoid removal are not necessary. However, the 28-day hearing required under MCR 3.976(B)(1), coupled with the 42-day provision of MCL 712A.19a(7), would result in the termination petition being filed in 70 days.

Other than termination proceedings, the federal statutes do not specify when steps must be taken toward adoption. Moreover, federal law does not require hearings after parental rights are terminated. By contrast, Michigan law requires review hearings at least every 91 days after the termination of parental rights.¹¹ If foster care or relative placement is intended to be permanent, case review hearings are to be held every 182 days.¹² Also, MCL 722.954b(2) provides that, if an adoptive family is not identified within 90 days after termination of parental rights, the child is to be included in the adoption registry established by MCL 722.958 as a clearinghouse for information about adoptive families and available children.

FEDERAL CHILD AND FAMILY SERVICES REVIEW

The recent federal focus on these issues chiefly concerns Michigan’s failure to meet federal requirements, which may lead to the reduction in Michigan’s share of federal funds. Each state must have a plan for foster care and adoption assistance approved by the Secretary of Health and Human Services. 42 USC 671 lists numerous elements that must be included in that plan.

Under the federal regulations, the federal assessment rates the state system on two groups of factors, seven “outcomes,” and seven



FAST FACTS

ASFA CONDITIONS FEDERAL FUNDING, BOTH FOR THE ADMINISTRATIVE COSTS OF THE SYSTEM AND FOR FOSTER CARE AND ADOPTION SUBSIDIES, ON COMPLIANCE WITH THE FEDERAL REQUIREMENTS.

UNLESS MICHIGAN COMPLETES A SUCCESSFUL PROGRAM IMPROVEMENT PLAN, MICHIGAN STANDS TO LOSE EIGHT PERCENT OF THE POOL OF FEDERAL FUNDS.

“systemic factors.” The outcomes, listed in 45 CFR 1355.34(b)1, include:

- Children are protected from abuse and neglect.
- Children are safely maintained in their own homes whenever possible and appropriate.
- Children have permanency and stability in their living situations.
- The continuity of family relationships is preserved.
- Families have enhanced capacity to provide for their children’s needs.
- Children receive appropriate services to meet their educational needs.
- Children receive adequate services to meet their physical and mental health needs.

**THE MICHIGAN STATUTES
DO NOT PROVIDE
FOR A SHORTER TIME LIMIT
FOR HOLDING A PERMANENCY
PLANNING HEARING WHERE THE
COURT OR AGENCY DETERMINES
THAT REASONABLE EFFORTS
TO AVOID REMOVAL
ARE NOT REQUIRED.**

The systemic factors specified in 45 CFR 1355.34(c) are:

- statewide information system
- case review system
- quality assurance system
- staff training
- service array
- agency responsiveness to the community
- foster and adoptive parent licensing, recruitment, and retention

The review describes a number of items within each outcome and factor. Each of those items is rated as a strength or an area needing improvement.

The Final Report of the Michigan Child and Family Services Review concluded that Michigan does not satisfy any of the seven outcome categories. It does comply with all but one of the systemic factors. Thus, barring any challenges to the conclusions of the review, unless Michigan completes a successful Program Improvement Plan, Michigan stands to lose eight percent of the pool of federal funds. FIA submitted Michigan’s improvement plan to the federal agency on March 19, 2003. Once federal authorities approve the plan, the federal agency will establish a time for implementation, which will very likely be two years.¹³

Many of the items cited in the federal review are beyond the courts’ control. However, the one systemic factor on which Michigan failed the review, the Case Review System, is an area in which the courts play a significant role. Within that factor, three items were identified as needing improvement and two as strengths. Michigan’s strengths included 1) meeting the federal requirement of periodic review at least once every six months; and 2) providing a process for termination of parental rights proceedings in accordance with ASFA.

“Areas needing improvement” included ensuring that each child has an appropriate written case plan developed jointly with the child’s parents. The review concluded that, despite Michigan’s policy requiring preparation of such plans, the plans were not being developed in many cases. Further, case plans were not being consis-

tently developed jointly with the children and parents. Often plans were not signed by the parents. Fathers, particularly, were not engaged in treatment planning. Case plans are often generic and do not address individualized family needs.

Our state was also cited for not consistently holding permanency planning hearings at least once every 12 months. The review found that the requirement was met in only 59 percent of the cases. It found that the “consistency with which the reviews are completed is variable.” The review added that the focus of the hearings is not always on advancing permanency.

The review also said the Michigan system did not consistently notify foster parents, preadoptive parents, and relative caregivers of hearings and give them an opportunity to be heard. The review summary explained that the statute requires such notices, but said “the findings of the review indicate an inconsistent notification of foster parents, preadoptive parents, and relative caregivers due in part to a lack of clarity regarding the responsibilities and process for notifying these parties.”

WORK GROUP RECOMMENDATIONS

In April 2003, a work group convened to study ways to improve the adoption process in Michigan. Part of the group’s charge was to examine the criticisms of the federal review and suggest ways to address those issues. The group, which also included FIA officials and attorneys, was chaired by Karen Tighe, Chief Judge of the Bay County Probate Court, and retired Probate Judge Donna Morris of Midland.

In September 2003, the work group issued its final report. Its recommendations include amending state court rules to:

- Encourage filing of petitions for termination of parental rights in less than 42 days.
- Encourage earlier scheduling of permanency planning hearings.
- Give termination of parental rights cases “the highest possible priority” for scheduling, so that cases are not delayed.
- Identify early in the proceedings absent parents, relatives who may be potential caregivers, and other interested parties.
- Ensure participation of interested persons, including parents, potential adoptive parents, relatives, and others, at hearings.
- Control substitution of attorneys for children.
- Require courts to verify whether lawyer-guardians ad litem meet with the children they represent, so they can provide courts with an accurate assessment of the children’s best interests.

The work group also urged trial courts to comply with reporting guidelines that will permit the State Court Administrative Office (SCAO) “to publish an annual report regarding each court’s compliance with the provisions designed to achieve permanency, including data on compliance with time requirements.”

In October 2003, the Supreme Court published the work group's proposed court rule changes, including:

- Revise MCR 3.965(B) to require the court to ask parents, guardians, or legal custodians to identify relatives with whom the child could be placed.
- Revise MCR 3.965(E) to provide that courts "shall direct the agency to identify, locate, and consult with relatives to determine if placement with a relative would be in the child's best interests."
- Amend MCR 3.977 to require courts to give child welfare cases "the highest possible priority" in scheduling.
- Amend MCR 3.975 and 3.976 to clarify time limits for filing permanent custody petitions. Courts would also be required to notify interested parties of dispositional review and permanency planning hearings. The notice of a permanency planning hearing "must inform the parties of their opportunity to participate in the hearing and that any information they wish to provide should be submitted in advance to the court, the agency, the lawyer-guardian ad litem for the child, or an attorney for one of the parties."

Also included among the proposals are amendments to MCR 3.915 to enforce the statutory requirement that lawyer-guardians ad litem for children meet with their clients before each hearing.

