



# REASONABLE EFFORTS:

A Judicial Perspective

By Judge Leonard Edwards

# Reasonable Efforts: A Judicial Perspective

by Judge Leonard Edwards (ret.)<sup>[1](#)</sup>

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## **Also by the Author**

The Role of the Juvenile Court Judge: Practice and Ethics

Child Abuse and The Legal System (with Professor Inger J. Sagatun)

*Reasonable Efforts: A Judicial Perspective*

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Judge Leonard Edwards (ret.)

*This book is dedicated to William, Chase and Donovan*

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## **Bibliography**

## Foreword

In January of 1990, as I prepared to take the bench in the Dependency Court for the first time, my Presiding Juvenile Court Judge, the late Justice Paul Boland, referred me to a letter found in the Appendices of a publication produced by the National Council of Juvenile and Family Court Judges called the “Resource Guidelines-Improving Court Practices In Child Abuse and Neglect Cases.” The letter which was dated December 6, 1989 was written by Judge Leonard Edwards, Presiding Judge of the Juvenile Court in Santa Clara County, California. In his letter addressed to the county child welfare director Judge Edwards explained that the Court was making no reasonable efforts findings in Dependency Court cases because of the agency’s failure to provide placements for teenage mothers and their babies and the failure to provide intensive in-home services to enable drug-abusing mothers and their drug-exposed babies to be placed together in the community.

Prior to that time, I had spent my entire legal career as an attorney and a judge in the criminal justice system. As a brand new juvenile court judge, I was shocked that a judge could or would write that kind of a letter. Needless to say, my shock was based on a simple but basic misunderstanding of the role of the juvenile court judge.

Juvenile court judges play a unique role in the juvenile court system. Indeed, the California Judicial Administration Standards, standard 5.40 is entitled “The Unique Role of the Juvenile Court Judge.” That is because that role has both traditional and non-traditional elements. On the traditional side, we decide what facts are true in accordance with the appropriate standards of proof. We decide what evidence is admissible in court and we enforce the rules necessary for each party in a case to present their cases in a legally appropriate manner.

On the non-traditional side, our role encompasses an oversight responsibility that was created by Congress in 1980 and reiterated by our state legislatures. That responsibility is meant to ensure that the child welfare system is functioning on behalf of children and families in the way that it was designed to function. To that end, among other things, juvenile court judges must evaluate the quantity and quality of services provided to children and families at multiple stages of the process. That evaluation manifests itself through what are called reasonable efforts findings.

As juvenile court judges, we must find that reasonable efforts have been made to prevent the removal of children from their families, that reasonable efforts have been made to give families a meaningful opportunity to reunify after the children have been removed, and that reasonable efforts have been made to secure permanency for children. These findings must be made within the context of every case, taking into consideration the individual strengths and needs of every family and its members. The issues are varied and often complex as evidenced in Judge Edwards’ letter, but must be considered in every case.

For decades, Judge Edwards has been the conscience and the voice for juvenile court judges nationwide. He has helped define and shape our role more than any other juvenile court judge ever. Once again he has raised his voice to emphasize the importance of this part of our role in more depth than has ever been done before. State by state Judge Edwards reviews the statutory scheme on reasonable efforts, the existing case law on the subject and offers commentary from judges and other child welfare system stakeholders.

This book, *“Reasonable Efforts: A Judicial Perspective”*, belongs on every juvenile court judge’s bench, in every juvenile court attorney’s office and must be included in all child welfare agency training. Our at-risk children and their families will be the ultimate beneficiaries.

Michael Nash, Presiding Judge  
Los Angeles Juvenile Court

## Introduction

The term “reasonable efforts” challenges and confounds many in our juvenile dependency and family courts across the country.<sup>2</sup> Judges hear about it in their judicial trainings, read about it now and then in publications, sign their names to court orders finding that the children’s services agency (“agency”) made “reasonable efforts” on a daily basis, and on occasion make “no reasonable efforts” findings. Yet attorneys rarely refer to reasonable efforts in court, and most judges approve of what the agency has done with little or no thought about it.<sup>3</sup> The law requires judges to make these findings, and good reasons exist to do so. By making the reasonable efforts/no reasonable efforts findings the court informs the parties, the children’s services agency, and the federal government that the agency is or is not meeting its legal responsibilities. By monitoring the agency’s actions the court ensures that the agency has complied with its legal obligation to provide services to prevent the child’s removal from parental care, assist the family safely to reunify with its child, and make certain to finalize a permanent plan for the child. The reasonable efforts/no reasonable efforts findings are the most powerful tools juvenile court judges have at their disposal in dependency cases, and attorneys and judges should pay special attention to them to ensure that the agency is doing its job, to make positive changes in the child protection system, and, most importantly to improve outcomes for children and families. Two goals of this book are to encourage judges and attorneys to be more assertive in their oversight of social service agencies and to examine the “reasonable efforts” issue earlier in the case.<sup>4</sup>

This book considers the reasonable efforts finding from a number of perspectives. First, it reviews the history of the reasonable efforts concept, including the congressional actions that resulted in legislation mandating court oversight of children’s services agency actions in child abuse and neglect cases. Second, it explains the legal requirements imposed on children’s services agencies and the responsibilities placed upon the courts by the legislation – when must the reasonable efforts findings be made, and what are the consequences if the court fails to make the finding? Third, it discusses the failure of the federal legislation to define reasonable efforts and the significance of that failure. Fourth, it reviews “aggravated circumstances”- situations when the court need not make reasonable efforts findings. Fifth, it examines the Indian Child Welfare Act (ICWA) and the federal requirement that the state provide “active efforts” before removing an Indian Child from parental care and “active efforts” to help parents reunify with their child. Sixth, it discusses state legislative responses to the federal law, trial court practice, and state appellate law rulings on the reasonable efforts issue. Seventh, it reviews state court practice addressing the reasonable efforts issue in the context of problems frequently encountered by families, including inadequate housing, poverty, domestic violence, substance abuse and similar issues. Eighth, the book outlines the problems and barriers that limit an attorney’s ability to address the reasonable efforts issue effectively. Ninth, it discusses the problems and barriers that limit judges’ ability to address the reasonable efforts issue effectively. Tenth, it suggests some strategies and recommended best practices judges can use to address the reasonable efforts issue. All of these come from a judicial perspective, from a judge who served in the juvenile court for more than 20 years, a judge who has spent his career attempting to

improve outcomes for children and families who appear in the juvenile court.

Additionally, the book includes ten appendices. Appendix A includes each state's statutes regarding reasonable efforts and some of each state's appellate case law discussing the reasonable efforts requirements. Comments from participants in the court process and scholars accompany the statutes and case law. Appendix B reviews state definitions of reasonable efforts from statutes and case law. Appendix C sets out several useful court forms regarding social service efforts to document reasonable efforts created in Troup County Georgia, Mecklenburg County, North Carolina, Jefferson County, Kentucky, Santa Clara County, California, and the state of Washington. Appendix D contains a letter to the Santa Clara County Director of Children's Services from the juvenile court presiding judge concerning reasonable efforts. Appendix E contains a psychological report concerning the inadequacy of visitation along with several letters regarding efforts to improve visitation for children and parents, while Appendix F sets out the Code of Federal Regulations 45: §1356.21. Appendix G contains a copy of 45 CFR §1355.25 - Principles of child and family services. Appendix H contains several preliminary hearing benchcards developed by the Courts Catalyzing Change project at the National Council of Juvenile and Family Court Judges (NCJFCJ). Appendix I contains several forms developed for use at interim reviews, and Appendix J reproduces California Standard of Judicial Administration 5.40 (c) and (d) regarding the judge's responsibility to attract and retain competent lawyers to represent children and parents. A bibliography follows.

The book includes a discussion regarding the widely disparate responses to the federal law among the states. Many commentators have concluded that the nation's juvenile courts have not effectively addressed the reasonable efforts issue, thus thwarting the intent of Congress.<sup>5</sup> This book attempts to demonstrate that while juvenile courts in many states infrequently try the reasonable efforts issue, trial and appellate courts in a number of states have been aggressive in their treatment of reasonable efforts and have effectively monitored agency actions. Appellate cases and commentary from trial court participants reveal that almost always the reasonable efforts issues are tried at a termination of parental rights hearing when it is too late to serve the interests of the child and family. The book urges all parties in the juvenile court, and particularly judges, to pay careful attention to the reasonable efforts issue and to do so early in the case. Reasonable efforts decisions are legal requirements and compliance with the law better serves children and families.

<sup>2</sup> The trial court that hears child abuse and neglect cases is called by different names in different states. Some refer to it as the Abuse and Neglect Court, the Child Protection Court, the Family Court, CHINS (Children in Need of Supervision), CHIPS (Children in need of Protection), CINC (Children in Need of Care), the Juvenile Dependency Court, and other names. The term juvenile dependency or dependency court will be used throughout this paper.

<sup>3</sup> "The systems for ensuring reasonable efforts earlier in a case have never been fully effective." (Crossley, Will L. "Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation," *Public Interest Law Journal*, 12 B.U. Pub. Int. L.J. 259, (2002-3), at p. 298; (hereinafter Crossley); Shotton, A., "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," *Cal. W. L. Rev.*, Vol. 26, 1989-1990, 223-256, at 227 & 236. (hereinafter "Shotton"); "Because it was difficult to enforce, the federal reasonable efforts requirement never became an effective provision." Bufkin, M., "Note: The 'Reasonable Efforts' Requirement: Does It Place Children at Increased Risk of Abuse or Neglect?," *University of Louisville Journal of Family*

*Law*, Vol. 35, Spring 1996/1997, at pp 355-380, at pp 370-1.

[4](#) Watson, A., “A New Focus on Reasonable Efforts to Reunify,” Child Law Practice Online, American Bar Association, *Child Law Practice*, Vol. 32, at pp. 2-3.

[5](#) Marcia Lowry of the ACLU testified to Congress that children “are supposed to be protected by the very fine legislation that Congress passed in 1980 which requires the states to make reasonable efforts to avoid the need for foster care placement whenever possible,” but “reasonable efforts are not made in hundreds and hundreds of thousands of cases across the country.” *Foster Care, Child Welfare, and Adoption Reforms, Joint Hearings Before the Subcommittee On Public Assistance and Unemployment Compensation of the Committee On Ways and Means and Select Committee On Child, Youth and Families*, 100th Congress 20-21 (1988) (Statement of Marcia Lowry, Director Children’s Rights Project, ACLU); cited in “Crossley,” *op.cit.*, footnote 3 at pp. 280 & p. 312;

## Sources

One can only approximate trial court activity regarding reasonable efforts litigation. Appellate case law reflects only those cases in which the attorneys had the time and resources to appeal a trial court decision. Even if the case is appealed, some appellate decisions are not reported in the official reporters. This book includes some unreported cases, but only where the case was of interest. It also includes interviews with and comments from a variety of practitioners and experts including judges, attorneys, writers, and court improvement directors.

There are cautions about reading appellate decisions. The law in every jurisdiction differs; thus, a case in one state may not be the law in another. Moreover, cases must be read carefully as they are fact driven and each case is different. Nevertheless, each case identifies issues that may be considered in other contexts. Many of the issues identified in case law have been litigated in only a few states. Attorneys and judges are encouraged to raise these issues in their own jurisdictions.

## I.

### Legislative History

When the United States Congress held hearings on the status of foster children and other child welfare issues in hearings from 1975 to 1980, the legislators were dissatisfied with what they heard from welfare directors and policy experts around the country. Congress had already passed the Child Abuse Prevention and Treatment Act (CAPTA) in 1974. That legislation provides federal funding to states in support of prevention, assessment, investigation, prosecution and treatment.<sup>6</sup> But Congress continued its attention on the foster care system, finding that the state and local child welfare agencies removed children from their parents without attempting first to preserve the family and then failed to provide parents with adequate services in their efforts to reunify parents with their children.<sup>7</sup> The congressional hearings revealed that child welfare agencies failed to create case plans for foster children, which unnecessarily prolonged their time in out-of-home care.<sup>8</sup> Congress further found that foster children experienced “foster care drift”, the movement from one foster home to another, and that this continual upheaval damaged these children.<sup>9</sup> Congress also learned from substantial research conducted in the 1960’s and 1970’s which indicated that with provision of effective social services, a greater number of families could be preserved, and many children could be safely reunited with their biological parents.<sup>10</sup>

Congress concluded that a significant overhaul was needed to address the complex problems facing abused and neglected children and their families. Congress conceived of a system that emphasized removal of children only when necessary for the child’s safety, provision of services to the family that make it possible for family reunification, and careful monitoring of agency actions to ensure that the agency acted consistently with these goals. Senator Cranston summarized one of the principles underlying this new law, the Adoption Assistance and Child Welfare Act of 1980 (AACWA):<sup>11</sup>

[T]hese sections are aimed at making it clear that States must make reasonable efforts to prevent the removal of children from their homes. In the past, foster care has often been the first option selected when a family has been in trouble; the new provisions will require States to examine alternatives and provide, whenever feasible, home-based service that will help keep families together, or help reunite families. Of course, State child protective agencies will continue to have authority to remove immediately children from dangerous situations, but where removal can be prevented through the provision of home-based services, these agencies will be required to provide such services before removing the child and turning to foster care. These provisions, I believe, are among the most important aspects of this legislation. Far too many children and families have been broken apart when they could have been



preserved with a little effort. Foster care ought to be a last resort rather than the first.<sup>12</sup>

Congress concluded that the legislative initiatives were necessary to avoid the major problems they identified: social services agencies removed too many children from homes, children lived in foster care for too long, and social services agencies failed to take affirmative action to prevent the removal of children from their homes when that could be safely avoided with the provision of services.

Under the new legislation – AACWA - the nation’s juvenile and family courts<sup>13</sup> became responsible for oversight of the children’s services agency at critical points in the juvenile dependency process. First, AACWA instructed juvenile courts to review the facts which surrounded the removal of a child from parental care and to determine whether the children’s services agency used sufficient services and resources to prevent the removal.<sup>14</sup> Related to that finding, before the removal could be approved, the AACWA required that the courts make a finding that “...continuation in the home from which the child was removed would be contrary to the welfare of the child.”<sup>15</sup> AACWA also required the courts to determine whether the agency provided adequate services to assist parents in their efforts to re-unify with their children who had been removed from their custody.<sup>16</sup>

In 1997, some seventeen years later, Congress held additional hearings on the status of foster children and found that children continued to languish in foster care, were not receiving timely permanency, and that family preservation policies placed some children at risk of re-abuse.<sup>17</sup> In the resulting legislation, The Adoption and Safe Family Act (“ASFA”),<sup>18</sup> Congress declared that the health and safety of the child are paramount.<sup>19</sup> Implementation of this goal involved provisions which shortened the time that family reunification services could be provided to families, identified types of serious abuse that would eliminate the need for reunification services, created a “case review system” that provides for periodic review of the case, and instituted adoption incentives. This new legislation also added a third issue for the courts to review – whether the agency was making reasonable efforts to make and finalize alternate permanency plans for each foster child in a timely fashion.<sup>20</sup> In each of these three situations (at the time of removal, reunification, and timely permanency) the legislation required that the courts make specific findings addressing whether the agency provided reasonable efforts or whether the agency failed to provide reasonable efforts.

Important financial implications for the local children’s services agency follow the required reasonable efforts finding. If the court makes a “no reasonable efforts” finding on the record, the agency receives no federal funding for the support of that child while in foster care. Local government must pay for any such services.<sup>21</sup>

<sup>6</sup> CAPTA was originally enacted in P.L. 93-247 and was most recently amended and reauthorized on December 20, 2010, by the CAPTA Reauthorization Act of 2010 (P.L. 111-320).

<sup>7</sup> “A major reason for the enactment of legislation dealing with these programs is the evidence that many foster care placements may be inappropriate, that this situation may exist at least in part because

federal law is structured to provide stronger incentives for the use of foster care than for attempts to provide permanent placements.” Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, *Legislative History* (U.S. Congress, Washington, D.C.) 1980, at p. 1464.

[8](#) Allen, M., Golubock, C., & Olson, L., “A Guide to the Adoption Assistance and Child Welfare Act of 1980,” Chapter 23, *Foster Children*, Edited by Hardin, M., American Bar Association, Butterworth Legal Publishers, Boston, 1983. (hereinafter “Guide to the Adoption Assistance Act”).

[9](#) Foster care drift “...refers to children who, once placed in foster care, become lost in the foster care system,” drifting from home to home thereafter, never achieving permanency. See Garrison, M., “Why Terminate Parental Rights?,” 35 *Stanford Law Review*, 423, at 423 (1983); Bartholet, E., *Nobody’s Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative*, Beacon Press, Boston (1999); Woodhouse, B., “Horton Looks at ALI Principles,” *J.L.O. & Fam. Stud.*, 4: 151 (2002).

[10](#) Fanshel, David, and Shinn, Eugene, *Children in Foster Care: A Longitudinal Investigation*, New York, 1975, Child Welfare Information Services; Stein, T., Gambrill, E.D., and Wiltse, K.T., *Children in Foster Homes: Achieving Continuity of Care*, (1978) New York, Praeger; Lahti, J., Green, J., Emlen, A., Zadny, J., Clarkson, Q., Kuehnel, M., and Casciato, J., (1978) *A Follow-up Study of the Oregon Project: A Summary*, Portland: Regional Research Institute for Human Services, Portland State University.

[11](#) P.L. 96-272; 42 U.S.C. §670 *et seq.* Many of the policies contained in the AACWA were suggested by Professor Michael S. Wald in his article, “State Intervention on Behalf of ‘Neglected’ Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights,” *Stanford Law Review*, Vol. 28, No. 4, April, 1976, at pp 623-706.

[12](#) 123 *Cong. Rec.* S22684 (daily ed. August 3, 1979).

[13](#) In different states either the juvenile or family court has the responsibility for presiding over juvenile dependency cases. Juvenile court will be used in this paper.

[14](#) 42 U.S.C. §472(a)(2)(A)(ii) and 45 CFR 1356.21(c) (2006); “No child will be placed in foster care, except in emergency situations, either voluntarily or involuntarily, unless services aimed at preventing the need for placement have been provided or refused by the family.” House Committee on Ways and Means, Social Services and Child Welfare Amendments of 1979: Report to Accompany H.R. Rep. No 96-136, 96th Congress, 1st Session, at 6 (1979).

[15](#) 42 U.S.C. §472(a)(2)(A)(ii); 45 CFR 1356.21(b)(1) (2006).

[16](#) 42 U.S.C. §671(a)(15)(B)(ii) (2006).

[17](#) “Children are experiencing increasingly longer stays in foster care...The emerging statistical picture shows that young children are spending substantial portions of their childhood in a system that is designed to be temporary.” H.R. Rep. 105-77, H.R. Rep. No. 77, 105<sup>th</sup> Cong. 1<sup>st</sup> Session, 1997 U.S.C.C.A.N. 2739, 1997 WL 225672 (Leg. Hist.) at p. 11; Gelles, R., *The Book Of David: How Preserving Families Can Cost Children’s Lives*, Basic Books, 1996.

[18](#) P.L. 105-77 (1997).

[19](#) 42 U.S.C. §629

[20](#) 42 U.S.C. §§672 (a)(2)(A)(ii), 673(b), & 675; 45 CFR 1356.21(b)(2) (2006); for a guide regarding finalizing a permanent plan see *Making It Permanent: Reasonable Efforts to Finalize Permanency Plans for Foster Children* by Fiermonte, C. and Renne, J., ABA Center on Children and the Law, Washington, D.C. (2002); (hereinafter “*Making It Permanent.*”)

[21](#) If the reasonable efforts to prevent removal finding is not made, the agency will not ever receive

federal funding for that child. 45 CFR §1356.21(b)(1); If the reasonable efforts finding regarding finalizing a permanent plan is not made, the agency will not receive federal funding for the month when that finding was made and will not receive funding until such time as a reasonable efforts finding is made. 45 CFR §1356.21(b)(2)(ii).

## II.

### Federal Law and Child Welfare

The federal law significantly changed the relationships between the federal government and state child welfare agencies and between state child welfare agencies and the courts. Suddenly the nation's juvenile dependency courts had new responsibilities involving the oversight of agency actions regarding abused and neglected children and their families.

#### A. FEDERAL OVERSIGHT OF STATE CHILD WELFARE ACTIONS

In the new federal statutory scheme, found in part in Title IV-B and IV-E, the federal government grants money to each state which supports children placed in foster care.<sup>22</sup> Usually the funds provided require that the state match this grant, typically by 25 to 50 percent.<sup>23</sup>

Each state creates a state plan which indicates how the state plans to use this funding to provide services to prevent removal, to reunify families that are separated, and to finalize a permanency plan for children under state control.<sup>24</sup> The plan resembles a contract – in that the federal government provides money to the state which funds the placement of children in out-of-home care, and the state guarantees that it will use the money as promised in the state plan.

The federal government utilizes several methods to ensure that the states comply with their state plan. First, the federal government relies on judicial findings such as “contrary to the best interests” and “reasonable efforts” to determine on a case-by-case basis whether the agency complies with its plan. Second, the federal government conducts Title IV-E audits of each state. Third, in 2000 the federal government started to conduct Child and Family Service Reviews (“CFSR”) of state child welfare agencies to determine whether each has complied with a number of practices and provides promised services, many of which are a part of the state plan.<sup>25</sup>

The government conducts all three of these reviews of agency practice by reviewing agency and court records. The United States Supreme Court has ruled that private parties cannot sue under Titles IV-B and IV-E to enforce the federal reasonable efforts requirement, in part because of the statute's silence as to the meaning of “reasonable efforts.”<sup>26</sup> Federal audits and judicial oversight through the “contrary to the welfare of the child” and “reasonable efforts” findings remain the exclusive means for ensuring that the agency fulfills its legal responsibilities.

#### B. AGENCY REQUIREMENTS

In order to qualify for federal funding for foster care, the AACWA requires that a state prepare a state plan which describes the services it will provide to prevent children’s removal from parental custody and to reunite the child and the parents after removal.<sup>27</sup> The plan must also include a provision that the social service agency will make foster care maintenance payments in accordance with section 672 of the federal law.<sup>28</sup> The law mandates that the state fulfill numerous other conditions in order to receive federal funding.<sup>29</sup>

Federal law requires that state child welfare agencies handle child welfare cases in several particular ways. First, the agency must take action to protect the child and provide services that will prevent removal, place the child, if necessary, and ensure the child is cared for.<sup>30</sup> Second, if the agency removes the child from the home, the agency must develop a case plan to ensure the child’s placement is in the least restrictive, most family-like setting available in close proximity to the parents’ home, consistent with the best interests and special needs of the child.<sup>31</sup> The case plan is an integral element of the reasonable efforts requirement.<sup>32</sup> The case plan must identify the problem which caused the removal as well as the goals and services which will enable the parent to remedy those problems and assist the parents as they seek to correct the problems. The agency must develop a case plan jointly with the parent or guardian.<sup>33</sup> Each case plan must specifically “[i]nclude a description of the services offered and provided to prevent removal of the child from the home and to reunify the family.”<sup>34</sup>

Third, the agency must also provide substantial information and assistance to the parents before parental rights are altered or lost. The agency must inform the parents of the reasons for state intervention, identify what the parents must do in order to remedy the situation, and provide assistance in locating and referring parents to service providers who can help the parents address the problems that brought their child to the attention of the agency.<sup>35</sup> Then, during court proceedings, the agency must provide evidence to the court at several court hearings that it is fulfilling its duty to make reasonable efforts, and this evidence must be documented by the court.<sup>36</sup> Court documents such as petitions, court reports, and forms may contain information about reasonable efforts, and court orders including findings of fact must reflect a judicial finding whether or not the agency made reasonable efforts prevent removal and to reunite the family.<sup>37</sup>

The federal government through the Children’s Bureau, a division of the Department of Health and Human Services, issued guidelines for state legislatures to consider when implementing laws which require that courts consider a variety of factors in making “reasonable efforts” findings.<sup>38</sup> These factors include:

- the dangers to the child and the family problems that precipitate those dangers;
- whether the services the agency provided relate specifically to the family’s problems and needs;
- whether case managers diligently arranged services for the family;
- whether the appropriate services for the family were available and timely, and, the results of the services provided.<sup>39</sup>

The federal government does not require that a state offer a specific set of services to families whose children have been abused or neglected. Instead, federal guidelines provide a list of suggested services and principles underlying child and family services.<sup>40</sup> In its state plan, the agency specifies what services it will make available to families where there has been state intervention, but ultimately, the judge in court proceedings determines whether the services offered in a particular case were reasonable. The judge must also decide whether the services addressed the problems that brought the child to the attention of the agency.<sup>41</sup>

In order to implement effectively the reasonable efforts requirement, the agency must document their efforts to fulfill its statutory duty.<sup>42</sup> Documentation enables the agency to demonstrate to federal reviewers the quality of their work as well as provide the court sufficient information for the judge to make well-informed reasonable efforts decisions. Appendix C provides examples of forms used by several agencies' to document the services it has provided to parents.

Following passage of the AACWA and ASFA most state legislation paralleled the federal law. State child welfare agencies responded to the new reasonable efforts requirements by developing policies and suggested guidelines for social workers who investigate and handle cases involving abused or neglected children. Agency policies stress prompt investigation of reported abuse or neglect, an assessment of family needs, and the development of a service plan for the family.<sup>43</sup> Agency policies often highlight the importance of preventing removal of the child from the home. One agency memorandum stated that a simple referral to services was insufficient to meet the demands of reasonable efforts, and that the agency should encourage and assist the family in gaining access to and utilizing the services.<sup>44</sup> Ultimately the courts and federal audits determine whether a particular agency is, in fact, following these recommended policies and guidelines.

**C. THE COURT’S INVOLVEMENT: “CONTRARY TO THE WELFARE OF OUR CHILD” AND “REASONABLE EFFORTS” FINDINGS**

To ensure the viability of this new system, Congress selected juvenile and family courts to oversee operation of the nation’s foster care system. When Congress chose the nation’s juvenile courts to oversee the actions of children’s services agencies, it anticipated that these courts would seriously undertake the responsibilities placed on them by federal legislation.<sup>45</sup> It is important to note, however, that the courts did not volunteer for this responsibility and Congress failed to provide the necessary financial assistance for the increased workload.<sup>46</sup> Moreover the children’s services agencies certainly did not want the courts looking over their shoulders, but this legislation forced the courts and the child welfare agencies into a new relationship.

States quickly adopted statutes requiring the courts to make the findings outlined in the federal legislation.<sup>47</sup> For example, California Welfare and Institutions Code § 319(d)(1) requires the court to:

make a determination on the record, referencing the social worker’s report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to

subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention.<sup>48</sup>

Under the federal law, in order for a state to recover federal foster care funds, a judicial finding must be made that “continuation in the home would be contrary to the child’s welfare” and that the child welfare agency made “reasonable efforts” to prevent the need for placement and to make it possible for the child to return home.<sup>49</sup> The “reasonable efforts” finding must be contained in a written court order, and the court must make this finding within 60 days from the physical removal of the child from parental custody.<sup>50</sup>

According to the federal law and conforming state legislation the court must make reasonable efforts findings at least in three different stages of a juvenile dependency case.<sup>51</sup> First, at the first judicial hearing that leads to removal of a child (usually a shelter care hearing),<sup>52</sup> if the court removes the child from parental custody, the court must make a finding that continuance in the home of the parents would be contrary to the welfare of the child. The court must also determine what the agency could have done to prevent removal.<sup>53</sup> This results in a judicial finding that the agency either did or did not exercise reasonable efforts to prevent removal of the child. For example, in a petition which alleges that the child needs the protection because the child has been exposed to domestic violence in the home, the court must determine what steps the child protection agency (“CPS”) took to remove the harm (the abuser) before removing the child. Did CPS explore in-home protection for the abused person and the child, or did the agency try to find a safe home for the victim-parent and child such as in a domestic violence shelter? This is a reasonable efforts issue.<sup>54</sup>

Second, during the pendency of the case, the court must determine whether the agency has provided appropriate services to assist the parents in their efforts to reunify with their child.<sup>55</sup> This determination necessarily assumes that the agency has conducted an appropriate assessment of the family and that the family was involved in that assessment. Depending on state statutes this determination may occur at review hearings, status hearings, permanency planning hearings, and/or termination of parental rights hearings. If the agency provided appropriate services, the court makes a “reasonable efforts” finding; if the agency did not provide adequate services, the court makes a “no reasonable efforts” finding. For example, if the parents lost custody of their child because of their substance abuse issues, the agency arguably should have assessed their needs and provided them with access to appropriate substance abuse services. If the agency failed to do so, the court could make a “no reasonable efforts” finding.<sup>56</sup> If, on the other hand, the parent did not cooperate with the social worker, left the area, or continued to abuse drugs and alcohol in spite of social worker efforts, the court would likely make a reasonable efforts finding.<sup>57</sup>

As a result of ASFA courts must also make a third reasonable efforts finding. If a child’s return home is no longer the appropriate plan, the agency must make reasonable efforts to finalize alternate permanency plans.<sup>58</sup> For example, if the court terminates parental rights and establishes adoption as the permanent plan for the child, the court must monitor agency efforts to complete the adoption. Failure to complete the adoption in a timely manner could result in a judicial finding of “no reasonable efforts.”

In short, the federal legislation and regulations place the responsibility of monitoring social service compliance with federal law regarding the necessity of removing a child from parental care, the provision of services to families where a child has been removed from home, and actions to finalize a permanent plan for the child squarely on the nation's juvenile and family courts. Congress designed the law to ensure child welfare agencies provide families with services to prevent disruption of the family unit, and to respond to the problems of unnecessary removals and foster care drift.<sup>59</sup> The reasonable efforts requirement is an enforcement mechanism to guarantee that each state provides adequate preventive and reunification services.

The agency must make these three reasonable efforts (prevent placement, reunify families, and achieve timely permanency) for children and families in each case where a child has been removed by the agency. This is both a requirement of each state's Title IV-E state plan and a condition of federal funding for individual foster care placements.<sup>60</sup>

Many states require a judicial determination of reasonable efforts at a termination of parental rights hearing, while other states view it as a factor for the judge to consider.<sup>61</sup> Usually the parent claims that the agency has not provided reasonable efforts to reunify the parent with the child. As this book demonstrates, most appellate case law which addresses the adequacy of social service actions arises from termination of parental rights hearings.<sup>62</sup> A parent who raises a reasonable efforts issue at a termination hearing presents the judge with a difficult decision. Usually the case has been in the system for years, the child is placed in an adoptive home, and the parents have not been caretakers for years. Given these circumstances it is likely that removal from the current adoptive home will cause trauma for the child. Moreover, if the court gives the parents some additional time to reunify, the child's permanent plan will not be finalized and the parents may or may not be successful.<sup>63</sup> The case law indicates that given this situation, the pressure on the judge and the appellate courts is to terminate parental rights. One conclusion this book reaches is that reasonable efforts should be litigated early, and that neither the child nor the parents are well served when they wait until the termination hearing to focus on reasonable efforts.