The Court welcomes the input of the bench, bar, and the public on this critical issue to our children. ◆



Maura D. Corrigan was elected to the Michigan Supreme Court in 1998 for an eight-year term. She is currently serving her second term as chief justice, having been elected by her colleagues in 2001 and in 2003. In practice, she was an assistant prosecuting attorney in Wayne County, Michigan from 1974 to 1979; in 1979, she became chief of appeals in the United States Attorney's Office in Detroit; in 1986, she became the first woman to be Chief Assistant United States Attorney in Detroit; and in 1989, she entered private practice as a partner in the firm of Plunkett & Cooney. She was appointed to the Michigan Court of Appeals in 1992 and became its chief judge in 1997. Corrigan graduated magna cum laude from Marygrove College in Detroit in 1969 and cum laude from the University of Detroit Law School in 1973.

Footnotes

1. 42 USC 671(a)(14)(D).
2. 45 CFR 1356.21(c).
3. 45 CFR 1256(b)(1)(i).
4. 42 USC 675(5)(B); 45 CFR 1355.34(c)(2)(ii).
5. 42 USC 675(5)(C); 45 CFR 1355.34(c)(2)(ii).
6. 42 USC 671(a)(15)(E)(i).
7. 42 USC 675(5)(E); 45 CFR 1256.21(h)(4)(i).
8. 45 CFR 1256.21(h)(4)(ii).
9. MCL 712A.19(3).
10. MCL 712A.19(4).
11. MCL 712A.19(3); MCR 3.978.
12. MCL 712A.19(4).
13. 45 CFR 1355.34(d).



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TITLE I--REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) In General.--Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that--

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern; "(B) except as provided in subparagraph (D), reasonable efforts shall 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;

"(C) 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, and to complete whatever steps are necessary to finalize the permanent placement of the child; "(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse); "(ii) the parent has--

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent; "(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent; "(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or "(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

"(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

"(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)--

"(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and "(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

"(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);".

(b) Definition of Legal Guardianship.--Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(7) The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term 'legal guardian' means the caretaker in such a relationship."

(c) Conforming Amendment.--Section 472(a)(1) of such Act (42 U.S.C. 672(a)(1)) is amended by inserting "for a child" before "have been made". (d) Rule of Construction.--Part E of title IV of such Act (42 U.S.C. 670-679) is amended by inserting after section 477 the following:

42 USC 678

"SEC. 478. RULE OF CONSTRUCTION.

"Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D)."

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SEC. 102. INCLUDING SAFETY IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS.

Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended--

42 USC 622.

(1) in section 422(b)(10)(B) --

(A) in clause (iii)(I), by inserting "safe and" after "where"; and (B) in clause (iv), by inserting "safely" after "remain"; and

42 USC 675.

(2) in section 475 --

(A) in paragraph (1)--

(i) in subparagraph (A), by inserting "safety and" after "discussion of the"; and (ii) in subparagraph (B)--

(I) by inserting "safe and" after "child receives"; and (II) by inserting "safe" after

(B) in paragraph (5)--

(i) in subparagraph (A), in the matter preceding clause (i), by inserting "a safe setting that is" after "placement in"; and (ii) in subparagraph (B)--

(I) by inserting "the safety of the child," after "determine"; and (II) by inserting "and safely maintained in" after "returned to".

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SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.

(a) Requirement for Proceedings.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended--

(1) by striking "and" at the end of subparagraph (C); (2) by striking the period at the end of subparagraph (D) and inserting "; and"; and (3) by adding at the end the following:

"(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless--

"(i) at the option of the State, the child is being cared for by a relative; "(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or "(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child."

(b) Determination of Beginning of Foster Care.--Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended--

(1) by striking "and" at the end of subparagraph (D); (2) by striking the period at the end of subparagraph (E) and inserting "; and"; and (3) by adding at the end the following:

"(F) a child shall be considered to have entered foster care on the earlier of--

"(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or "(ii) the date that is 60 days after the date on which the child is removed from the home."

42 USC 675 note.

(c) Transition Rules.--

(1) New foster children.--In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act--

(A) if the State comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and (B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) Current foster children.--In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall--

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than $\frac{1}{3}$ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time; (B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than $\frac{2}{3}$ of such children as the State shall select; and (C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

(3) Treatment of 2-year legislative sessions.--For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature. (4) Requirements treated as state plan requirements.--For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act.

42 USC 675 note.

(d) Rule of Construction.--Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.

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SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended--

(1) by striking "and" at the end of subparagraph (E); (2) by striking the period at the end of subparagraph (F) and inserting "; and"; and (3) by adding at the end the following:

"(G) 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."

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SEC. 105. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.

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

(1) in subsection (a)(2)--

(A) in the matter preceding subparagraph (A), by inserting "or making or enforcing child custody or visitation orders," after "obligations,"; and (B) in subparagraph (A)--

(i) by striking "or" at the end of clause (ii); (ii) by striking the comma at the end of clause (iii) and inserting "; or"; and (iii) by inserting after clause (iii) the following: "(iv) who has or may have parental rights with respect to a child,"; and

(2) in subsection (c)--

(A) by striking the period at the end of paragraph

(3) and inserting "; and"; and

(B) by adding at the end the following:

"(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E."

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SEC. 106. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended--

(1) by striking "and" at the end of paragraph (18); (2) by striking the period at the end of paragraph (19) and inserting "; and"; and (3) by adding at the end the following: "(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that--

"(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and "(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

"(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State."

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SEC. 107. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended--

(1) in the last sentence--

(A) by striking "the case plan must also include"; and (B) by redesignating such sentence as subparagraph (D) and indenting appropriately; and

(2) by adding at the end the following: "(E) In the case of a child with respect to whom the permanency plan is

adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems."

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Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children

Reasonable efforts refer to efforts made by State social services agencies to provide the assistance and services needed to preserve and reunify families.

Laws in all States, the District of Columbia, Guam, and Puerto Rico require the provision of services that will assist families in remedying the conditions that brought the child and family into the child welfare system. The statutes in most States, however, use a broad definition of what constitutes reasonable efforts. Some commonly used terms associated with reasonable efforts include

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“family reunification,” “family preservation,” “family support,” and “preventive services.”¹

When Reasonable Efforts Are Required

Federal law has long required State agencies to demonstrate that reasonable efforts have been made to provide assistance and services to prevent the unnecessary removal of a child from his or her home and make it possible for a child who has been placed in out-of-home care to be reunited with his or her family.²

In many States, the statutes also require that when a determination is made that reunification of the family is not in the best interest of the child, efforts be made to finalize another permanent placement for the child. Under the Adoption and Safe Families Act of 1997 (ASFA), while reasonable efforts to preserve and reunify families are still required, the child’s health and safety constitute the paramount concern in determining the extent to which reasonable efforts should be made.³

When Reasonable Efforts Are Not Required

Under the provisions of ASFA, reasonable efforts to preserve or reunify the family are not required when the court has determined that:

- The parent has subjected the child to aggravated circumstances, as defined by State law. The definition of aggravated circumstances may include, but need not be limited to, abandonment, torture, chronic abuse, and sexual abuse.
- The parent has committed murder of another child of the parent.
- The parent has committed voluntary manslaughter of another child of the parent.
- The parent has aided or abetted, attempted, conspired, or solicited to commit such a murder or such voluntary manslaughter.

¹ The specific services provided to the child and the family are specified in a case plan. For more information on the case planning process, see *Case Planning for Families Involved With Child Welfare Agencies* on the Child Welfare Information Gateway website at www.childwelfare.gov/systemwide/laws_policies/statutes/caseplanning.cfm

² Beginning with the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

³ States must comply with the requirements outlined in ASFA as a condition for receiving certain Federal funds.