#### **D. THE CONSEQUENCES OF REASONABLE EFFORTS FINDINGS**

The federal government bears a significant interest in how each state uses its portion of the billions of federal dollars for foster care funding through Title IV-E. The Children's Bureau, Administration for Children and Families, conducts Title IV-E Foster Care Eligibility Reviews every few years in each state. The review is a collaborative process between each state agency and its stakeholders.<sup>64</sup> The purposes of the review are (1) to determine if the state is in compliance with the child eligibility requirements as outlined in 45 CFR §1356.71 and §§671 and 672 of the Social Security Act and (2) to validate the basis of the financial claims of the state to ensure that the state made appropriate payments on behalf of eligible children and to qualified homes and institutions.<sup>65</sup> As a part of that audit the investigators examine court records in individual cases. The auditors review the court file to ascertain whether the court entered the "contrary to the best interests" finding in the court records when a child is removed from the home and whether the court made a reasonable efforts finding at specified hearings during the dependency case. The penalty for failure to include the



proper findings or a “no reasonable efforts” finding by the court, is a loss of federal funds expended on behalf of the particular child for the period of time when the juvenile court found reasonable efforts to be lacking.<sup>66</sup>

Each state derives a substantial portion of its foster care budgets from federal funds, thus the failure to comply with federal requirements seriously jeopardizes state foster care programs. For example, in 1995 the eligibility audit of foster care cases in California by the U.S. Department of Health and Human Services’ Office of the Inspector General found that 39% of the cases were not eligible for Title IV-E funding. California’s programs consequently faced a potential loss of \$51.7 million. Most of those errors were traced to court failures to make the required reasonable efforts findings.<sup>67</sup> Numerous other states have been penalized for failing to make the required federal findings.<sup>68</sup>

## **E. THE IMPACT OF REASONABLE EFFORTS/NO REASONABLE EFFORTS FINDINGS**

The reasonable efforts finding by the court often creates a ripple effect through the child protection system. Social workers in the field pay careful attention to the reasonable efforts findings by the judge, just as law enforcement officers heed a judicial criminal court ruling in search and seizure and confession cases. The reasonable efforts finding indicates court approval of the actions by the social worker in that particular case. The finding often builds confidence among social workers that their actions can be repeated.

On the other hand when the court makes a “no reasonable efforts” finding, it sends a message to child protection and social workers that they should not repeat that action or that they should do more than they did in the case before the court. For example, if the social worker unnecessarily removes a child from a victim of domestic violence and the court makes a “no reasonable efforts” finding, the next time a similar case arises, social workers will consider alternatives to removal such as removing the abuser, providing in-home protection for the abused person and child, assisting the victim with obtaining a restraining order, or finding a safe home for the child and the victim of abuse.

A “no reasonable efforts” finding by the court can result in a modification of agency practices. The agency may create new services or expand existing services. See Appendix D which provides an example of one judge’s finding in which the agency responded to the judge’s letter by making those services available.

<sup>22</sup> 42 U.S.C. §671. The federal government, under Title IV-B of the Social Security Act, also provides funds to states, tribes, and territories for the provision of child welfare-related services to children and their families. These services may be made available to any child, and his or her family, and without regard to whether the child is living in his or her own home, living in foster care, or was previously living in foster care. The majority of these funds are intended to support families and prevent entry into foster care. See 42 U.S.C. §§ 620-622. Some states have successfully applied to the federal government such that children found to be delinquent can be eligible for Title IV-E funding. This means that local probation officers must follow the Title IV-E guidelines and provide reasonable efforts to prevent a child’s placement in foster care.

- [23](#) 42 U.S.C. §674.
- [24](#) The requirements of a state plan are described in 42 U.S.C. §§621, 622(b), 629(b), and 671(a).
- [25](#) <http://www.acf.hhs.gov/programs/cb/monitoring>;  
<https://www.childwelfare.gov/management/reform/cfsr/>;
- [26](#) *Suter v Artist M.*, 503 U.S. 347, 112 S.Ct. 1360, 118 L.Ed.2d 1 (1992); see also *Washington State Coalition for the Homeless v Department of Social & Health Services*, 949 P.2d 1291 (Wash. 1997) and Alexander, R., Jr., and Alexander, C., “The Impact of *Suter v Artist M.*, on Foster Care Policy,” *Social Work*, Vol. 40, No. 4, July, 1995 at pp 543-548.
- [27](#) 42 U.S.C. § 671(a). Title IV-B provides a small amount of federal funding to the states for services to preserve families.
- [28](#) *Id.*
- [29](#) *Id.*
- [30](#) 42 U.S.C. §1356.21 (c). (Refer to Appendix F for the complete text of §1356.21). “Cared for” means that the child has a home with parental figures ensuring the child is safe and healthy.
- [31](#) 42 U.S.C. §§675 (1) & 675(5)(A), §1356.21(g); If the child is 16 years of age or older, the plan must include services aimed at helping the youth prepare for independence. 42 U.S.C. §§ 671, 677; *In the Interest of S.F.*, No. 00-0137, 2000 WL 961591 (Iowa Ct. App. July 12, 2000).
- [32](#) 45 C.F.R. § 1356.21(c)(3); § 1356.21(g)(4) – both are found in Appendix F.
- [33](#) 45 CFR § 1356.21(b)(2)
- [34](#) 45 C.F.R. § 1356.21 (g)(4)
- [35](#) 45 C.F.R. §1356.21(b)
- [36](#) 45 C.F.R. §1356(d)
- [37](#) 42 U.S.C. sections 671(a)(15), 672(a)(1)
- [38](#) Duquette, D., & Hardin, M., *Guidelines for Public Policy and State Legislation Governing Permanence for Children*, Department of Health and Human Services, ACF, Children’s Bureau, Washington, D.C. 1999.
- [39](#) *Id.*, at III-5; Minnesota is one state that has specific statutory language making it clear that the state agency bears the burden of establishing it has made reasonable efforts. The statute lists factors the courts must consider in analyzing whether the state has met its burden; (refer to the Minnesota statutes in Appendix A).
- [40](#) The litany of services includes: “24 hour emergency caretaker; the homemaker’s services; daycare; crisis counseling, individual and family counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing the children’s removal from the home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provisions, or arrangements for mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post adoption services.” C.F.R. § 1357.15. A commentator suggests that the following services be available: Drug treatment, housing assistance, homemaker services, counseling, transportation, parenting education, anger management classes, mental health care, child-development classes, home visits by nurses, day care referrals to medical care, domestic violence counseling, financial management services, alcohol recovery support, stress management services, nutritional guidance, and arrangements for visitation to which the author adds, wrap-around services, and facilitated meetings with family/support persons. See Bean, K. “Reasonable Efforts: What State Courts Think,” *University of Toledo Law Review*, Vol.36, 321

(2004-5) (hereinafter, “What State Courts Think”); 45 C.F.R. section 1357.15(e)(2); “Guide to the Adoption Assistance Act,” *op.cit.*, footnote 8 at pp. 591-2 See also Appendix G, “45 CFR 1355.25, Principles of Child and Family Services.

[41](#) Some appellate courts have addressed this issue. See *In re Kristin W.*, (1990) 222 Cal.App.3d 234 and *In re Venita L.*, 191 Cal. App. 2d 1229, 236 Cal. Rptr. 859 (1987). Several commentators have also noted that the services offered are sometimes unrelated to the presenting problems in the case. Crossley, W., *op.cit.*, footnote 3 at p. 305. At least one judge asked for a copy of the state plan and then ordered services that the state had included in its state plan. The judge learned that the state had no such services. See the comments of Judge Douglas McNish (ret.) in Appendix A under the State of Hawai’i.

[42](#) 35 C.F.R. §1356.21(d); Ratterman, D., Dodson, D., & Hardin, M. “Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation,” Second Edition, American Bar Association, National Legal Resource Center for Child Advocacy and Protection, Washington, D.C., 1987 at p. 17. (hereinafter “Reasonable Efforts to Prevent Foster Placement”).

[43](#) Ratterman, *Id.* at p. 3.

[44](#) See Ariz. Div. of Economic Security, *DES Manual*, Revision No. 241, section 5-53-08(c)(4) (Nov. 1984) cited in Ratterman et.al. *Id.*, at p. 3.

[45](#) “The committee is aware of allegations that the judicial determination requirement can become a mere *pro forma* exercise in paper shuffling to obtain federal funding. While this could occur in some instances, the committee is unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children.” Child Welfare Act of 1980, Public Law. No. 96-272, *Legislative History* (U. S. Congress, Washington, D.C.) 1980, at p. 1465.

[46](#) Based on the author’s experience visiting courts across the country and a review of the literature, the court’s juvenile dependency workload is comparable to the delinquency workload. That is, the same amount of judicial time is necessary to address juvenile dependency as the court expends in juvenile delinquency cases.

[47](#) Appendix A provides the references to the state statutes concerning reasonable efforts.

[48](#) California Welfare and Institutions Code §319(d)(1), West, 2013.

[49](#) 45 CFR § 1356.21(b) and (c); (the full text of this regulation is reprinted in Appendix F).

[50](#) 45CFR §§ 1356.32(d) & 1356(b)(1)(i).

[51](#) 42 U.S.C. §671(15)(B)(i) & (ii). In some states, the court must make reasonable efforts findings at more hearings. For example, see Ohio Rev. Code Ann. §2151.419(A), Anderson, 1989, and Cal. Welfare & Inst. Code §§306, 319, 361, 366.21(e), 366.26(f), 366.22(a), West, 2013.

[52](#) The shelter care hearing is the first judicial hearing after a child has been removed from parental care. It usually occurs a few days after the physical removal. The hearing has different names in different states including initial hearing, detention hearing, temporary custody hearing, and emergency protection hearing. This paper will refer to it as the shelter care hearing. State statutes set the time for shelter care hearings, usually within a few days of the physical removal of the child. For a list of each state’s statutes, see *Matrix of State Statutes Pertaining to Child Abuse, Neglect and Dependency*, NCJFCJ, Reno, 1998. If the child is removed based upon a protective custody warrant, the “contrary to the welfare” finding must be made on the warrant.

[53](#) 42 U.S.C. §671 (a)(15)(B)(i); 45 C.F.R. §1356.21(c) & (d) (reprinted in Appendix F). The reasonable efforts to prevent removal finding can be waived when certain emergency circumstances arise. A waiver should occur only when services would fail or would not be adequate to protect the

child in the home. The trial court can make this determination up to 60 days from the time of removal of the child. 45 C.F.R. 1356.21(b)(1)(i).

[54](#) Edwards, L., “Domestic Violence and Reasonable Efforts at the Detention Hearing,” *The Bench*, Winter, 2013. Found at Judgeleonardedwards.com in the Publication’s blog. See also the cases and discussion *infra* at Section VII B. 5. If the agency offers reasonable services, but the parents refuse to accept or participate in those services, the agency will have fulfilled its statutory duty. (See for example, Wash. Dept. of Soc. & Health Serv. *Manual G* section 32.32 (Apr. 1984 at p. 19).

[55](#) 42 U.S.C. §671(a)(15)(B)(ii).

[56](#) 42 U.S.C. § 671; 45 C.F.R. §1356.21(d) (reprinted in Appendix F). Also see the cases and discussion *infra* at Section VII B 5(Substance Abuse).

[57](#) For example, in one case involving a mother’s substance abuse, the appellate court held that the agency should have made an immediate assessment of mother’s substance abuse needs and provided services. The agency did not and the court held that was a failure of reasonable efforts. *Jennifer R. v Superior Court of San Diego* (2012 Cal. App. LEXIS 5, WL 6016468 - unpublished – a copy is available from the author)

[58](#) 42 U.S.C. §671(a)(15)(C); 45 C.F.R. §1356.21(b)(2).

[59](#) 42 U.S.C. §§671(a)(15), 672(a)(1).

[60](#) 42 U.S.C. sections 671(a)(15) and 672(a)(1). Each state develops its own state plan and presents it to the federal government. What a state might consider in developing a state plan is suggested in 45 C.F.R. § 1357.15(e)(2). Apparently, most states have not adopted these suggestions.

[61](#) For example, N.Y. Soc. Serv. Law section 384-b(2)(f) (McKinney Sup. 1986)

[62](#) Appendix A reviews the statutes and selected cases involving reasonable efforts from all 50 states and the District of Columbia. The vast majority of cases reviewed by the appellate courts have arisen from termination of parental rights hearings.

[63](#) Watson, A., “*op.cit.*,” footnote 4 at p. 2.

[64](#) The stakeholders include service providers foster parents, the courts and others involved in the child welfare system.

[65](#) For example, HHS regulations also mandate that the case plan include a description of the services offered and provided to prevent removal and to reunify the family. 42 U.S.C §671; 45 C.F.R. § 1356.21(b), (c)(4) (1997)

[66](#) 45 CFR § 1356.21(b) *Reasonable efforts*. A copy of this regulation is contained in Appendix F; HHS, Human Services Development Serv., Policy Announcement, ACYF-PA-84-1 (Jan. 13, 1984), p. 4.

[67](#) See generally, Edwards, L., “Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980,” *Juvenile and Family Court Journal*, Vol. 45, No. 3, 1994, at pp. 1-28. (hereinafter “Improving Implementation,”)

[68](#) Edwards, L., “Improving Implementation,” *Id.* at p. 10. If a state does not participate in the Title IV-E program, it would not receive federal money for foster care placements and a “no reasonable efforts” finding would have no fiscal impact on the state. Most states, however, participate in the Title IV-E program.

### III.

## What is the Definition of Reasonable Efforts?

The federal statutes which created the reasonable efforts concept failed to define the term. The Child Welfare Policy Manual states that judicial determinations of reasonable efforts be made on a case-by-case basis so that the individual circumstances of each child before the court are properly considered.<sup>69</sup> This failure has led to confusion and criticism.<sup>70</sup> One commentator blames the failure of reunification efforts during the first 17 years of AACWA on the lack of a definition.<sup>71</sup> Several states enacted legislation defining reasonable efforts.<sup>72</sup> State definitions typically restate the federal language with the addition of more general terms. Appendix B includes both the statutes and definitions written by appellate courts. Because of the general nature of the state definitions, they give the trial and appellate courts little guidance. As such, trial courts must compare agency efforts, the available resources, and parental compliance.