- The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent.
- The parental rights of the parent to a sibling of the child have been terminated involuntarily.

The laws in all States, the District of Columbia, and Puerto Rico are substantially in compliance with these requirements. In addition, several States and Puerto Rico provide one or more additional grounds for not making reasonable efforts. The following are some examples of these additional grounds:

- The parent has abandoned the child or infant.⁴
- The parent has been convicted of murder or voluntary manslaughter of the child's other parent.⁵
- The child has previously been removed from the home due to abuse or neglect and has been removed due to a subsequent incident of abuse or neglect.⁶
- The parent has been convicted of a sexual offense that resulted in the child's conception.⁷
- The parent has failed to comply with the terms of a reunification plan.⁸
- The parent has been incarcerated for a long term in relation to the child's age, and there is no suitable relative to care for the child.⁹
- The parent suffers from a mental illness of such duration or severity that there is little likelihood that the parent will be able to resume care for the child within a reasonable time.¹⁰

⁴ Abandoning a child is a ground in California, Connecticut, Delaware, Iowa, Massachusetts, Michigan, Nevada, New Hampshire, Oklahoma, Texas, and Utah. Abandoning an infant is a ground in Arkansas, Hawaii, Indiana, Minnesota, Nevada, Oklahoma, Washington, and Wisconsin.

⁵ In Alaska, Indiana, Maryland, New Hampshire, New Mexico, Oregon, Virginia, Washington, and West Virginia.

⁶ In Alaska, Arizona, California, Kentucky, Nevada, Oklahoma, South Dakota, Utah, and Puerto Rico.

⁷ In California, Connecticut, Oklahoma, and Washington.

⁸ In Alaska and Maine.

⁹ In Alaska, Kentucky, New York, North Dakota, and South Dakota.

¹⁰ In Alaska, Arizona, California, Kentucky, Maryland, Utah, and Puerto Rico.

- The parent suffers from chronic abuse of drugs or alcohol and has refused or failed treatment.¹¹

Some other grounds found in just one or two States include:

- The parent has indicated a lack of interest in reunification with the child (California and Puerto Rico).
- The parent has withheld medical treatment or food from the child (Ohio).
- A putative father has failed to establish paternity of the child (Montana and Nevada).
- The parent has allowed the child to be present where a clandestine illegal laboratory is operated (Utah).
- The parent has been found to be a sexually violent predator (Washington).

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be complete, additional information on these topics may be in other sections of a State's code as well as in agency regulations, case law, and informal practices and procedures.

¹¹ In California, Kentucky, North Dakota, Ohio, Oklahoma, South Dakota, and Puerto Rico.



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Reasonable Efforts

Author: The Administration for Children and Families

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III. REASONABLE EFFORTS TO PRESERVE FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN

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INTRODUCTION

"Reasonable efforts" requirements were introduced into child welfare proceedings by the Federal Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272 (AACWA). Since the enactment of AACWA, reasonable efforts has been a core concept in American child welfare and practice. The Federal Adoption and Safe Families Act of 1997, Public Law 105-89 (ASFA), maintained but refined this concept. ASFA provides that:

- b. reasonable efforts shall 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;
- c. 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, and to complete whatever steps are necessary to finalize the permanent placement of the child. [42 U.S.C. §671(a)(15).]

Federal law previously required States to make reasonable efforts to prevent placement and reunify families. It now also requires reasonable efforts to secure a new permanent family when it is not possible either to prevent placement or reunify the family.

These Guidelines are intended to assist States in implementing the procedural aspects of reasonable efforts requirements. Further, they are designed to help States identify and clarify what core services might be appropriate to assure meaningful rehabilitation services for a dysfunctional family and what services are appropriate to assure permanent placement of children unable to safely return home.

Requirements for case plans, administrative reviews, and permanency hearings support the reasonable efforts requirements.

The Federal requirement for reasonable efforts has three major prongs. First, children's health and safety must be the paramount concern in providing and reviewing reasonable efforts. [42 U.S.C. §671(a)(15)(A).] Second, the State agency must make reasonable efforts to preserve families before placing a child in foster care. These efforts are designed to prevent or eliminate the need for removing the child from his or her home and to make it possible for a child to safely return to his or her home. [42 U.S.C. §671(a)(15)(B).] Note, however, that the court may determine that reasonable efforts are not required in certain cases, as explained

below. [42 U.S.C. §671(a)(15)(D).] Third, when the child's return home is no longer the appropriate plan, reasonable efforts are required to arrange and stabilize a new permanent home for the child. [42 U.S.C. §671(a)(15)(C).]

The following Guidelines are designed primarily to help States establish criteria and procedures for deciding what services (reasonable efforts) they should provide to preserve or reunify families. For children who are not going to be reunified with their birth families, the Guidelines are designed to help States establish criteria and procedures for making reasonable efforts to find alternative permanent homes. The Guidelines recommend strengthening the courts' oversight both of agency case-by-case efforts to preserve and reunify the family and agency efforts to achieve alternative permanent homes. State laws concerning reasonable efforts must respect parental rights; accommodate children's need for timely, safe, and permanent homes; and observe basic fairness and due process of law.

This chapter provides an overview of the reasonable efforts doctrine, but not all guidelines concerning reasonable efforts appear here. Certain provisions concerning judicial oversight of reasonable efforts within specific stages of the court process appear in Chapter IV, Court Process. Chapter VI, Termination of Parental Rights, includes a discussion of when agencies must prove that they have provided appropriate services to preserve the family, as part of the grounds for termination.

GUIDELINES AND COMMENTARY

1. *Require Reasonable Efforts:* We recommend that State law require the court to determine whether the State has made reasonable efforts to prevent placement, reunify the family, or secure a new permanent home for the child.

Commentary

The reasonable efforts provision was established to limit unnecessary and inappropriate removal of children from their families and to expedite safe reunification of children through the provision of services. Although long an element of Federal law governing eligibility for Federal funds, the reasonable efforts requirement is not always incorporated into existing State law and procedure. The doctrine of reasonable efforts has become a core concept in American child welfare law and practice and should be reflected in State, as well as Federal, law.

2. *Convene State-Specific Study Commission:* We recommend that as part of developing criteria and procedures for a State reasonable efforts policy, States should convene a commission of their most knowledgeable people.

Commentary

States should develop criteria for reasonable efforts, a comprehensive catalogue of available services, and administrative and judicial policies to define and operationalize the reasonable efforts requirements. Federal law sets out a policy of reasonable efforts to preserve families, reunify families or find an alternative permanent placement for a child who cannot be reunified with his or her birth family. However, current Federal law allows the States to establish criteria and procedures for implementing a policy that defines reasonable efforts. Federal law also specifies circumstances in which the State may not be required to make reasonable efforts.

What "core services" should a State make available to (a) families in crisis and (b) children in need of a new permanent home? How can the State assure that needed services are provided promptly to prevent placement, reunify families, and find permanent homes for those children not returning to their birth families? By what process should a State decide whether or not to provide reunification services? Under what limited circumstances should the State immediately seek new permanent homes for children without first seeking to rehabilitate the parents? The process should be timely and fair both to children and parents.