A typical definition from one of these statutes reads as follows:

the exercise of ordinary diligence and care by the division....”<sup>73</sup>

As noted in this definition, reasonable efforts cannot be defined with precision. The reasonableness of services or other social worker actions depends on the local community and its resources. What is reasonable in one community may not be in another. Trying to impose a standard for services across a state or the nation will work only through the use of very general terms. As written in one court opinion:

The question of what constitutes “reasonable services” is one which cannot be answered by a definitive statement. Instead, it must be answered on the basis of any given factual situation, for it is clear that services which might be reasonable in one set of circumstances would not be reasonable in a different set of circumstances.<sup>74</sup>

Facts and circumstances of each case inform the definition of “reasonable efforts.” As a result of this subjective standard, judges retain a great deal of discretion in their reasonable efforts decisions. Parental participation in services plays a critical part in this decision. A lack of parental cooperation with the service plan may result in a finding of reasonable efforts even when the agency failed to provide adequate services. The Rhode Island appellate court stated that it “would not burden the state agency with the additional responsibility of holding the hand of a recalcitrant parent.”<sup>75</sup> In a Missouri case the appellate court reviewed agency and parental actions during the reunification period and affirmed the termination of parental rights decision and the reasonable efforts finding.<sup>76</sup> The agency provided the parents food and housing, parenting classes, referrals to community service programs

and psychological counselors, and arranged visits. The mother, however, left a 6 month residential treatment program after 1 week, missed meetings, rarely attended her therapy sessions, did not complete her financial assistance applications, and cancelled visits with her children, thus not seeing them regularly.<sup>77</sup>

The child welfare process would benefit from a carefully drawn statute defining reasonable efforts such as that enacted by the Minnesota legislature.<sup>78</sup> However, contrary to the claims of many critics of child welfare practice, the inadequate definition of reasonable efforts is not the principle reason for its ineffectiveness in many states. As this book attempts to demonstrate, reasonable efforts become very effective when trial judges examine the issue throughout the life of a juvenile dependency case, particularly early in the proceedings. The careful examination of social worker actions by the judge and parental participation in services determine whether the agency has met its duty to provide reasonable efforts.

<sup>69</sup> The federal government has stated that a federal definition of reasonable efforts would be contrary to the intent that reasonable efforts be considered case-by-case or would be too broad to be effective. Administration for Children and Families, Child Welfare Policy Manual, Section 8.3C.4 Title IV-E; Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable Efforts. Available at [www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=59](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=59); However, the Child Welfare Information Gateway refers to reasonable efforts as “accessible, available and culturally appropriate services that are designed to improve the capacity of families to provide safe and stable homes for their children. These services may include family therapy, parenting classes, drug and alcohol abuse treatment, respite care, parent support groups, transportation expenses and home visiting programs.” Child Welfare Information Gateway, Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children: Summary of State Laws (2009)

<sup>70</sup> Crossley, W., *op.cit.*, footnote 3 at p. 260; Kaiser, J. “Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases, *Rutgers Journal of Law & Public Policy*, Vol. 7:1, Fall 2009, 100-144, 101; Gelles, R., *The Book of David: How Preserving Families Can Cost Children’s Lives*, *op.cit.*, footnote 17 at p. 94; Bufkin, M., *op.cit.*, footnote 3 at p. 370.

<sup>71</sup> Kim, C., “Putting Reason Back Into the Reasonable Efforts Requirement in Child Abuse and Neglect Cases,” *University of Illinois Law Review*, 1999, pp. 287-332, at p.296; other commentators also lament the lack of a definition. See Crossley, *op.cit.* footnote 3 at pp. 280-281; Gelles, R., “Improving the Well-Being of Abused and Neglected Children: Hearing Before the Senate Committee on Labor and Human Resources, 104<sup>th</sup> Congress 16 (1996) at p. 13; Braveman, D., & Ramsey, S., “When Welfare Ends: Removing Children From the Home for Poverty Alone,” *Temple Law Review*, Vol. 70, Summer, 1997, at pp. 447-470, at 453-454.

<sup>72</sup> Those states include Arkansas, Colorado, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, and Virginia.

<sup>73</sup> Mo. Ann. Stat section 211.183(2), Vernon Supp. 2013

<sup>74</sup> *In the Matter of Myers*, 417 N.E.2d 926, 931 (Ind. App. 1981)

<sup>75</sup> *In re Kristen B.*, 558 A.2d 200, 204 (R.I. 1989)

[76](#) *In the Interest of A.M.K.*, 723 S.W. 2d 50 (Mo. Ct. App. 1986)

[77](#) A commentator points out that the appellate court did not make the connection between the mother's "failures" and the agency's efforts. She asks "why the mother failed to attend?" Was there a problem with transportation? Were the services free of charge? See Shotton, *op.cit.*, footnote 3 at p.9.

[78](#) Refer to Appendix B.

## IV.

### **Aggravated Circumstances: When Are Reasonable Efforts Unnecessary?**

In the years following passage of the AACWA in 1980, a number of critics argued that some parents should not receive services from the agency in order to reunify with their children. They asserted that in some states the agencies expended services over too long a period of time without the child reaching permanency.<sup>79</sup> Additional congressional hearings in 1996 and 1997 resulted in passage of the Adoption and Safe Families Act (ASFA).<sup>80</sup> In this legislation Congress shifted the emphasis away from efforts to reunify the family and towards permanency and child safety.<sup>81</sup>

ASFA “excuses” states from providing reasonable efforts if a court of competent jurisdiction determines that the parent subjected the child to aggravated circumstances (as defined by state law) such as abandonment, torture, chronic abuse, and sexual abuse.<sup>82</sup> ASFA specifies examples of parental conduct which would permit the state to bypass reunification services, including murder or voluntary manslaughter of a sibling, aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or committed a felony assault that results in serious bodily injury to the child or another child of the parent.<sup>83</sup>

ASFA permits the states to expand the list of findings that excuse the agency from making reasonable efforts.<sup>84</sup> While some states adopted the federal list of the types of parental behavior which, if proven, excuses the state from providing reunification services to the parent, other states have expanded the list.<sup>85</sup> For example, Georgia law follows the federal statute closely,<sup>86</sup> while California law expanded the federal list substantially.<sup>87</sup>

Whether proof that a parent’s conduct falls within the statutory language means that the parent automatically does not receive reunification services remains unanswered in some states. Two authors suggest that the agency examine the parent’s current situation to determine if the proven conduct clearly indicates that the parent will place the child at risk should the child be returned, rather than automatically bypass services.<sup>88</sup> On the other hand, another author recommends circumventing the reasonable efforts requirement entirely. If the agency concludes that a history of abuse exists in the family or in cases where an agency has already removed one child from the home. Under these circumstances the commentator suggests that a permanent placement should be sought and parental rights terminated.<sup>89</sup>

Based upon 20 years presiding in the juvenile court, the author recommends following the first commentators. Some parents do change. They overcome their addiction, they leave a dangerous relationship, or they mature and become safe parents even after their parental rights have been terminated in a previous case. Judges should always examine the current situation and the parent’s



ability to parent safely.

[79](#) See, for example, the testimony of Gelles, R., “Improving the Well-Being of Abused and Neglected Children: Hearing Before the Senate Committee on Labor and Human Resources, *op.cit.*, footnote 71.

[80](#) Pub. L. No. 105-89, 111 Stat. 2115, (codified as amended in scattered sections of 42 U.S.C.)

[81](#) Roberts, Dorothy, “Is There Justice in Children’s Rights?: The Critique of Federal Family Preservation Policy,” 2 *U. PA. J. Const. Law*, 112 (1999).

[82](#) 42 U.S.C. §671 (a)(15)(D)(i) – (iii).

[83](#) *Id.*

[84](#) *Id.*

[85](#) For a summary of state laws regarding aggravated circumstances see:

[https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/reunify.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/reunify.pdf)

[86](#) Ga. Code Ann section 15-11-58(a)(4)(A) (2013)

[87](#) Calif. Welfare & Institutions Code § 361.5. Interestingly, it has been the added sections which have resulted in the highest number of bypass cases. Refer to § 361.5 subsections (10), (11), and (13).

[88](#) That is the position taken by Professor Kathleen Bean. “Aggravated Circumstances, Reasonable Efforts, and ASFA,” *Boston College Third World Law Journal*, Volume 29, Issue 2, Article 1 (2009); and see the discussion in Rollin, M., Vandervort, F., & Haralambie, A., “Federal Child Welfare Law and Policy: Understanding the Federal Law and Funding Process,” found in *Child Welfare Law and Practice*, ed. By Ventrell, M., & Duquette, D., Bradford, Denver, 2005, at p. 154. The appellate court in the case of *In re G.L.*, (No. D064521, January 10, 2014) agrees with this position where despite the loss of 4 children and a longstanding drug addiction, mother’s recent rehabilitation persuaded the trial judge to offer her reunification services.

[89](#) Graf, J., “Can Courts and Welfare Agencies Save the Family: An Examination of Permanency Planning, Family Preservation, and the Reasonable Efforts Requirement,” *Suffolk U. Law Review*, Vol. 30, 1996, 91 at pp. 112-113.

## V.

### **The Indian Child Welfare Act and Active Efforts**

The Indian Child Welfare Act (“ICWA”), federal legislation passed in 1978, establishes a different standard for the child protection agency when Indian children are the subject of child protection proceedings and seeks to keep Indian children with Indian families, if possible.<sup>90</sup> Because of unique historical issues which impacted Indian families, Congress concluded that removal of Indian children required additional efforts by the state to prevent removal.<sup>91</sup> During the federal legislative hearings which led to passage of the ICWA, Congress heard overwhelming testimony that state social workers often removed Indian children from their homes without applying any legal standards for removal.<sup>92</sup> Congress stated the policy of the ICWA as follows:

[I]t is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families.<sup>93</sup>

The ICWA requires that before removal or termination of parental rights of an Indian child, the state must prove to the court that “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”<sup>94</sup> “Active efforts” has a “distinctly Indian character” and involves a greater expenditure of resources by the state than those required by the reasonable efforts standard.<sup>95</sup> These efforts must demonstrate proactive casework and active engagement with the family including more frequent contact with the family and tribe.<sup>96</sup> Moreover, active efforts must be culturally appropriate. This should be accomplished by involving and using the available resources of the extended family, the tribe, Indian social service agencies, and individual Indian caregivers.<sup>97</sup> The active efforts standard must be applied by the court regardless of whether the child’s tribe has intervened in the proceedings.<sup>98</sup>

#### **A. THE STATUTE**

The ICWA does not define active efforts, thus a judge makes a determination on a case-by-case basis.<sup>99</sup> Nevertheless, agreement exists throughout the country that active efforts require a higher level of services than reasonable efforts.<sup>100</sup> Moreover, the Bureau of Indian Affairs, as well as several states require that “active efforts” include input and assistance from tribal resources.<sup>101</sup> The federal law specifies that child welfare must provide “active efforts” prior to foster care placement and prior to termination of parental rights.<sup>102</sup> Most state courts address the issue at the same hearings as they would address the reasonable efforts issue, at the shelter care hearing, the dispositional hearing, the permanency planning hearing, and the termination of parental rights hearing.

## B. CASE LAW

Numerous appellate decisions address “active efforts” pursuant to the ICWA. Most of these decisions are listed in Appendix A under each state’s appellate decisions. The general themes involve (1) whether the agency exercised “active efforts” to prevent removal of an Indian child or to prevent the need for termination of parental rights; (2) whether lack of parental cooperation excused failures by the agency to provide “active efforts;” (3) the definition of “active efforts,” and (4) whether the trial court used the correct standard of proof in determining if “active efforts” have been provided.<sup>103</sup> In one case the court noted that “active efforts” implies heightened responsibility compared to passive efforts. These same cases agree with the distinction between active and reasonable efforts as follows: ““Passive efforts are where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition. Active efforts, the intent of the drafters of the Act, is where the state caseworker takes the client through the steps of the plan rather than requiring the plan be performed on its own.”<sup>104</sup> Another set of cases focused on the difference between “reasonable efforts” and “active efforts.”<sup>105</sup> Several cases affirmed agency “active efforts” based upon a lack of parental cooperation with the service providers.<sup>106</sup> Some appellate decisions reverse trial court findings because the trial court terminated parental rights illegally by its failure to follow the ICWA.<sup>107</sup>

Judges must become conversant in the requirements of the ICWA. The judge should enquire of all parents and relatives appearing in juvenile dependency proceedings whether they have any Indian heritage, regardless of whether any party raises the issue. If there is a possibility that the child could be Indian, the judge should order the social worker to provide legal notice to any possible tribes and to the Bureau of Indian Affairs as to the legal proceedings and thereby give the tribe an opportunity to participate in the proceedings. Failure to do so may result in a reversal of all of the court orders and a return to the beginning of the proceedings.<sup>108</sup> Once it has been determined that the case involves an Indian child, judges must be prepared to hold the agency to the “active efforts” standard, one that is higher and more demanding than “reasonable efforts.”

<sup>90</sup> P.L. 95-608; 25 U.S.C. §§1901 et.seq. West, 2013.

<sup>91</sup> *Id.* Congressional Findings at §1901; Hazeltine, S., “Speedy Termination of Alaska Native Parental Rights: The 1998 Changes to Alaska’s Child in Need of Aid Statutes and Their Inherent Conflict with the Mandates of the Federal Indian Child Welfare Act, 19 Alaska L. Rev. 57 (2002)

<sup>92</sup> One report described it as the “wholesale separation of Indian children from their families...” *Establishing Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and for other Purposes*, H R Rep. 95-1368, at 9 (July 24, 1978); See also *Mississippi Band of Choctaw Indians v Holyfield*, 490 U.S. 30, 32; 109 S. Ct. 1597; 104 L. Ed. 2d 29 (1989); See also H.R. Report No. 1386, 95<sup>th</sup> Cong., 2d Sess. 23 (1978), reprinted in *U.S. Code Cong. & Admin. News* 7530.

<sup>93</sup> 25 U.S.C. § 1902.

<sup>94</sup> *Id.* At §1911(d) and §1912(d). In California the state must prove it as provided active efforts by clear and convincing evidence. *In re Michael G.*, 63 Cal. App. 4<sup>th</sup> 700 (Cal. App. 1998)

<sup>95</sup> Andrews, “The ‘active efforts’ standard requires more effort than a ‘reasonable efforts’ standard does.” “‘Active’ Versus ‘Reasonable’ Efforts:’ The Duties to Reunify the Family Under the Indian

Child Welfare Act and the Alaska Child in Need of Aid Statutes,” 19 *Alaska L. Rev.* 85 (2002) at p. 87; *In re Nicole B.*, 927 A.2d 1194 (Md. Ct. Spec. App. 2007). “The term active efforts by definition, implies heightened responsibility compared to passive efforts.” *In the Matter of A.N. and M.N.*, 325 Mont. 379, 384, 106 P.3d 556, 560 (Montana Supreme Court, 2005); *C.J. v State Dep’t of Health & Social Services*, 18 P.3d 1214 (Alaska 2001); *Sandy B. v. State, Dept. of Health & Social Services, Office of Children’s Services*, 216 P.3d 1180 (Alaska 2009); *M.W.*, 20 P.3d 1146 (Alaska Supreme Court, note 18), 2001; 44 Fed. Reg. 67,584 at D. 2(Nov. 26, 1979); DHS Social Services Manual XIII-3559.

96 Judge April Attebury of the Karuk Tribal Court in Siskiyou and Humboldt Counties, California, tells social workers they should hold the client’s hand from start to finish of the case; (author’s conversation with Judge Attebury). Justice William Thorne (ret.) told the author that the social worker should treat the client as you would your own child and do whatever it takes. (author’s conversation with Justice Thorne). “Active Efforts Principles and Expectations,” Oregon Judicial Department, Citizens Review Board, Salem; Wisconsin statutes state that it is the agency’s responsibility to meet the standard defined as “an ongoing, vigorous, and concerted level of case work...made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe and that utilizes the available resources of the Indian child’s tribe, tribal and other Indian child welfare agencies, extended family members of the Indian child, other individual Indian caregivers, and other culturally appropriate service providers. Wis. Stat. §48.028(4)(g)(2).

97 25 U.S.C. § 1912(d)

98 *In re Jonathon S.*, 28 Cal. Rptr. 3d 495 (Cal. Ct. App. 2005)

99 *Wilson W. v. State*, 184 P.3d 94, 101 (Alaska 2008).

100 Goldsmith, D. “Preserving the Indian Child’s Family: Active vs. Reasonable Efforts,” *The Judge’s Page*, National CASA, July, 2010, p. 11. *A.M. v State*, 945 P.2d 296 (Alaska 1997); However, commentator Mark Andrews disagrees, writing that, at least in Alaska, the state Supreme Court has used the same standard for both reasonable efforts and active efforts. Andrews, M., “‘Active’ Versus ‘Reasonable’ Efforts:’ The Duties to Reunify the Family Under the Indian Child Welfare Act and the Alaska Child in Need of Aid Statutes,” *op.cit.*, footnote 95; Fletcher, M. “The Origins of the Indian Child Welfare Act: A Survey of the Legislative History,” *Legal Studies Research Paper Series*, Research Paper No. 07-06, Michigan State University College of Law.

101 For example, the Bureau of Indian Affairs wrote that the meaning of “active efforts” included a search for help from within the Indian culture; “Guidelines for State Courts; Indian Child Custody Proceedings,” 44 *Fed. Reg.* 67,584 (Nov. 26, 1979). Oregon has developed a common understanding and consensus around the active efforts definition. Convening tribal representatives with Citizen Review Boards resulted in the development of Oregon’s *Active Efforts Principles and Expectations*. The California legislature defines “active efforts” as efforts that “takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers.” Cal. Welfare & Institutions Code § 361.7, and California Rule of Court 5.484(c). Michigan requires caseworkers to “take a proactive approach with clients and actively support them in complying with the service plan rather than requiring the service plan to be completed by the client alone.” “Indian Child Welfare Case Management,” State of Michigan Department of Human Services, Native American Affairs 205 (3/1/2010)

[102](#) 25 U.S.C. §1912(d)

[103](#) For example, in the case of *In re Michael G.*, 63 Cal. App. 4<sup>th</sup> 700, 74 Cal. Rptr. 2d 642 (Cal. App. 1998) involving interpretation of the ICWA, the appellate court reversed a termination of parental rights finding that clear and convincing evidence is the standard of proof in California for a determination under ICWA that active efforts have been made to prevent breakup of an Indian family and have been unsuccessful.

[104](#) *A. A. v. State, Dept. of Family & Youth Services*, 982 P. d 256 (Alaska 1999); *In re A.N.*, 325 Mont. 379, 106 P.3d 556 (Montana, 2005). The appellate court does not explain how the term “passive efforts” appears in the case law. “Passive efforts” is certainly not synonymous with “reasonable efforts.” Social workers in whatever context should not be permitted to provide only “passive efforts.”

[105](#) *A.M. v. State*, 945 P.2d 296 (Alaska 1995); *appeal after remand*, 945 P.2d 296 (Alaska 1997); *N.A. v State*, 19 P.3d 597, 603 (Alaska, 2008)

[106](#) *In re William G.*, 89 Cal. App. 4<sup>th</sup> 423 (Cal. Ct. App. 2001); *T.F. v State Dep’t of Health and Social Services*, 26 P.3d 1089 (Alaska 2001).

[107](#) *In re Nicole B. and Max B.*, 175 Md. App. 450, 927 A.2d 1194 (Court of Special Appeals of Maryland, 2007)

[108](#) See *In re Nicole B.*, *Id.*

## VI.

### State Responses to the Reasonable Efforts Issue

#### A. LEGISLATION:

All states participate in the legislative scheme established by the AACWA and ASFA and passed statutes in conformity with the federal law.<sup>109</sup> These statutes mandate that the judge make “contrary to the best interests” and “reasonable efforts” findings. The Arkansas statute typifies many state statutory schemes:

#### ARKANSAS

What Are Reasonable Efforts?

Citation: Ann. Code § 9-27-303

‘Reasonable efforts’ are measures taken to preserve the family and can include reasonable care and diligence on the part of the department or agency to utilize all available services related to meeting the needs of the juvenile and the family.

Reasonable efforts may include the provision of ‘family services,’ which are relevant services provided to a juvenile or his or her family, including, but not limited to:

- Child care
- Homemaker services
- Crisis counseling
- Cash assistance
- Transportation
- Family therapy
- Physical, psychiatric, or psychological evaluation
- Counseling or treatment

Family services are provided in order to:

- Prevent a juvenile from being removed from a parent, guardian, or custodian
- Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed
- Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile

When Reasonable Efforts Are Required

Citation: Ann. Code § 9-27-303

Reasonable efforts shall be made:

- Prior to the placement of a child in foster care to prevent the need for removing the child from the child's home
- To reunify a family after a child has been placed out of the home to make it possible for the child to return home safely
- To obtain permanency for a child who has been in placement more than 12 months, or 15 of the previous 22 months.

A list of the statutes regarding reasonable efforts findings from each state is contained in Appendix A.

Some state Judicial Councils or Supreme Courts emphasize the importance of the federal law by passage of court rules and/or standards of judicial administration regarding the reasonable efforts findings. For example standard 5.40 of the California Standards of Judicial Administration states:

Judges of the juvenile court...are encouraged to

- (8) [e]valuate the criteria established by child protection agencies for initial removal and reunification decisions and communicate the court's expectations of what constitutes "reasonable efforts" to prevent removal or hasten return of the child.<sup>110</sup>

## **B. WHEN MUST THE TRIAL COURT ADDRESS THE REASONABLE EFFORTS ISSUE AND MAKE REASONABLE EFFORTS/NO REASONABLE EFFORTS FINDINGS?**

The federal law requires that the court must make a determination within 60 days of the physical removal of the child that the agency made reasonable efforts to prevent removal or the state will lose federal funding for that child.<sup>111</sup> The court must review the status of each child in foster care every six months to determine the progress made in the case towards a return home or an alternate permanent plan.<sup>112</sup> The court must make a reasonable efforts finding within twelve months of the date the child entered foster care and at least once every twelve months thereafter.<sup>113</sup> The court must also hold a review every six months to determine the appropriateness of the placement, the extent of case progress, and compliance with the case plan.<sup>114</sup>

State statutes vary. Some require that the court address the issue several times as in the Arkansas statute above. Most states require that the issue be addressed early in the case, within the first 60 days. Securement of an early judicial determination of reasonable efforts allows the state to commence collecting federal funding. The Texas statutes, for example, require frequent trial court findings at the shelter care hearing,<sup>115</sup> the 14-day hearing,<sup>116</sup> and at all status hearings.<sup>117</sup> See Appendix A for state statutes which provide an indication of the frequency that trial judges are required to make reasonable efforts findings. Whether the juvenile court tries these issues is difficult to determine.<sup>118</sup> State appellate decisions and comments from participants in many state court systems indicate that they are rarely litigated.<sup>119</sup>

Several commentators argue that the courts should be required to make a "reasonable efforts" determination before a termination of parental rights.<sup>120</sup> This is a reasonable requirement, but for the

child and family this determination comes too late in the case. As the discussion throughout this book indicates, the reasonable efforts determination should begin early and continue throughout the case.

## C. TRIAL COURT PRACTICE

State courts vary in their approach to the reasonable efforts issue. In some states attorneys and judges regularly try the issue, as reflected in numerous appellate decisions in those states. In other states the issue seldom appears in appellate decisions, and interviews with judges and attorneys indicate that the issue rarely is litigated in the trial courts.<sup>121</sup>

Some critics assert that trial court judges simply do not make “no reasonable efforts” findings.<sup>122</sup> They offer several reasons. First, judges do not receive sufficient information to make an informed decision regarding reasonable efforts. Usually, the only information comes from the agency. Second, when the judge realizes that a negative finding will impact the resources for the local agency, it becomes difficult to make such a finding. Third, auditing procedures do not require judges to explain the basis for their decisions to approve of state removal of children.<sup>123</sup> Fourth, under the ASFA timelines and its emphasis on timely permanency, judges may find the state exercised reasonable efforts in order to move the case along and ensure a permanent and stable home.<sup>124</sup> Fifth, some judges do not believe it is their role to ask questions of the agency. Instead, they see themselves as passive observers of a court process in which “the contestants develop the facts and the judge makes a decision.”<sup>125</sup>

Many state judges make informed reasonable efforts findings in spite of these reasons. As the review of case law and commentary reveals, in some states the trial and appellate courts pay careful attention to reasonable efforts findings, and judges and attorneys examine the issue carefully in court proceedings. These judges recognize that they have been designated by the legislature as monitors of social work practice. Just as judges play a critical role in overseeing police officer conduct in criminal cases involving searches and seizures, they play a similar role checking to see that social workers are fulfilling their legal responsibilities towards children and families.

## D. STATE APPELLATE LAW

State appellate courts provide an indication of how often parties try the reasonable efforts issue in the state juvenile and family courts. Appellate decisions also provide an idea of the degree to which the appellate courts actively examine and rule upon reasonable efforts issues. It is important to note that cases reported in the appellate courts do not reflect the frequency of litigation in the trial courts on the issue of reasonable efforts. Several barriers prevent these issues from reaching the appellate courts. The parents may not have legal representation or the court may appoint an attorney too late to be prepared to raise the issue.<sup>126</sup> Even with representation, the attorneys may not appeal the court rulings regarding reasonable efforts,<sup>127</sup> due to the cost of the appeal, an unwillingness to use the appellate process, or heavy caseloads. In states where little or no state appellate law exists, the author contacted judges, attorneys, guardians *ad litem*, and court improvement directors to determine



the extent of court activity regarding the reasonable efforts determinations.<sup>128</sup>

A great disparity exists in trial court attention to the three reasonable efforts issues, reasonable efforts to prevent removal, to reunify, or to finalize a permanent plan. Very few trial and appellate courts address the reasonable efforts to prevent removal,<sup>129</sup> and only some address reasonable efforts to reunify. Very few cases examine the reasonable efforts to achieve timely permanency. The vast majority of appellate cases discussing the reasonable efforts issue occur at termination of parental rights hearings.<sup>130</sup> (Refer to section VIII and Appendix A for a state-by state analysis).

<sup>109</sup> Christian, S., “1998 State Legislative Responses to the Adoption and Safe Families Act of 1997,” National Conference of State Legislatures, State Legislative Report, March, 1999.

<sup>110</sup> Standard of Judicial Administration 5.40(e)(8), California Rules of Court, West, 2011. Standard 5.45 encourages juvenile court judges to follow the Resource Guidelines written by the National Council of Juvenile and Family Court Judges in order to achieve a number of goals including (5) “Timely and thorough reports and services to ensure informed judicial decisions, including reasonable efforts findings...”

<sup>111</sup> 42 C.F.R. §1365.21(b)(1)

<sup>112</sup> 42 U.S.C. §675(5)(B)

<sup>113</sup> 42 C.F.R. §1356.21(b)(2)

<sup>114</sup> 42 U.S.C. §§6671(a) & 675(5)(B).

<sup>115</sup> Tex. Fam. Code Ann. Section 262.001

<sup>116</sup> Tex. Fam. Code Ann. Section 262.201

<sup>117</sup> Tex. Fam. Code Ann. Section 262.202

<sup>118</sup> Studies of practice and appellate case law in Texas indicate that the reasonable efforts issue is rarely litigated. “Legal Representation Study: Assessment of Appointed Representation in Texas Child-Protection Proceedings,” Children’s Commission, Supreme Court of Texas, Permanent Judicial Commission For Children, Youth & Families, Austin, 2011, at pp. 20-23. (Hereinafter “Legal Representation Study”)

<sup>119</sup> Refer to Appendix A for this information.

<sup>120</sup> Crossley, W., *op.cit.* footnote 3 at p. 298; Hand, J.A. “Notes: Preventing Undue Terminations: A Critical Evaluation of the Length-of-Time-Out-of-Custody Ground For Termination of Parental Rights,” 71 N.Y.U.L.Rev. 1251 (1996) at p. 1264, 1286.

<sup>121</sup> For example, an Alaska report indicate that “[p]ractitioners interviewed for this study agreed that a judicial finding of ‘no reasonable efforts’ was uncommon.” *Improving the Court Process for Alaska’s Children in Need of Care*, Alaska Judicial Council, Anchorage, 1996, at p. 100. The author has had numerous email and personal discussions with judges, attorneys, and court improvement directors in many states regarding the frequency that reasonable efforts issues are tried in their court and in their state. Copies of emails from those persons are available from the author.

<sup>122</sup> Shotton, A., *op.cit.*, footnote 3 at p. 27, reporting that a 1989 survey of juvenile court judges revealed that only 44 judges had made one or more negative reasonable efforts rulings during his or her tenure. *c.f.* Smith, L, “Children’s Aid System Gets Mixed Marks from Clients,” *L.A.Times*, Feb. 27, 1996, at A1, reporting on a 1992 study documenting that 54.8% of the case files involving foster care children in Kansas did not include documentation regarding reasonable efforts.

<sup>123</sup> Raymond, S., “Notes: Where Are the Reasonable Efforts to Enforce the Reasonable Efforts

Requirement?: Monitoring State Compliance Under the Adoption Assistance and Child Welfare ACT OF 1980,” *TEXAS LAW REVIEW*, VOL. 77, 1235, 1255 (1999).

[124](#) Bean, K., “What State Courts Think,” *op.cit.* footnote 40 at 332.

[125](#) *Improving the Court Process for Alaska’s Children in Need of Care*, *op.cit.*, footnote 121, at p. 98.

[126](#) Edwards, L., “Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment,” *Juvenile and Family Court Journal*, Vol. 63, Spring, 2010, at pp. 21-37.

[127](#) In at least one state (Georgia), one trial court judge indicted that the reasonable efforts issue is regularly heard in his court, but that the court rulings are not appealed. Georgia has very few appellate court decisions discussing reasonable efforts. (Interview with Judge Michael Key, Troup County Court, 2012).

[128](#) Those comments appear in Appendix A after the appellate case law summary for each state.

[129](#) New York is a significant exception to this statement. As the cases listed under New York in Appendix A indicate, the issue is regularly tried and reviewed in appellate decisions.

[130](#) Kim, *op.cit.*, footnote 71 at p. 305.

## VII.

### Recurring Factual Situations in the Trial Courts

#### A. THE SHELTER CARE HEARING

Juvenile court experts assert that the most important hearing in the juvenile court process is the shelter care hearing.<sup>131</sup> Both the *Resource Guidelines* and commentators conclude that after the child has been placed in foster care, family reunification becomes more difficult to achieve than prevention of placement in the first instance.<sup>132</sup> Thus the shelter care hearing in the court process and the court's attention to the "reasonable efforts to prevent removal" issue is a very critical point in the juvenile court process.

At the shelter care hearing or within 60 days of the child's removal from parental custody, the judge must decide whether the agency has provided reasonable efforts to prevent removal of the child.<sup>133</sup> Few appellate cases address the reasonable efforts to prevent removal, and almost all of the judges, attorneys, and court improvement leaders confirmed that attorneys and judges do not discuss this reasonable efforts issue early in the case. The court may find that reasonable efforts to prevent removal were not possible because of exigent circumstances. However, the court must review this finding at subsequent hearings to determine whether continued removal is still necessary.