State agency policies or regulations should clearly define the agency's obligations to make reasonable efforts to reunify the family. Clarifying these obligations gives the judge a more objective basis to determine whether reasonable efforts have been made and helps child welfare agencies know what is expected of them. State legislatures or agencies could ensure appropriate service delivery by clearly identifying a core of services generally needed by families of abused and neglected children. Once identified, the State legislature or agency could prioritize services by their effectiveness and their costs. The agency would then decide which

of those services they could provide promptly to families with children in foster care. Legislatures could require State or local agencies to both develop and deliver this core of services. For example, a core of services might include, among others, substance abuse treatment, time limited counseling services, and in-home intensive services. Such services might also include limited flexible funds that could meet immediate material needs of families. (See M. Hardin, *Establishing a Core of Services to Preserve Families Subject to State Intervention: A Blueprint for Statutory and Regulatory Action*, 1992; G. Diane Dodson & M. Hardin, *On-Time Services to Preserve Families: A Guide for Child Protection Agency Administrators and Policymakers*, 1997; *Report: Reasonable Efforts Advisory Panel Meeting*, National Resource Center for Legal and Court Issues, ABA Center on Children and the Law and the National Child Welfare Resource Center for Organizational Improvement, University of Southern Maine, 1995.)

Though agencies need flexibility to determine the appropriate treatment techniques applicable to an individual family, many agency clients always need certain services. An organized set of these frequently needed services, available in sufficient quantities, will help avoid service delays that hinder timely attainment of permanent homes for children.

Identifying the core of services available for reasonable efforts and designing the criteria and process for determining how the State is to make reasonable efforts is a complex and difficult task. To address these profound issues, States should enlist the assistance of their most knowledgeable people to carefully study the characteristics and needs of children who most often end up in long-term foster care in their State and the needs of the families of those children. One approach is to convene work groups including a range of key experts and stakeholders, to schedule regular meetings of the group, and to plan for that process to culminate in recommended agency policy, draft legislation, and court rules. Such work groups should take into account and not duplicate the State's judicial self-assessment.

Most States have recently conducted careful self-assessments of their courts' performance in child abuse and neglect cases, including the courts' oversight of reasonable efforts. Taking into account the results of the self-assessment, a new State study commission can focus on improving and organizing the delivery of services, implementing the new ASFA requirements, and improving coordination between service providers and the courts.

3. *Child's Health and Safety Paramount*: We recommend that State law require that, in the implementation of reasonable efforts, the child's health and safety be the paramount concern.

Commentary

Federal law does not require agencies to make efforts to prevent placement or reunify families where such efforts will endanger a child's health and safety. Federal law states that: "in determining reasonable efforts to be made with respect to a child and in making such efforts, the child's health and safety shall be the paramount concern." [ASFA, §101(a), 42 U.S.C. §671(a)(15)(A).] In addition, reasonable efforts to preserve the family are not required if a court finds that the parent has committed certain serious criminal acts against the child or against another child of the parent, which may jeopardize the child's health or safety. [ASFA, §101(a), 42 U.S.C. §671(a)(15)(D).] Finally, even if none of those specific circumstances applies, courts may exercise their discretion, in individual cases, to protect the health and safety of children. [ASFA, §101(d), 42 U.S.C. §678.] Thus, courts and agencies are not required to make reasonable efforts to preserve and reunify families if such efforts would not be possible without endangering a child's health and safety.

States' obligations to make "reasonable efforts" have sometimes been misinterpreted to require the endangerment of children for the sake of family preservation or reunification. To eliminate such misinterpretations, ASFA makes clear that efforts to prevent removal or to reunify a family are not required when such efforts would endanger a child.

State law should also specify that services are not required when such services might endanger a child's health and safety. State law should make it clear that agencies can respond flexibly in emergencies and when situations suddenly change. Further, it should be clear that when an agency takes such a step it will be considered to have made "reasonable efforts" to prevent placement or reunify the family. Sometimes temporary denials or cessation of services are reasonable.

State law can also make it clear to agencies and courts that service plans should not present undue risks to children. Agencies should not propose and courts should not approve services to prevent placement if those services would place a child in serious danger. Agencies should not persist in providing reunification services where doing so would be harmful or dangerous to the child, and courts should not approve the continuation

of such services.

While an agency might not safely be able to prevent removal, it may be able to provide services that will permit a child's early safe return home. When an agency must stop a particular reunification service, other services might be helpful.

4. *Reasonable Efforts to Preserve and Reunify Families:* We recommend that State law require that, in determining whether the State has made reasonable efforts to prevent placement and reunify the family, courts consider whether services to the family have been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, State law should require the court to consider the following:
 - a. Dangers to the child and the family problems precipitating those dangers;
 - b. Whether the agency has selected services specifically relevant to the family's problems and needs;
 - c. Whether caseworkers have diligently arranged those services;
 - d. Whether appropriate services have been available to the family on a timely basis; and
 - e. The results of those interventions.

Commentary

Federal law requires judicial findings that agencies have made reasonable efforts to prevent the need to remove a child from home or to make it possible for a child to return home safely. [42 U.S.C. §§671(a)(15), 672(a)(1).] State law can assure compliance with Federal program requirements for foster care and implement the reasonable efforts policy more efficiently if it adopts a procedure and substantive criteria in its own statutes or court rules. The court must determine whether reasonable efforts were made at the time a child is removed from home.

To define the meaning of the reasonable efforts obligation, it is helpful to break the obligation into its different elements. The first part of an agency's and court's obligations concerning reasonable efforts is to clarify the reasons for State intervention. That is, before determining whether an agency has made reasonable efforts to prevent the need to remove a child from home or to return the child home, a court must first clarify the danger to the child that required State intervention and document the problems precipitating the danger. Without knowing exactly what dangers prevent a child's immediate return home and what family problems create or maintain a dangerous situation for the child, the court cannot determine whether the agency's efforts to rehabilitate the family were reasonable.

Second, having identified the dangers and problems precipitating State intervention, the court must decide whether the services proposed by the agency are customized to the individual needs and strengths of the family and relevant to the problems requiring placement of the child. To decide if services are relevant, a judge might take into account other services the agency might have offered or possible interim caregiving. In other words, if some other form of available help to the family would have been far more likely to succeed, a judge might determine that there had not been reasonable efforts.

Third, the court must decide whether the agency caseworkers were reasonably diligent in implementing the agency's case plan for the family and the child. Agencies might adopt their own regulations specifying what concrete steps by caseworkers would constitute reasonable casework to rehabilitate a family. For example, the regulations might include the following:

- Caseworkers must closely consult with parents to develop a case plan (using a language translator if necessary) which elicits and takes into account their views concerning services, to make sure the services match their schedules, and to periodically determine whether parents feel that the services are helping.
- Caseworkers must oversee each service provider, explaining to the provider what each service is supposed to accomplish for the family and child, sending a copy of the case plan to the provider, and setting a timetable for each service. The caseworker is responsible for ensuring that the provider adheres to the case plan by checking up periodically with the provider to guarantee that the service is being provided as agreed and that parents are participating.
- Caseworkers must ensure that parents and children have access to services, including arranging for children to be present, when appropriate, and making sure that parents have practical means of transportation, taking into account the resources available to parents.
- Caseworkers must periodically visit children and parents in person as required by agency regulations or policy.
- Caseworkers must arrange for parent-child and sibling visitation.

Fourth, the court must decide whether appropriate services were actually available and delivered on a timely basis to help the family. While it is sometimes difficult for judges to determine whether or not public agencies have been "reasonable" in developing and providing services for families, such a determination is possible. For example, if the child welfare agency has a specific list of services that an agency provides to families, a judge could determine what services on the list were relevant to the family's problems and whether such services were provided to the family on a timely basis.