Most reported cases arise in New York. Pursuant to New York law, a party can request that the juvenile court hold a hearing within a few days of the agency's removal of a child.<sup>134</sup> The court has appointed counsel by the time of this hearing, and at the hearing the court frequently hears evidence on the reasonable efforts to prevent removal issue. For example, in the case of *In the Matter of Jamie C.*<sup>135</sup> the trial court found the agency did not provide reasonable efforts to prevent removal, a finding affirmed on appeal. The agency (ACS) removed the children on neglect allegations. The petition alleged that the mother's mental illness rendered her neglectful of her children and that she was not taking her prescribed medication. One of her children had Down's syndrome. The appellate court stated "[h]ere, ACS did not provide this mother with sufficient services or referrals in response to her significant psychiatric needs." While the ACS frequently contacted with the family, no services addressed the family's unique needs. The court concluded that "[t]he condition that a judicial determination that reasonable efforts to prevent a child from entering into foster care were made before the State can be eligible for foster care maintenance reimbursement was enacted to punish the State and hold it accountable when its social services agencies fail to do what the federal law mandates."<sup>136</sup>

In the cases of *In Re Nicholson and Nicholson v Scoppetta and David G.* the appellate courts set out the process a trial court should follow in analyzing the agency's responsibilities:

The court *must do more* than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal... Additionally, the court must specifically consider whether the imminent risk to the child might be eliminated by other means, such as issuing a temporary order of protection or providing services to the victim.<sup>137</sup> (emphasis in the original)

This recommended analysis requires that the judge examine the social worker, particularly in cases where the worker claimed that no services were provided because of exigent (emergency) circumstances.

Upon delivery to the social worker of a child who has been taken into temporary custody..., the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services.<sup>138</sup>

A California appellate case highlights the meaning of this statute. The mother seriously beat one of her children using an extension cord. Social work investigation revealed other incidents of physical abuse. The trial court removed the children at the detention hearing. The trial court found that "reasonable efforts have been made to prevent or eliminate need for [the children's] removal from home." The trial court did not identify or describe what those "reasonable efforts" were, nor did the court inquire into the availability of services "that would prevent or eliminate the need to detain the child or that would permit the child to return home" as required by California Rules of Court, rule 5.678(c)(2).<sup>139</sup> The appellate court pointed out that California Welfare and Institutions Code §361(d) requires the trial court to make a determination whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home and that the court "shall state the facts on which the decision to remove is based." The trial court did not do this, thus making the finding "merely a hollow formula designed to achieve the result the agency seeks." The appellate court concluded that "[a] finding of parental abuse is not sufficient by itself to justify removing the child from the home, reversed the trial court order removing the children, and returned the case to the trial court for further proceedings."<sup>140</sup>

In the Connecticut case of *In re Lindsey P.*,<sup>141</sup> the appellate court held that the state department failed to provide reasonable efforts to prevent the removal of an allegedly neglected child from her home. The *ex parte* affidavit filed by the state contained misleading and inaccurate information and omitted exculpatory information. In the case of *Interest of S.A.D.*<sup>142</sup> the Pennsylvania appellate court found that the agency had not offered reasonable efforts to an eighteen-year-old mother and her 14 month-old daughter. The mother sought help from the agency for housing. The agency informed the mother she would have to "voluntarily" place her child with the agency and then find housing. The mother procured housing with a family and returned to the agency for her daughter only to be told she had to find her own housing. No one from the agency visited the family home she had located. The appellate court reversed the finding of reasonable efforts by the trial court based on their determination that the mother acted responsibly towards her child throughout the proceedings.<sup>143</sup>

In a Missouri case, the appellate court reversed a trial court removal order and remanded the case to the trial court for further proceedings. The appellate court found that the dispositional order removing the children lacked any showing of reasonable efforts by the agency to prevent the removal. The agency claimed that the removal was based upon an “emergency hot line” call regarding the children. The appellate court rejected that reasoning, pointing out that a hot line call does not preempt the role of evidence and adjudication.<sup>144</sup> An Iowa Court of Appeals reversed a juvenile court finding of reasonable efforts after the court had placed a 12-year-old child who had committed an aggravated assault into a group home.<sup>145</sup> The appellate court found no evidence that the agency had made any attempt to “prevent or eliminate the need for removal of the child from the child’s home.”<sup>146</sup>

## **B. REVIEWS, PERMANENCY HEARINGS, AND TERMINATION OF PARENTAL RIGHTS HEARINGS**

The federal law requires the court to determine whether the agency provided reasonable efforts to make it possible for a child to safely return home.<sup>147</sup> This finding relates to the efforts made by the agency to assist the parents in their rehabilitation. Few appellate cases address this issue early in the case. Virtually all appellate decisions addressing reasonable efforts do so in the context of a termination of parental rights hearing. The cases listed in this section are organized according to the problems presented by the parents when the agency removed their child or children from parental care.

Many of these issues have been litigated in only a few states. They represent issues that judges and attorneys should carefully consider in determining whether reasonable efforts have been offered to the parents. After all, one of the purposes of the federal law is to offer parents a fair opportunity to change their circumstances and reunite with their children.

### **1. Housing**

Homelessness can be the primary reason for state intervention on behalf of a child. In fact, since 1995 several separate studies show that 30 percent of America’s foster children could be safely returned to their own homes now, if their birth parents had safe, affordable housing.<sup>148</sup> Should the state be required to provide housing services for the parent in order to prevent removal of a child from his or her parents? Several appellate courts have addressed whether the agency owes a duty to assist homeless parents with housing resources in the context of juvenile dependency proceedings. One of the first courts which addressed this issue was the Delaware Supreme Court in the case of *In the Matter of Derek W. Burns*.<sup>149</sup> The young mother approached the agency for temporary assistance while she sought housing. She asked the agency to return her child, but the agency refused and ordered services unrelated to her needs. The trial court terminated her parental rights when she was unable to find stable housing. The Supreme Court reversed stating that the agency failed to provide assistance to her in finding stable housing.<sup>150</sup>

The Rhode Island Supreme Court faced a similar situation in two cases in which parents claimed that the agency should have provided housing assistance to homeless families which would

allow parents to reunite with their children.<sup>151</sup> The agency resisted claiming that the court had no authority to order housing assistance in juvenile dependency cases and asserting that such expenditures would unduly tax the agency's limited resources. The Rhode Island Supreme Court affirmed the trial court holding that temporary housing relief was consistent with the intent of the state statute, stating "the Legislature intended for the court to provide a check on DCF's powers, to protect families from hasty and routine terminations by ensuring that adequate services have been provided prior to termination."<sup>152</sup>

In *Martin A. v Gross*<sup>153</sup> a class action brought by homeless parents, the New York appellate court found that the agency offered virtually no services to homeless families whose children had been placed in protective custody by the agency. In the case of *In re S.A.D.*<sup>154</sup> the mother turned to the agency for help with housing only to have her child removed. The Pennsylvania court held that this was a denial of reasonable efforts.

A Washington appellate court ruled that a trial judge could not order the agency to pay for housing for a homeless mother and her children, concluding that the trial court had overstepped its authority and must defer to the doctrine of separation of powers.<sup>155</sup> However, in a subsequent decision the Washington Supreme Court held that the State had an enforceable statutory duty to provide housing assistance to homeless children and their families, that the juvenile dependency statute could be interpreted outside of a dependency proceeding, and that a juvenile court in dependency proceedings may order the State to provide some form of housing assistance to children and their families when homelessness is a primary factor in the decision to place or to keep a child in foster care.<sup>156</sup>

Nothing in the federal law prohibits welfare agencies from providing housing for homeless parents. At the congressional hearings Senators stated "The bill...allows federal child welfare funds to be spent on specific services intended to make it possible for children to remain in their own homes..."<sup>157</sup> As one commentator noted "the judge may fashion innovative remedies, such as housing assistance, to meet the specific needs of homeless families."<sup>158</sup>

As indicated in these cases only a few states have addressed housing in the context of juvenile dependency cases. No appellate decisions on this issue exist in the majority of states.

## **2. Poverty**

Poverty is endemic in our society, and its impact on children is particularly harsh. The most recent study estimates that 21.6 percent of children in the United States live in poverty.<sup>159</sup> A strong correlation exists between poverty and foster care. As one author concluded, "children *in* foster care, by and large, come from families living in poverty."<sup>160</sup> (emphasis in the original) However, the law is clear: poverty must not be the basis for removing a child from parental care.<sup>161</sup>

Studies show the inextricable link between poverty and the child welfare system.<sup>162</sup> Courts have struggle with this issue. For example, in a Pennsylvania case the court wrote:

It is well-settled that the Juvenile Act was not intended to provide a procedure to take the children of the poor and give them to the rich, nor to take children of the illiterate and crude and give them to the educated and cultured, nor to take the children of the weak and sickly and give them to the strong and healthy. Neither will this court tolerate the separation of a young child from a parent to protect agency funding.<sup>163</sup>

In an Alabama case, the agency removed the children basically due to the parents' poverty. The allegations stated that the parents could not support the children financially or emotionally and the children were not receiving adequate medical treatment, food, clothing or shelter.<sup>164</sup> The father worked full time, but was unable to financially support the family. The appellate court reversed a termination of parental rights finding that the social service agency failed to provide any aid to the family. The court wrote that "...poverty in the absence of abuse or lack of caring should not be the criteria for taking away a wanted child from the parents. Such should particularly be the case when there has been no apparent aid given toward keeping the family together by the agency seeking its termination."<sup>165</sup> Similarly a New York appellate court stated:

An agency assuredly need not guarantee that parents will no longer be poor or unemployed, but neither can it, without more, simply impose on impoverished parents the usual plan, including the requirement, for return of their child, that they have a means of support and suitable home.<sup>166</sup>

The California legislature passed a law statute which reflects a similar state policy, stating "[no] child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family."<sup>167</sup>

While the child welfare system cannot be charged with bringing children and families out of poverty, the system can and should be prepared to provide particularized services for poor parents.<sup>168</sup> These services at the very least include child care, homemaking, babysitting, financial assistance, and housing assistance.<sup>169</sup> In addition, parenting education, employment assistance, nutrition programs, counseling, temporary kinship placements, and health care often can be of critical importance.<sup>170</sup> Whatever services offered must be available in a timely fashion, low cost or free, effective, and transportation must be provided.

### **3. Visitation**

Visitation between parents and children is an essential service in the reunification process. Some experts argue that visitation or access is the most important part of any reunification plan.<sup>171</sup> Frequent visiting maintains family relationships, helps families cope with changing relationships, empowers and informs parents, and enhances children's well-being. In addition, it helps families confront reality (the situation in which they find themselves), and it provides a time and place to practice new behaviors.<sup>172</sup> Ongoing contact with the child enhances a parent's motivation to change.<sup>173</sup> Visitation also permits others to assess the parent-child relationship and assist parents learn safe and effective parenting behaviors.<sup>174</sup>

Studies of children in out-of-home care repeatedly find that children who visit frequently are more likely to be reunited with their parents.<sup>175</sup> Studies also show the association between frequent visitation and the emotional well-being of both children and parents.<sup>176</sup> Regardless of the outcome of the legal case before the court, both the child and parents are best served by frequent visitation.<sup>177</sup>

Child development experts agree that no standard visitation schedule exists for all children. Creation of a visitation order must focus on the child's developmental needs.<sup>178</sup> For example, infants need frequent and consistent contact with their parents. Separation evokes strong and painful reactions.<sup>179</sup> According to the American Academy of Pediatrics:

Weekly or other sporadic "visits" stretch the bounds of a young child's sense of time and do not allow for a psychologically meaningful relationship with estranged biological parents....For parent-child visits to be beneficial, they should be frequent and long enough to enhance the parent-child relationship.<sup>180</sup>

Some juvenile court judges recognize this principle. For example, Judge Douglas Johnson wrote in an article that:

the standard supervised biweekly, one-or-two hour visitation is inadequate, inappropriate and unacceptable. Reasonable efforts in this context means meaningful daily or near daily parenting time to build the infant/parent relationship and achieve permanency. A judge can rule earlier on whether a parent is making progress toward becoming a proper parent when the parent is given a fair opportunity to learn skills and apply them. If Health and Human Services is unwilling to provide such services, the judge could rule that a negative reasonable efforts finding will be issued in 30 days. If so ruled, Health and Human Services will not receive its foster care matching dollars under Federal Title IV-E Foster Care and Adoption Assistance Program. But Health and Human Services must still provide the services as ordered."<sup>181</sup>

A National Council of Juvenile and Family Court Judges (NCJFCJ) publication stressed the importance of "continued and regular contact between family members," recommending daily visits between a mother and her baby.<sup>182</sup> A San Francisco Superior Court Standing Order mandates infants from birth to five years of age receive "at least six hours of visitation with their parent(s) or guardian(s) each week."<sup>183</sup>

Ensuring early and adequate visitation presents significant challenges for social workers. After the agency removes a child from parental care, the immediate concerns of the social worker include finding a temporary placement for the child and preparing documents for a court hearing that will take place almost immediately. After completion of these tasks the social worker then decides the location of the visits, the necessary transportation for the parents and child in order to meet at the designated visitation location, the length and frequency of the visits, whether the visits must be supervised, and who will provide that supervision, and whether the social worker will evaluate the child's reactions after the visit. For some of these issues, the social worker makes recommendations to the court. The



frequency, duration, and supervision involve legal issues that the judge in many states must determine after hearing recommendations from the social worker.<sup>184</sup> Judges should also determine whether transportation issues exist, particularly where public transportation is limited.

Some state social service agencies developed standards and procedures regarding visitation. One survey indicated that about half of the states specify a minimum of biweekly visits as the standard; the remaining states had no standards regarding visitation frequency.<sup>185</sup> In state court litigation parents argued that the failure of the agency to adequately facilitate visitation prevented them from maintaining a connection with their children because the agency did not adequately facilitate visitation.<sup>186</sup> However, many jurisdictions find visitation problematical due to the lack of agency resources which often makes frequent parent-child contact difficult.<sup>187</sup>

Many state child welfare agencies instituted policies and procedures on parent-child visitation.<sup>188</sup> Ms. Peg Hess, a recognized expert in parent-child visitation, concludes that agency policies grant too much discretion to the agency and that her study warrants a concerted effort to define visitation standards and frequency.<sup>189</sup> She points out that children-in care whose parents frequently visit are more likely to have high well-being ratings and to adjust well to placement than those children whose parents visit less frequently or not at all. Children whose parents visit frequently are also more likely to be discharged from placement.<sup>190</sup> She concludes that the frequency of visitation is the result of agency policy and resources, the location of the placement, the cooperation of foster parents, and caseworker attitudes and assessment of the case.<sup>191</sup>

Reasonable efforts rulings in both federal and state courts have focused on the adequacy of the visitation between parents and their children. In one federal case the court ordered the state to provide fair hearings for denials of visitation to parents with children placed in foster care.<sup>192</sup> The court held that the agency must provide visits within the first week of a child's placement in foster care, and service plans must include provisions for visits at least every two weeks and take into account the time commitments of the parent.<sup>193</sup> In another federal case, the consent decree declared that visits should occur in the home of the biological parents or the foster family whenever possible, or otherwise in a dignified setting that is natural and homelike.<sup>194</sup> Several federal courts resisted making orders regarding visits for parents and children in care.<sup>195</sup>

Several state appellate courts discuss visitation in the context of reasonable efforts requirements. Some of these decisions emphasize the importance of visitation in maintaining the parent-child relationship. The Rhode Island appellate court in the case of *In re Nathan F.* stated “[t]he state had to demonstrate by clear and convincing evidence: that it (1) consulted and cooperated with the parent or parents in developing a plan for appropriate services . . . , [and] (2) made suitable arrangements for visitation. . . .”<sup>196</sup> In *In re Kristina L.*,<sup>197</sup> the agency arranged for the mother to see her daughter one hour every 2 weeks. When a termination hearing was held, the child was “bonded” to the foster parents. The mother appealed the termination decision, and the Rhode Island Supreme Court reversed the trial court ruling because the agency failed to provide reasonable efforts to the family. The Supreme Court noted that it was no surprise that the child bonded to the foster parents in light of the “totally inadequate” visitation schedule arranged by the agency.

Increased judicial oversight of parent-child visitation is vitally necessary to ensure adequate contact.<sup>198</sup> In a California case, *In re Alvin R.*, the agency recommended delaying visitation until the initiation of counseling sessions for the father and son. Counseling was delayed, and as a result no father-son visitation occurred. On appeal the appellate court reversed the trial court finding that the agency had provided reasonable efforts stating “[t]he longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship.”<sup>199</sup> In another California case, *Tracy J. v Superior Court*<sup>200</sup> the appellate court held that the agency failed to make reasonable efforts, and that visitation was inadequate given the safety concerns present in the case. Although the parents had limited intellectual functioning, they fully cooperated with services offered, and visits had been reported as positive. Nevertheless the agency permitted only one supervised visit a week. The appellate court held that this was a denial of reasonable efforts and that the agency should have increased the visitation. A New Mexico Appellate Court reached a different result in a case where agency delays prevented meaningful visitation between the father and his child. The court concluded that the more immediate needs of the child for permanency should prevail.<sup>201</sup>

Providing adequate visitation with an incarcerated parent presents a challenge. Some state courts have ruled that limited visitation while parents are incarcerated violates the reasonable efforts requirement.<sup>202</sup> These cases hold that incarceration should not mean the end of a parent-child relationship.<sup>203</sup> In an Ohio case the agency’s case plan provided only general goals. The agency scheduled to regular visits and required the parents to call and arrange visits for no more than once a week and for no longer than one hour. The appellate court reversed the termination of parental rights,<sup>204</sup> stating its opinion that when the agency provides visitation to an incarcerated parent, the appellate court will be ready to affirm reasonable efforts.<sup>205</sup> If a parent fails to take advantage of visitation, the court will likely affirm the efforts of the agency even if those efforts were minimal.<sup>206</sup>

The author while sitting as Presiding Judge of the Santa Clara County Juvenile Court became concerned about the quality and quantity of parent-child visitation during the family reunification period. At the time the agency scheduled visitation for once a week for two hours at a large converted gymnasium. The author asked two well-known psychologists to review the visitation location and to prepare a report addressing the question: is the current parent visitation program supportive of family reunification? Their report indicated that the visitation failed to support family reunification, the environment was too impersonal, and the visits occurred too infrequently. The author met with the agency director who responded with significant changes in the county’s entire visitation scheme. The author’s letter to the psychologists, their report, the author’s letter to the Director of Children’s Service, his response, and the author’s letter to the local newspaper are contained in Appendix E.

The juvenile court judge must take an active leadership role to ensure improvements occur in local visitation practice. The following steps outline the measures a judge should take to provide children in foster care appropriate visitation:

- Recognize that visitation is a critical element of the family reunification process and be prepared to address visitation at each hearing.
- Ensure that a visit take place soon after the removal as both the parent and child will

be experiencing grief over the separation.<sup>207</sup>

- Oversee the child's initial placement decision to ensure that it supports frequent, meaningful visitation.
- Develop clear, enforceable, written visitation orders for each case.
- Develop local rules that address visitation issues.
- Determine the frequency and duration of visitation by measuring the needs of the child and family rather than the capacity of the agency.
- Encourage cross-systems training for all participants in the juvenile dependency court system to address child development principles and strategies to improve the quality and quantity of visitation.
- Examine best practices and draw from model programs from around the country to improve visitation practices.
- Facilitate collaborative community efforts to improve visitation practices and overcome barriers to successful visitation.<sup>208</sup>
- Work with the agency and community members to make transportation available so that frequent visitation is possible.
- Discuss visitation at court system's meetings so that attorneys and service providers can contribute their ideas.<sup>209</sup>

Children and their parents benefit from visitation, yet policies and practice in most states reveal the inadequacy of visitation both in quantity and quality. Moreover, very few appellate decisions address visitation, which indicates that attorneys fail to litigate issues surrounding the quality and quantity of visitation. Visitation plays a critical part in the family reunification process. Judges and attorneys must pay particular attention to this issue.<sup>210</sup>

#### **4. Case Plan and Provision of Appropriate Services**

Federal law requires the agency to provide a case plan which identifies the problems presented in the case and the services offered to alleviate the problems.<sup>211</sup> As a Minnesota appellate court stated: “[T]he record should show that the supervising agency identified the problems leading to the loss of custody [and] offered services designed to remedy those problems....”<sup>212</sup> In order to offer reasonable efforts, the plan must address the problems that brought the child to the attention of the agency,<sup>213</sup> and must not “consist of a litany of required services that [are] not related to the conditions that eventually gave rise to the dependency adjudication.”<sup>214</sup>

Some courts recognized the failure of the agency to provide the needed services to parents trying to reunify with their children. In a Connecticut case, the trial court terminated reunification services and found the agency had provided reasonable efforts. The trial court found the primary obstacle to reunification was the mother's “longstanding lack of insight or sense of responsibility for [her

daughter's] past,<sup>215</sup> which passed the burden of obtaining services to the mother. The appellate court reversed the trial court, finding that the agency had not provided reasonable efforts.<sup>216</sup>

In a Delaware case the agency's drug treatment professionals made clear that the substance abusing mother needed more than referrals to out-patient services. When the agency failed to provide those services, the Family Court denied a petition to terminate parental rights holding that the agency failed to develop and implement an adequate case plan.<sup>217</sup> In a California case the case plan included counseling for the child as the key component to reunification.<sup>218</sup> Yet the agency referred the child to a therapist where there was a long waiting list for services. The agency did not explore other therapists or transportation that would make it possible for the child to attend another therapist. In its reversal of the trial court the appellate court stated "Some effort must be made to overcome obstacles to the provision of reunification services."<sup>219</sup> (emphasis in the original) Other cases have criticized the agency's lack of efforts towards removing particular obstacles to reunification such as a parent's lack of financial resources,<sup>220</sup> a lack of stable housing,<sup>221</sup> and substance abuse.<sup>222</sup>

However, state appellate courts acknowledge that "reasonable efforts" does not mean every conceivable effort or service. In *In re Alvin R.* the California appellate court noted "[w]e recognize that the mere fact that more services could have been provided does not render the Department's efforts unreasonable."<sup>223</sup> The New Hampshire appellate court in *In re Jonathan T.* stated that the agency need not make "every effort," only "reasonable efforts,"<sup>224</sup> and the Connecticut appellate court noted that the agency is required to "everything reasonable, not everything possible."<sup>225</sup> Nevertheless, the trial court should always examine the case plan to determine whether the offered services addressed the problems that brought the child to the attention of the agency.

## 5. Substance Abuse

Many parents lose custody of their children because of their substance abuse problems. Between 50 to 90 percent of all child welfare cases involve issues of parental substance abuse,<sup>226</sup> and nationally over 700,000 women abuse drugs while pregnant.<sup>227</sup> Many appellate court decisions reflect the widespread use of intoxicating substances by pregnant and parenting mothers and their partners.<sup>228</sup> These cases focus on prenatal drug abuse, the danger to children resulting from parental substance abuse, drug testing, the confidentiality of medical records, and the criminalization of fetal abuse.<sup>229</sup>

There are different types of cases involving substance abusing parents, and these should be analyzed separately. For the drug-exposed infant, the social worker should make an evaluation whether state intervention is necessary.<sup>230</sup> The questions that the social worker and later the judge should ask include the status of the infant, the status of the mother and father, the home environment, and previous contact with the social services agency.<sup>231</sup> Persuasive research indicates that if the mother has a support person in her life, the baby can safely remain with her, possibly with some services.<sup>232</sup> If the mother has a serious substance abuse problem and little or no support system, the social worker should consider placing the mother and baby together directly from the hospital in an in-patient program. All of these strategies are consistent with the legal mandate that the social worker provide services to prevent removal.

For cases involving substance abuse and older children, the social worker must determine the impact of the abuse on the children. The social worker may decide to refer the parents to out-patient substance abuse treatment programs. Parenting programs that focus on substance-abusing parents can also be effective, preferably ones that focus upon mother-child relationships.<sup>233</sup> Some state courts have ruled that substance abuse by itself is not a sufficient basis for juvenile court intervention - connection between the abuse and child well-being must exist.<sup>234</sup>

In all types of cases where the child has been removed the court must determine whether the agency has provided adequate services for the substance abusing parents.<sup>235</sup> Appellate case law has addressed this issue. In one case the child was removed from the parents because of domestic violence and substance abuse. The social worker insisted that the mother participate in domestic violence counseling, but the mother asked for substance abuse services. The case plan did not include substance abuse services. The appellate court found that no reasonable efforts were provided stating “[T]he record does not support the finding that the Agency identified the problems leading to the loss of custody of the child, offered and provided services designed to remedy those problems, and made every reasonable effort to assist the parent in the areas where compliance proved difficult.<sup>236</sup>

Some communities do not have adequate substance abuse services, particularly in the rural areas of our country. Community leaders must recognize the high cost of foster care and other out-of-home placements. For example, the author along with others persuaded the local Board of Supervisors to prioritize substance abuse services for mothers and their infants. The local Department of Family and Children’s Services responded by opening a residential treatment center for substance-abusing mothers and their infants.

If a parent is unwilling to participate in substance abuse services, however, the parent runs the risk of losing custody permanently. In one case the mother was ordered to enter a residential treatment program as a part of the case plan.<sup>237</sup> She refused and continued to abuse alcohol and drugs. The appellate court affirmed the trial court’s decision to terminate reunification services finding that the agency had offered reasonable services to the mother.

Commentators note that recovery from substance abuse can take a long time and that services have been inadequate,<sup>238</sup> however, recent developments have made many re-think that observation. The family drug treatment court (FDTC) is the most important development in substance abuse treatment for parents whose children are the subject of child welfare proceedings.<sup>239</sup> First created in 1993 in a Florida juvenile court and based on the criminal drug court model, these courts have expanded rapidly across the United States and now number more than 340.<sup>240</sup> Perhaps no other rehabilitative program produces more successful outcomes in the treatment of substance abusing parents. FDTCs demonstrate that substance abusing parents can change – they can become safe, sober parents in much greater numbers than thought possible. That change can occur within a reasonable time, a time consistent with ASFA timelines. The juvenile court judge can facilitate this rehabilitative process by working with substance abuse treatment providers, the social services agency, and other service providers. Numerous studies confirm FDTCs success in rehabilitating parents and permitting safe reunification.<sup>241</sup> Comparisons between juvenile dependency courts that offer a FDTC and those

that do not clearly indicate that reunification is more likely when a parent participates in a FDTC.<sup>242</sup>

FDTC's successes can be partially attributed to the presence of a substance abuse expert in the court process. The judge needs an accurate assessment of the parent's substance abuse problem and the proper treatment plan for him or her. Social workers usually have insufficient training to provide the court with that assessment or to create an appropriate treatment plan. The development of FDTCs shows that juvenile court judges need substance abuse expertise to help make the important decisions about the treatment and rehabilitation of substance abusing parents.<sup>243</sup>

## 6. Domestic Violence

A child's exposure to domestic violence in the home can result in state intervention on behalf of that child.<sup>244</sup> In fact, a substantial portion of CPS caseloads involve domestic violence.<sup>245</sup> Domestic violence cases typically involve one parent inflicting violence upon the other, and are often accompanied by parental substance abuse, a dirty home, parental mental health problems, poverty, and homelessness.<sup>246</sup> Commentators note that while social workers may identify substance abuse or mental health issues as a justification for removing a child, the issue of domestic violence should not be overlooked, whether it is identified at the outset or during the pendency of a case.<sup>247</sup> The legal issues that the court must decide include whether the agency provided reasonable services to prevent removal of the children and then, at subsequent hearings, whether the agency provided adequate services to keep the child and the victim-parent safe and permit the parent or parents to reunify with their child.

The most important case regarding domestic violence, child protection, and reasonable efforts is *In re Nicholson*, where a federal court judge in New York City held that the state violated a mother's constitutional rights by removing her children after she was victimized by domestic violence.<sup>248</sup> The court made clear that social workers have a responsibility to the victim of violence as well as to the child in order to prevent removal of the child. To satisfy the reasonable efforts requirement the court suggested that the social worker explore options such as removal of the abuser, assist the victim to secure a restraining order, or placement of the victim and child in a safe environment.<sup>249</sup> The fact that a parent is the victim of domestic violence is insufficient reason to remove a child.

After the *Nicholson* case, social service practice in New York changed significantly.<sup>250</sup> The New York courts recognize the obligation upon the child welfare agency to provide services to prevent removal and the court's obligation to review agency actions to determine whether the agency fulfilled its legal obligations.<sup>251</sup> Further, subsequent New York case law clarified the agency's responsibility to provide services to enable a parent to reunify with the child.<sup>252</sup> One appellate case noted that agency efforts should help the parent "so as to render the parent capable of caring for the child."<sup>253</sup> These services may include "assistance with housing, employment, counseling, medical care and psychiatric treatment."<sup>254</sup>

In several New York cases involving domestic violence the trial court addressed the reasonable efforts issue which resulted in a return of the child to the non-offending parent including the case of *In*

One of the reasons that New York trial judges review removals so quickly relates to the state statutory structure, which requires that the reasonable efforts issue must be addressed by the court at the shelter care hearing.

(iii) In determining whether temporary removal of the child is necessary to avoid imminent risk to the child's life or health, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, whether reasonable efforts were made prior to the date of application for the order directing such temporary removal to prevent or eliminate the need for removal of the child from the home.

If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding. [256](#)

Additionally, New York law requires a hearing shortly after the shelter care hearing. [257](#) A parent or other person legally responsible for the care of a child temporarily removed or the child's attorney can apply for a hearing at which the court must determine whether the child should be returned to the parent. The hearing must be held within three court days of the application. At the hearing the court must determine, among other issues,

...whether reasonable efforts were made prior to the date of the hearing to prevent or eliminate the need for removal of the child from the home and where appropriate, whether reasonable efforts were made after removal of the child to make it possible for the child to safely return home. [258](#)

This statute permits the parties to raise the reasonable efforts issue early in the case, and particularly the reasonable efforts to prevent removal issue. Christine Kiesel, the Court Improvement Program Director in New York, reports that New York judges and attorneys receive significant training on reasonable efforts. The issue is contested frequently at Family Court §§1022 & 1027 hearings shortly after the child is taken into emergency protective custody (§1022) or when the agency requests to take the child into emergency protective custody before the filing of a petition (§1027). This hearing provides an opportunity to prevent removal from the parent at the outset of the case. [259](#) The attorneys litigate the reasonable efforts to prevent removal issue at this hearing realizing that it is often difficult to secure the return of a child once the child is removed. [260](#) The New York experience along with the later sections of this book entitled "Early is Better" and "Interim Hearings" support the scheduling of hearings early in the case to examine reasonable efforts issues.

A few other state appellate court opinions have addressed domestic violence in the context of child welfare litigation. In a Minnesota case, the agency removed the children from their mother's care because of their exposure to violence inflicted on her and the children. The mother participated in services, but failed to end the abusive relationship. The trial court terminated parental rights and the court of appeals affirmed the judgment. [261](#) The appellate court failed to address why the mother

remained in the abusive relationship. Was she threatened or did she stay because of her love for the abuser? A careful examination of this issue would have been helpful.