5. *Reasonable Efforts to Finalize Placement:* We recommend that, in determining whether the State has made reasonable efforts to make and finalize a new permanent home for the child (in cases where reunification is no longer the child's exclusive permanency plan), State law instruct courts to consider whether services to achieve that goal have been accessible, available, and appropriate. In evaluating the accessibility, availability and appropriateness of services, the law should require the court to take into account the following:
 - a. Whether the agency has identified an appropriate strategy to make and finalize a new permanent placement for the child;
 - b. Whether there has been diligent arrangement for the provision of those services; and
 - c. Whether adequate and appropriate services have been available on a timely basis.

Commentary

Reasonable efforts to make and finalize a new permanent placement for a child who cannot be reunified with his or her birth family can be broken down into three basic issues. The first issue is whether the agency has identified an appropriate strategy to make and finalize a permanent home. For example, if the child has complex special needs, a judge might ask several questions. Has the agency selected a good specialized placement agency to find an adoptive home and is it offering adequate adoption subsidy and medical assistance protections? Does the agency plan to list the child with appropriate adoption exchanges? Has the agency explored all available families consistent with MEPA? (See generally, J. Hollinger, A Guide to the Multiethnic Placement Act of 1994, as Amended by the Interethnic Adoption Provisions of 1996, ABA 1998.)

The second issue for the judge is whether there has been diligent follow-through to provide those services. For example, a judge might ask the following questions. Has the agency taken timely steps to list the child with appropriate registries? Has the agency diligently searched for potential new parents? Has the agency fully explored whether relatives or foster parents are interested in adopting the child? Has the agency screened and tentatively selected potential new parents? Has the agency taken timely steps to complete adoption subsidy terms that will provide sufficient and secure services to the child to improve the odds of a stable placement? Has the agency counseled and prepared the child for adoption? Has the agency proceeded to prepare adoption assistance agreements (where applicable)? Has the agency arranged for post-adoption services?

The third issue is whether adequate and appropriate services exist to place and stabilize the child in a new permanent home. For example, a judge might ask several questions. Has the agency explored the interest of relatives and foster parents in adopting the child? Is there an available adoption placement agency with specialized skills helpful to this child and a good track record? Does the State adoption agency permit adoption subsidy terms that will provide sufficient and secure services to the child to improve the odds of a stable placement? Does the public adoption agency promise other post-adoption services, as necessary to stabilize the placement?

6. *Reasonable Efforts Include Concurrent Planning:* We recommend that State law indicate that reasonable efforts may include concurrent efforts both to reunify a family and to ensure that an adoptive or other alternative permanent home will be available if needed by the child.

Commentary

Concurrent planning means working to reunify a family while, at the same time, planning for the possibility that reunification will not succeed. In circumstances where the probability of successful reunification is unlikely, concurrent planning can benefit the child by reducing the length of time that the child is in a temporary placement. For example, an agency might seek out foster parents or potential adoptive parents who will be willing to adopt the child should reunification efforts fail. ASFA explicitly authorizes this practice by providing that "reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts [to preserve the family]." [42 U.S.C. §671(a)(15)(F).]

7. *Criteria for Not Requiring Reunification Services:* Reasonable efforts to prevent removal of a child or to reunify a family are required in most cases. We recommend, however, that State law specify that

the State is not required to provide reunification services if there is a judicial finding that the child cannot be safely returned home within a reasonable time, even if reunification services are provided. This is shown by parental behavior that includes one or more of the following:

- a. The parent committed murder or voluntary manslaughter, or conspiracy to murder another child of the parent, or committed a felony assault that resulted in serious bodily injury to the child or another child of the parent.
- b. The parent aided or abetted, solicited, attempted, or conspired to commit such a murder or voluntary manslaughter.
- c. The parent committed, solicited, aided and abetted, or engaged in a conspiracy to commit other specified crimes against children.
- d. The parents' rights to the child's sibling were previously involuntarily terminated.
- e. The parent abandoned a child for [30], [60], [90] or more days and the identity of the parent is unknown and cannot be ascertained despite diligent efforts to do so.
- f. The parent's abuse or neglect of the child, a sibling, or other child in the household was so extreme or repeated that any plan to return this child home would present an unacceptable risk. Factors the court might consider in determining the extent of risk include:
 - The seriousness of the injury or harm to the child or risk of injury or harm associated with the abuse or neglect;
 - Whether the abuse or neglect was the result of a parental character disorder or compulsion unlikely to change (e.g., as shown by extreme cruelty or sexual abuse); and
 - The frequency, number, and severity of incidents of abuse or neglect.
- g. The child's parent makes an informed and voluntary decision not to receive services or assistance to prevent removal or reunify the family.

Commentary

Federal law provides that States are not *required* to make reasonable efforts to preserve or reunify a family in all cases, although State agencies and courts are *permitted* to extend prevention and reunification services to families even in circumstances where Federal law would not require it.

Most of the above criteria for not requiring reunification services are consistent with existing Federal law. Criteria a through c paraphrase CAPTA or ASFA, and criterion d directly reflects the ASFA exception to the obligation to provide reunification services. Similarly, while the language of criteria e and f was supplied by the Expert Group, it reflects or stands in place of ASFA language, particularly the language related to aggravated circumstances. Criterion g, however, was added by the Expert Group to the criteria already established by Federal law.

The above criteria presume it is highly unlikely that the child can be placed with the parent within a reasonable time even if services are provided to reunify the family. That is, when one or more of the criteria specified in this Guideline apply in an individual case, it is unlikely that reunification services can succeed within a reasonable time.

Under Federal law, States are not required to make reasonable efforts to preserve the family in all cases. ASFA, §101, 42 U.S.C. §671(a)(15)(D) provides that:

[R]easonable efforts [to prevent the need for placement and to reunify the family] shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that--

- i. (i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);
- ii. (ii) the parent has--
 - I. (I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - II. (II) committed voluntary manslaughter (which would have been an offense under section 1112 (a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;
 - III. (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or
 - IV. (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

- iii. (iii) the parental rights of the parent to a sibling have been terminated involuntarily.

Thus, ASFA sets forth certain limited circumstances in which reasonable efforts to prevent removal and reunify the family are not required. These include the commission of certain specified crimes, as set forth above and that parental rights concerning a sibling have previously been terminated. Beyond the mandatory circumstances, ASFA allows States to further define "aggravated circumstances."

Federal law requires a number of the circumstances listed in these Guidelines. Criteria a and b are based on crimes specified by ASFA and the Federal Child Abuse Prevention and Treatment Act (CAPTA), in which "reasonable efforts" are not required. [ASFA, §101, 42 U.S.C. §671(a)(15)(D)(ii); CAPTA, §107, 42 U.S.C. 5106a(b)(2)(a)(xii).] Criterion c invites States to add additional serious crimes, not specified by ASFA, as criteria for not requiring reunification services. Among other things, these might include crimes committed against children other than the child in question or the child's siblings. In particular, it might include crimes committed against another child residing in the child's household.

Criterion d, based on termination of parental rights to a sibling, is specifically required by ASFA as an exception to the obligation to provide reunification services. Some States think this ground is too broad and have elected to define it more narrowly. One way of doing this is to require that the States have made diligent efforts to rehabilitate the family in the case of a prior termination of parental rights.

Criterion e deals primarily with abandoned infants. ASFA and CAPTA require expedited termination of parental rights for abandoned infants. [ASFA, §103(a)(3), 42 U.S.C. §675(5)(E); CAPTA, §107, 42 U.S.C. §5106a(b)(2)(a)(xi)(I).] Since expedited termination is required for abandoned infants, it is also logical to include these as criteria for not requiring reunification services.

Criterion f includes cases in which returning the child home would be an unacceptable risk even if a parent appeared to improve as the result of reunification services. In these cases, there typically is a combination of factors demonstrating the extreme risk to the child. Among these factors are the severity of the harm or threat to the child, the number and frequency of incidents of abuse and neglect, and the particularly cruel or compulsive nature of the parent's acts. The Expert Work Group preferred paragraph f to the language identifying specific examples of "aggravated circumstances" that appears in ASFA (i.e., "sexual abuse, torture, or chronic abuse").

Criterion g involves the situation in which a parent chooses not to participate in services to try to preserve the family and not to accept other assistance. Rather than assuming that parents want to work toward family reunification, agencies should help the parents decide whether this is their goal. Of course, it is essential that the parent is properly counseled and the parent's decision is fully informed.

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Additional Questions and Circumstances that States May Want to Consider

A major area of controversy among the Expert Work Group was the relationship between those circumstances in which reasonable efforts are not required and the grounds for termination of parental rights under State law. At issue was whether the criteria for not requiring reasonable efforts should be the same as certain grounds for the termination of parental rights. States need to consider and carefully debate this area.

The majority of the group thought that the two legal questions (to deny reasonable efforts or to terminate parental rights) were separate and should have their own criteria. A minority felt that certain grounds for the termination of parental rights i.e., most of those termination grounds that do not require reasonable efforts should be criteria for denying reasonable efforts. Whether or not there is a link between grounds for termination and criteria for not requiring reasonable efforts, the State needs to make certain that parents who can benefit from services will actually receive them and that parents' rights to due process are fully honored.

An additional area of controversy among the Expert Work Group related to additions to the criteria listed above. Several additional suggestions received some support within the Expert Work Group but were opposed by the majority. States considering such possible additions should approach them with caution, allowing thorough debate concerning their practical implications. The legislature should be convinced that any criteria it enacts for not requiring reasonable efforts will apply only in situations where reunification services clearly cannot help parents improve within a reasonable time. The following are the additional minority suggestions:

1. The parent had minimal contact or communication with the child for the previous three months for a child under three or for the previous six months for a child three or older, although the parent had the ability and opportunity to maintain such contact.

This involves cases of abandonment and extreme parental disinterest in which parents can be identified and located. Compare criterion e, above.

2. An unmarried father of an infant less than one year old has failed to visit the child, establish paternity, or provide financial support within 30 days after becoming aware of the child's birth; or did not attempt to seek custody within 30 days after becoming aware that the child was placed into foster care, although the father was informed of the opportunity to seek custody.

This deals with cases in which an unmarried father fails to come forward and either assume responsibility or assert paternity within a short time after a child's birth. The majority of the Expert Work Group was concerned about the strictness of the time requirements imposed on the unmarried father.

3. The child or a sibling was previously removed from home, returned home, and subsequently reabused or reneglected although, before the most recent incident, the agency had made appropriate and diligent efforts to preserve the family. In addition, the underlying causes of the episode of abuse or neglect following the child's return were similar to the causes of the abuse or neglect occurring before the child was removed from home.

This deals with cases in which the agency has already made reasonable efforts to preserve the family, but in response to maltreatment of the child's sibling or in connection with a much earlier incident involving the same child.

4. The parent is addicted to drugs or alcohol, causing the parent to abuse or neglect the child, and prior to the child welfare agency's involvement, the parent has repeatedly refused or failed to complete drug or alcohol treatment.

This deals with the situation where, prior to child welfare agency involvement, the parent has already repeatedly refused or failed substance abuse treatment. The idea behind this suggestion is that if other agencies have already made their repeated best efforts to help, there is nothing more that the child welfare agency can do. The majority view is that when a parent is first threatened with loss of rights to a child, this often provides a new and more powerful motivation for the parent to stop or control the substance abuse.

5. The parent has an emotional or mental incapacity so severe that the parent cannot care for the child, taking into account the particular needs and condition of the child. There is no known course of treatment that can prepare the parent to care adequately for the child.

This deals with the situation in which a parent abuses or neglects the child due to a mental or emotional incapacity and the incapacity is so severe that there is no known treatment that can make it possible for the particular child to be returned home within a reasonable time. The idea behind this ground is that if mental health agencies have already made their repeated best efforts to help and the prognosis is poor, there is nothing more that the child welfare agency can do to prepare the parent to care for the particular child. The majority view is that psychiatry and psychology are not exact sciences and that there is danger of inaccurate diagnoses.

6. The child's parent has made no arrangements for the care of the child and the parent will be imprisoned for at least two years if the child is under three, three years if the child is under six, and four years if the child is six or older.

This would excuse the agency from making reasonable efforts to preserve the family where the parent has not made appropriate arrangements for care of the child (e.g., with relatives) and the parent will serve a long term of imprisonment, taking into account the age and needs of the child. The idea behind paragraph 5 is that, where the child is facing a long stay in foster care, the needs of the child for a permanent placement take precedence over parental rights. The majority noted that paragraph 6 includes situations in which there is not history of abuse or neglect prior to imprisonment and emphasized that, in many cases, the parent-child relationship can be preserved through ongoing

visits and contacts while the parent remains in prison.

8. *Procedure for Determining Whether There Have Been Reasonable Efforts to Preserve the Family or to Finalize a New Permanent Home:* We recommend that State law require that:
 - a. The agency should submit a sworn statement prior to any judicial hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. This statement, which should be submitted to the court and the parties at least 5 days in advance of the hearing, should describe the reasonable efforts made by the agency or the rationale for not making such efforts.
 - b. Following the hearing, the court will determine whether or not the agency made reasonable efforts and enter brief findings describing the efforts.

Commentary

To ensure careful judicial deliberation concerning reasonable efforts, it is important to design a process which takes into account the agency's capacity to prepare substantive material in a timely manner and the time the court needs for review and deliberation. A report from the agency, submitted well in advance of the hearing, allows the parties to consider carefully whether reasonable efforts were made. If appropriate, it also allows them to introduce other evidence. A sworn statement helps ensure the accuracy of the report. This recommendation also appears in the Resource Guidelines: *Improving Court Practice in Child Abuse and Neglect Cases*. (The Resource Guidelines were first published by the National Council of Juvenile and Family Court Judges (NCJFCJ) in 1995 and have been endorsed by NCJFCJ, the American Bar Association, and the Conference of Chief Justices.)⁸ Equally important is a careful thought process by the judge. The preparation of findings helps ensure thorough judicial deliberations. The findings also provide an authoritative record concerning the agency's efforts. This record can be invaluable in later hearings, including hearings on whether to return the child home or whether to terminate parental rights.

Much of the content of this Guideline is also covered in Chapter IV, Court Process, in the discussion of disposition, review, and post-termination of parental rights review hearings.

9. *Procedure for Finding that Reunification Services Are Not Required:* We recommend that at any time, upon motion of any party or on the Court's own motion, State statutes or court rules authorize the court to determine that reunification services are not required.

Commentary

The Guidelines recommend allowing any party to file a motion, at any time, asking the court to find that the criteria for not requiring reunification services are met. Such a motion might request the finding with regard to one or both parents. Thus, the State or child's attorney might choose to file directly for termination of parental rights at the beginning of a case. Or, after a period of reunification services, one party or another, or the court on its own motion, could move to suspend such services and move to termination of parental rights, guardianship or some other permanent plan for the child. Chapter VI, Termination of Parental Rights, recommends that a petition for the termination of parental rights may be filed at any time. Related matters such as a permanency hearing, a motion to excuse reunification services, or a petition for termination of parental rights should be consolidated and heard together to avoid duplicative proceedings.

Agencies and courts need enough information, early in each case, to determine whether circumstances exist in which reunification services are not required. Legislation may be necessary, for example, to authorize or require checks of parental criminal records when they have abused or neglected their children. It might be needed to allow agencies to review parents' mental health records and other background information, and to allow agencies to obtain speedy court orders, when necessary, to gain access to this information.

When an abused or neglected child enters foster care, the parties and the judge should routinely consider the possibility that reunification services might not be appropriate. Legislation or court rules may, for example, assure that parents are consistently asked whether they want reunification services. They may encourage parties to say (or judges to ask) whether reunification services should be required; specify at what stage these questions should routinely be asked; and authorize the judge to require further information to aid in a decision on whether reunification will be required.

Top

Publications

ABA Center on Children and the Law. *Reasonable Efforts Advisory Panel Meeting*. Washington, DC: ABA Center on Children and the Law, 21, April 1995.

Alsop, R. "Reasonable Efforts Requirement in Protective Services Policy." *Protecting Children* 6 (2): 3-6 (Summer 1989).

Bailey, C. "The Truth About the Diversion Project." *Juvenile and Family Justice Today* 5 (4): 6-8 (Winter 1997).

Barth, R.P. "Family Reunification." *Child Welfare Research Review, Volume II*. New York, NY: Columbia University Press, 1997, pp. 219-228.

Barthel, J. *For Children's Sake: The Promise of Family Preservation*. New York, NY: Edna McConnell Clark Foundation, 1992, pp. 67-77.

Berry, M. "Adoption in an Era of Family Preservation." *Children and Youth Services Review*, 20 (1-2):1-12 (1998).

Castner, S. F. "The Amendment to the Adoption Assistance and Child Welfare Act of 1980-Preserving Our Most Valuable Resource." *Valparaiso University Law Review* 24 (1):111-146 (Fall 1989).

Child Welfare League of America. *CWLA Standards of Excellence for Services for Abused or Neglected Children and Their Families*. Washington, DC: Child Welfare League of America, 1998.

Citizens for Missouri's Children. *A Roundtable Discussion of Fifteen State-Based Child Advocates on Family Preservation Services*. St. Louis, MO: Citizens for Missouri's Children, 1991.

Dodson, G.D., and Hardin, M. *On-Time Services to Preserve Families: A Guide for Child Protection Agency Administrators and Policy Makers*. Washington DC: ABA Center on Children and the Law, 1997.

Edwards, L.P. Letter to Richard O'Neil, Director of the Department of Family and Children's Services, San Jose, CA, December 6, 1989.

Gelles, R.J. "The Doctrine of Family Reunification: Child Protection or Risk?" *The APSAC Advisor* 6 (2): 9-11 (Summer 1993).

Gelles, R.J. *The Book of David: How Preserving Families Can Cost Children's Lives*. New York, NY: Basic Books, 1996. Distributed by Basic Books, A Division of HarperCollins, 10 East 53rd Street, New York, NY 10022-5299.

Goodman, S., and Hurley, J. *Reasonable Efforts: Who Decides What's Reasonable?* Washington, DC: Office of the Assistant Secretary for Planning and Evaluation (DHHS), August 1993. Distributed by the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (DHHS), Washington, DC.

Hardin, M. *Establishing A Core of Services for Families Subject to State Intervention*. Washington, DC: ABA Center on Children and the Law, 1992.

Herring, D.J. "Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System." *University of Pittsburgh Law Review*

54 (1): 139-209 (Fall 1992).

Kent Juvenile Court Reasonable Efforts Project Staff. *Steps for Preserving Families: Guidelines for Practice*. Grand Rapids, MI: 1989.

Kusserow, R.P. *Barriers to Freeing Children for Adoption*. Washington, DC: The U.S. Department of Health and Human Services, February 1991.

Ladd, W.E. "The Untreatable Family: When Are Rehabilitative Services Inappropriate? A Short Review of the Literature." *Michigan Child Welfare Law Journal* 1 (1):51-52 (Summer 1996).

McCarthy, D. "Anticipated Effects of New Procedural Rules and Statutory Changes in Child Abuse and Neglect Cases." *West Virginia Law* 14:14 (July 1997).

McCroskey, J., and Meezan, W. "Family-Centered Services: Approaches and Effectiveness." *The Future of Children, Protecting Children from Abuse and Neglect* 8 (1): 54-71 (Spring 1998).

McDonald, H. "The Ideology of Family Preservation." *The Public Interest* 115: 45-60 (Spring 1994).

National Center for Youth Law. *Making Reasonable Efforts: Steps for Keeping Families Together*. San Francisco, CA: National Center for Youth Law, National Council of Juvenile and Family Court Judges, Child Welfare League of America, and the Youth Law Center, 1987.

National Center for Youth Law. "Reasonable Efforts to Prevent the Necessity for Foster Care Placement: An Important Mandate of Pub. L. No. 96-272." *Clearinghouse Review* : 1394-1398 (April 1985).

National Council of Juvenile and Family Court Judges. *Children and Families First: A Mandate for America's Courts*. Reno, NV: National Council of Juvenile and Family Court Judges, 1995, pp. 3-4.

National Council of Juvenile and Family Court Judges. *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*. January 1992.

National Council of Juvenile and Family Court Judges. *Reasonable Efforts Training Video-Notebook*. 1991.

National Council of Juvenile and Family Court Judges. *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*. Reno, NV: National Council of Juvenile and Family Court Judges, 1995.

Nelson, D. *Recognizing and Realizing the Potential of "Family Preservation"*. Washington, DC: The Center for the Study of Social Policy, 1988.

Robinson, S. *State Child Welfare Reform: Toward a Family Based Policy*. Denver, CO: National Conference of State Legislators, August 1997.

Shotton, A.C. "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later." *California Western Law Review* 26 (2): 223-256 (1989-90).

Tamilia, P.R. "A Response to Elimination of the Reasonable Efforts Required Prior to Termination of Parental Rights Status." *University of Pittsburgh Law Review* 54:211 (Fall 1992).

U.S. Department of Health and Human Services, Children's Bureau. *National Study of Protective, Preventive and Reunification Services Delivered to Children and Their Families*. Washington, DC: Government Printing Office, 1994.

Children's Bureau Child and Family Services Reviews Fact Sheet for Courts

History and Purpose

The Child and Family Services Reviews (CFSRs), which help States improve outcomes for vulnerable children and families, are conducted by the Children's Bureau, within the U.S. Department of Health and Human Services (HHS), to help States improve safety, permanency, and well-being outcomes for children and families who receive services through the child welfare system. The CFSRs monitor States' conformity with the requirements of title IV-B of the Social Security Act. The first round of reviews took place between 2000 and 2004 and all States were required to implement Program Improvement Plans (PIPs). The second round of reviews began in early spring of 2007. The CFSRs are an important tool that also enables the Children's Bureau to ensure conformity with Federal child welfare requirements and determine, in greater depth and detail, what is actually happening to children and families receiving child welfare services.

Specifically, the CFSRs measure seven outcomes and seven systemic factors. The outcomes measured include:

- whether children under the care of the State are protected from abuse and neglect;
- whether children are safely maintained in their own homes whenever possible and appropriate;
- whether children have permanency and stability in their living conditions;
- whether the continuity of family relationships and connections is preserved for children;
- whether families have enhanced capacity to provide for their children's needs; and
- whether children receive appropriate and adequate services to meet their educational, physical, and mental health needs.

The systemic factors (capacities needed to achieve identified outcomes) measured by the CFSRs include:

- the effectiveness of the State's systems for child welfare information, case review, and quality assurance;
- training of child welfare staff, parents, and other stakeholders;
- the array of services that support children and families;
- the agency's responsiveness to the community; and
- foster and adoptive parent licensing, recruitment, and retention.

Court representatives are critical stakeholders in the State child welfare agency's ability to achieve positive outcomes for children and families. Decisions and timeframes of the

court directly affect the agency's ability to meet child welfare goals. The courts are an integral part of any State's system for addressing the needs of abused, neglected, and dependent children, and the courts' actions and orders have a huge effect on the outcomes for children who are reviewed in the CFSR. If there are any areas determined to need improvement, the State is provided an opportunity to do so through a Program Improvement Plan that is developed and implemented jointly by the State child welfare agency and the courts. Significant financial penalties may be assessed for failure to make the improvements needed to achieve substantial conformity with any of the outcomes and systemic factors evaluated in the CFSR.

Court actions are an integral part of what is monitored by the CFSRs. The courts play a crucial role in ensuring that the agency is in compliance with both national and State child welfare standards. Child welfare issues examined by the CFSRs include, for example, how effectively the State's processes for periodic case reviews and permanency hearings promote timely and appropriate permanency outcomes for children in foster care, how effective the State is in identifying children for whom termination of parental rights is appropriate and following through in a timely manner, how engaged parents are in the case planning and goal-setting processes, and how effectively foster caretakers are notified and have an opportunity to be heard in hearings and reviews about the children in their care.

Collaboration With the Courts

In reauthorizing the Court Improvement Program (CIP), the Promoting Safe and Stable Families Amendments of 2001 expanded the CIP's scope to include implementation of a PIP, as necessary, in response to findings identified in a CFSR. Thus, through the CIP, all State court systems are required to participate in the implementation of a CFSR PIP when the court system is involved. CIP strategic plans must target specific activities to bring the State into compliance in accordance with a CFSR PIP. State courts were also instructed to include in their strategic plans a strategy to facilitate legal and judicial participation in the CFSR and collaboration with the child welfare agency at all stages of the review, and to identify activities that would inform the legal and judicial community about the reviews and encourage active legal and judicial participation.

As part of the Federal Government's effort to recognize the integral role that courts play in the CFSR process, the Children's Bureau facilitates consultant judges' visits to States in advance of the reviews. The purpose of the visits, which are planned with both Federal and State input, is to assist in securing court involvement in the CFSR Statewide Assessment and onsite review processes. Depending on need, a second visit may be made to facilitate court involvement in the PIP.

Court representatives involved in the CFSRs may include the Chief Justice, the State court administrator, the CIP director, local presiding judges, agency attorneys, guardians ad litem and court-appointed special advocates, the State bar association, parents' attorneys, the State Council of Family and Juvenile Court Judges, juvenile probation officers, and the Governor's task force on juvenile justice.

In addition to participating in the reviews as stakeholder interviewees, States may involve court representatives in the CFSR process in a variety of ways:

- Inviting them to participate in advance CFSR planning
- Engaging the Chief Justice early in the process
- Providing them with early notification of the dates of the onsite review
- Conducting surveys and focus groups, and holding informational meetings
- Participating in standing, steering, and/or planning committees for CFSR-related activities
- Requesting court involvement in identifying legal and judicial issues affecting child welfare in the State
- Requesting that they share child welfare-related court data with the child welfare agency
- Initiating cross-training opportunities, such as involving court and CIP personnel in PIP training
- Requesting the court's assistance in writing narrative portions of the Statewide Assessment
- Soliciting comments on Statewide Assessment drafts
- Creating a CFSR legal-judicial subcommittee to address related issues
- Providing the Chief Justice with a copy of the Final Report
- Integrating the CIP strategic plan with the PIP
- Requesting court involvement in the identification of child welfare-related State and court areas needing improvement and in the development of PIP strategies, which may include changes made by the court, to address onsite findings
- Partnering in approaching the State legislature for needed legislative changes
- Developing regularly scheduled meetings to address challenges and problems affecting children's permanency plans and move the State's reform agenda forward

Court Involvement Resulting From the Last Round of CFSRs

On behalf of the children in their State, courts and child welfare agencies collaborated on the first round of CFSRs in many ways. For example, in response to its PIP, Georgia enacted a law to reduce delays in finalizing adoptions. The new law provides that uncontested adoption petitions must be heard within 120 days. In Indiana, the courts and the agency wrote interagency agreements, implemented in most counties, to improve services for children in need of help. A new system in Kansas notifies the court whenever a permanency hearing is due; a committee of judges met to make related recommendations on implementation. The Children's Justice Initiative in Minnesota, a partnership between Minnesota's Supreme Court and Department of Human Services, targets training and local reforms. Minnesota's CIP assists with assessments of court-agency collaboration in some counties. Oregon's Adoption Task Force, comprising both agency and court representatives, made recommendations for streamlining the adoption process, such as training Court Appointed Special Advocates to gather medical and

genetic history materials, along with birth certificates. In Vermont, a case management protocol was launched with the participation of both court and agency representatives.

Reflecting the desire for more participation of the courts in the CFSR and PIP development, the National Council of Juvenile and Family Court Judges, the Conference of Chief Justices, and the Conference of State Court Administrators have passed resolutions at their annual meetings urging more involvement. The Children's Bureau encourages court participation in all phases of the CFSR and PIP processes.

More Information

Court representatives can obtain more information about getting involved on behalf of children in their State from the Child Welfare Information Gateway's section on "Court-Child Welfare Agency Collaboration," available at <http://www.childwelfare.gov/systemwide/courts/ccwa.cfm>. Court representatives may view reports from the first CFSR round and information on the second round on the Child Welfare Monitoring section of the Children's Bureau Web site at <http://www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm#cfsr>. An information memorandum developed by the Children's Bureau on court-agency collaboration in the CFSRs is available at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/im/2005/im0505.htm. See also the National Child Welfare Center on Legal and Judicial Issues, <http://www.abanet.org/child/rcjji/>.

The three leading national organizations dealing with court issues relating to children and families have formed a collaborative effort with support and funding from the Children's Bureau. The American Bar Association's Center on Children and the Law, the National Center for State Courts, and the National Council of Juvenile and Family Court Judges will continue to work together as the *National Court and Child Welfare Collaborative: Focus on System Reform*. For more information, see http://www.acf.hhs.gov/programs/cb/current_initiatives/national_court.htm.