Mothers who are victims of domestic violence face difficult choices. Threats from the abuser, loss of economic support, and love for the abuser may inhibit her desire to leave and care for her child.<sup>262</sup> In a Connecticut case the agency failed to recognize that the mother was a victim of domestic violence. The appellate court, in reviewing a termination of parental rights, noted that the agency was mistaken about the mother's victimization, but that the parents "actively sought to deceive the service providers by failing to disclose the dysfunction, abuse and violence within the household."<sup>263</sup> The appellate court affirmed the termination of parental rights and the reasonable efforts finding by the trial court.

National policy experts focus on the need for judicial use of the reasonable efforts finding in domestic violence cases. As one policy book stated: "[t]he judge should utilize the reasonable efforts provisions of state and federal law to hold the social service or child protection service agency accountable for the timely provision of appropriate services to family members."<sup>264</sup> Another publication states:

The court should review the actions the agency has taken to protect the children, and to provide necessary services in a timely manner, particularly those addressing the domestic violence, to the children and to each of the parents to enable the children to remain in the home."<sup>265</sup>

A Florida publication co-authored by Judge Cindy Lederman concludes that "[r]easonable efforts require immediate provision of domestic violence services to families in dependency court."<sup>266</sup>

A California publication delineates the following efforts by the agency to address safety in domestic violence cases and they include:

- assisting in the creation of a safety plan for the abused parent and the children;
- consulting with a local domestic violence agency about providing advocacy and services, and linking the abused parent and the children with that agency;
- assisting the abused parent in seeking a restraining order for her/himself and the children;
- assisting the abused parent and the children in securing temporary, confidential shelter or other housing assistance; and
- requiring supervised visitation or other restricted visitation for the abusive parent, and providing access to visitation center services.<sup>267</sup>

The California legislature has gone further by requiring the court to "examine the child's parents, guardians, or other persons having relevant knowledge and hear relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel to present,"<sup>268</sup> and

...make a determination on the record, referencing the social worker's report or other



evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) or Section 306, and whether there are available services that would prevent the need for further detention.<sup>269</sup>

Questions the judge or attorneys should ask the social worker include: (1) Did you screen for domestic violence at the outset of the case? (2) Does the petition allege the specific facts about the abuse?<sup>270</sup> (3) What steps did you take to remove the abuser from the family home? (4) Did you consider placing the mother and child in a battered woman's shelter? (5) Did you assess the possibility of the mother and child reside with a relative? (6) Did you consider in-home services to support and protect the mother? (7) Did you secure a restraining order for the mother or assist her secure a temporary restraining order? (8) Since the time of removal what steps have you taken to obtain safe housing for the mother? (9) Is it safe to return the child to the mother today? (10) What would be necessary in order to make it safe to return the child to the mother? (11) Are you prepared to provide the mother support temporarily for housing and food? (12) Have you referred the mother to a domestic violence advocacy organization?<sup>271</sup> Of course, if the abuser is the mother and the victim is the father, the same questions should be asked to identify a safe environment for the father and child to reside.

The judge or attorneys should ask these questions early in the case, preferably at the shelter care hearing. They address whether the agency has provided reasonable efforts to prevent removal or to facilitate a speedy return of the child to the abused parent. They also identify issues that the case plan should address.

## **7. Mental Health**

All child welfare service providers have to deal with mentally challenged parents struggling to rear their children.<sup>272</sup> Some parents have mental health problems so severe that the state will intervene and remove the child from their care. States vary widely in their response to parents with severe mental health problems. A few states created an exception permitting reunification services to be bypassed in cases of chronic mental illness.<sup>273</sup> In Nebraska the state appellate court held that reunification services need not be provided in spite of a statute because, in one case, "the mother was destined by virtue of the mental condition never to be able to comply with any order of rehabilitation."<sup>274</sup> Under South Carolina law mental illness, drug or alcohol addiction, mental retardation and extreme physical incapacity can serve as grounds for termination of parental rights.<sup>275</sup> If the evidence shows that the parent could benefit from services, however, the state must provide services.<sup>276</sup>

Some state courts resist the trend to bypass services and order reunification services where the parent suffers from mental health difficulties.<sup>277</sup> These court decisions recognize that the parent's mental health issues should not automatically result in the permanent removal of the child.<sup>278</sup> Some appellate decisions demonstrate that child welfare agencies offer extraordinary reunification services,<sup>279</sup> while others indicate that such services are not required by law.<sup>280</sup> In Florida, an appellate court held that a simple referral to a mental health agency failed to meet the reasonable

efforts requirement and reversed a termination of parental rights decision.<sup>281</sup> A New York court found that the agency did not provide reasonable efforts including intensive case management services to a parent suffering from mental illness.<sup>282</sup> However, on occasion the state court will hold that the agency is not required to provide a service that is not readily available,<sup>283</sup> when the parent is uncooperative,<sup>284</sup> or when the services would be duplicative of services a parent is receiving on his or her own.<sup>285</sup> Even when the court orders reunification services, those services often do not meet the needs of the parent.<sup>286</sup>

In several states the courts have demanded that the agency provide appropriate services to mentally ill parents and have reversed termination of parental rights decisions because the state failed to provide reasonable efforts.<sup>287</sup> A California court found that the agency had not provided tailored services to meet the needs of a developmentally disabled parent.<sup>288</sup> The court noted that the agency failed to help the mother deal with the health and cleanliness issues plaguing her children. The agency “helped” the mother find housing by telling her to keep her eyes open for a house. The court stated the record was “clear that no accommodation was made for [the mother’s] special needs in providing reunification services.”<sup>289</sup> One can conclude from this ruling that, at least in this state, mental illness, standing alone, is not a sufficient basis to justify legal proceedings removing a child. A nexus between the illness and risk to the child must exist.<sup>290</sup> The reasoning in this case resembles that in *In re Venita L.*,<sup>291</sup> where the agency removed the child and commenced dependency proceedings because the mother was confined to a psychiatric hospital. The agency amended the service plan five times in a little over a year. The agency also told the father to attend Alcoholics Anonymous meetings. When services were terminated the parents appealed the decision, the appellate court reversed the trial court finding of reasonable efforts. The court of appeals pointed out that father’s substance abuse was not the reason for the dependency proceedings and that the mother had completed her case plan.

In another California case, the appellate court reversed a termination of parental rights decision by the trial court, holding that the mentally ill parent was hospitalized most of the reunification period and the trial court had the discretion to extend the time for reunification given the unique circumstance of the case.<sup>292</sup> In the case of *In re David D.*<sup>293</sup> the mother voluntarily placed her children in foster care to escape an abusive environment with her husband. Her accompanying depression resulted in a suicide attempt during the reunification period, which prompted the system to cease all efforts to help her reunify. The appellate court found the system reacted with “appalling lack of compassion” and ordered six more months of services, during which the mother was to receive a chance to reestablish regular visits with her children.

Numerous New York cases address the provision of reasonable efforts to parents with mental health problems. In one case a mother, classified as mildly mentally retarded, appealed the trial court decision which terminated her parental rights.<sup>294</sup> The appellate court reversed the termination holding that the agency failed to make diligent efforts and that the evidence did not establish that the mother’s retardation precluded her from caring for the children in the future. The appellate court also pointed out that the agency had not provided the mother general psychiatric or psychological services or specialized services for mental retardation.<sup>295</sup> In another New York case the trial court found the agency had not provided reasonable efforts to prevent removal of the children from a mother with

psychiatric needs.<sup>296</sup> Similarly, in the Oregon case of *State ex rel. Juv. Dept. v. Habas*,<sup>297</sup> the children were placed in state custody because of their mother's periodic bouts of manic depression. The agency returned the children to their mother and provided services including a homemaker and a day nurse. Sixteen days later and before any services were in place, the mother suffered another bout of depression. The agency removed the children and parental rights were terminated. Ultimately the Oregon Supreme Court overturned the termination decision, finding that reasonable services were never provided to the mother due apparently to bureaucratic confusion. In another appeal from a termination of parental rights, a Florida court found that the evidence did not support the trial court's finding that the mother was a paranoid schizophrenic and that there was evidence that with proper psychotherapy the mother would have the tools to manage her disorder. The court found the agency had not made reasonable efforts to reunify mother and her child or provide her with appropriate services. The appellate court reversed the termination and remanded the case.<sup>298</sup>

Even with mental health problems, the parent must demonstrate some interest in reunification. In one California case the agency discovered during the reunification period that mother was developmentally disabled and that it was difficult for her to comply with the case plan. Nevertheless, services were terminated and the court terminated parental rights. On appeal the court affirmed the termination. The court found that there was substantial evidence to support the trial court's finding that it was unlikely that the mother would develop an adequate parental relationship with her daughter. The agency offered reasonable efforts, but the mother had no motivation and failed to participate.<sup>299</sup>

Some critics assert that welfare agencies do not tailor reunification services to the needs of disabled parents. They point out that without individualized services that address the special needs of these parents, a termination of parental rights will occur.<sup>300</sup> Moreover, the Americans with Disabilities Act does not seem to provide any support for disabled parents facing termination of parental rights proceedings.<sup>301</sup> A Michigan appellate court concluded that "termination of parental rights proceedings do not constitute 'services, programs, or activities' within the meaning of [the ADA] 42 U.S.C. 12132."<sup>302</sup>

Juvenile and family courts will always have to face difficult issues regarding mentally ill and developmentally delayed parents and their children. Judges should insist that they receive high quality information about each parent's capabilities. The information may come from psychological or psychiatric evaluations, and judges should insist that the evaluator follow the guidelines from the American Psychological Association.<sup>303</sup> Judges should also consider what supports the parent has including relatives and close friends. Often the parent can remain a part of the child's life if others are present in the daily family life. Mentally ill parents deserve an opportunity to demonstrate they can be safe parents. As one critic concluded:

It is not that Mary Ann (and others like her) is reasonably likely to become a fit parent; rather, it is that she ought to be provided the opportunity to achieve fitness, and that her children should be provided the opportunity to remain with their biological mother. The state cannot be held liable for failing to perform miracles, but the state can be expected to make the minimum 'reasonable effort' that might afford some

chance of change for these parents.<sup>304</sup>

A review of the appellate cases involving mental health issues (refer to Appendix A) reveals that most appellate decisions affirm trial court termination of parental rights judgments. In order to make the reasonable efforts mandate meaningful in cases involving mentally ill parents, the agency must offer services specially designed to address the parent's disability, and judges must be prepared to examine the quality of services provided to these parents.

## **8. Culturally Competent Services**

Children of color represent 41 percent of children within the United States, yet 59 percent of children involved in the child welfare system are children of color.<sup>305</sup> Children from all over the world reside in the counties and states in the United States. These children speak scores of different languages.<sup>306</sup> Moreover, significant numbers of gay and lesbian relationships parent children as well.<sup>307</sup> Yet the federal and state statutes make no mention of whether reasonable efforts should encompass culturally competent services.

In some respects the agency and the courts have made significant changes in order to accommodate different cultures. Most courts use interpreters so that non-English speakers can understand the proceedings. Many courts have interpreters as a part of court staff, some have interpreters for multiple languages, and many courts have contractual arrangements with interpreters who are on call when a non-English speaking family comes before the court. Yet some courts have held that the parents have no right to an interpreter in juvenile dependency proceedings.<sup>308</sup> The paucity of appellate case law indicates that agencies, courts, and attorneys rarely discuss culturally competent services. A small number of cases raise the issue that the services offered were not reasonable because of a lack of cultural competence.<sup>309</sup>

Some appellate courts make strong statements about the necessity of tailoring services to meet the specific cultural needs of each particular family. For example, several California appellate cases hold that the service plan must be specifically tailored to fit the circumstances of each family and designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.<sup>310</sup> One California court ruled that the agency must make a good faith effort to develop and implement a family reunification plan.<sup>311</sup> The court stated:

This statutory scheme contemplates immediate and intensive support services to reunify a family where a dependency disposition removes a child from parental custody. (citations omitted.) A good faith effort to develop and implement a family reunification plan is required. A reunification plan must be appropriate for each family and be based on the unique facts relating to that family. This reunification plan is a crucial part of the dispositional order. In light of the mandatory language of the statutes and the rule, 'failure to formulate an adequate reunification plan [has] been held to be reversible error under rule 1376(b).<sup>312</sup>

Yet other courts fail to understand the cultural barriers facing some families. For example, a

Minnesota appellate court found services were ‘culturally appropriate’ when the state provided an interpreter for Vietnamese parents even though the real problem concerned the parents’ conduct rather than a language barrier.<sup>313</sup> In a California case the Filipino mother was removed from a support group because she could not understand English adequately.<sup>314</sup> The counselor wrote that the mother

...seems to have difficulty with understanding the group material....The facilitators are concerned that the language barrier may be too great for Maria to benefit from the group all...it is felt that she would benefit more from a culturally competent provider of services. (in Tagalog).<sup>315</sup>

The court of appeals affirmed the termination of reunification services stating that reunification services need not be the best services available, merely what is reasonable. A similar result occurred in the case of *M.V. v Super. Ct. Orange County*,<sup>316</sup> In contrast, the appellate court in *Nahid v Superior Court of Sacramento County*<sup>317</sup> granted the mother’s extraordinary writ and ordered the trial court to “make a fresh start,” noting “[j]uvenile dependency law does not codify the dominant culture or the reigning political system.”<sup>318</sup> In this case the trial court had not ordered reunification services because the children believed that their Iranian mother was involved with the Mujahedin.

When making reasonable efforts decisions, judges must be sensitive to the family’s cultural context and should expect social workers and attorneys to inform the court about the family’s special needs. Only in this regard will services provide what is necessary for the parent to be successful in reunification efforts.

## **9. Meaningful Efforts - Agency’s Good Faith**

On occasion the agency provides services that do not address the actual problems that brought the child to the attention of the juvenile court. This situation presents another reasonable efforts issue – did the agency provide services that met the parent’s needs? The agency has an obligation to check to see that the reunification services are in place and that they address the problems that brought the child to the attention of the state. Simply providing the parent with a written plan without monitoring the effectiveness of the plan should be a failure of reasonable efforts. Put another way, did the agency make good faith efforts to prevent removal or to reunify the family?<sup>319</sup>

A few appellate courts affirmed this monitoring duty. In one case the court held that as a part of its responsibilities, the agency must make certain that the service plan is working, that the parent has found the correct services and is participating in them. In this case, *Amanda H. v Superior Court*, the social worker failed to tell mother she was in the wrong counseling program until the reunification period had run.<sup>320</sup> The appellate court reversed the trial court’s decision to end reunification services finding that the social worker failed to demonstrate good faith efforts and made representations that may have thwarted mother’s ability to adequately address the plan within the statutory time frame.

Parallel to the monitoring duty is the social worker’s duty to engage the family so that they would take advantage of the services. For example, in a California case the social worker only provided stamped envelopes and ignored the father’s request for visits. The appellate court reversed

the trial court's finding of reasonable efforts.<sup>321</sup>

An Indiana appellate court examined the agency's role in assisting an itinerant family in a case where the trial court had terminated parental rights.<sup>322</sup> The appellate court found that the agency did not provide adequate services in spite of the fact that the parents frequently moved and changed employment. The court held that the agency should have helped the family find a stable residence. Moreover, the agency should have ensured that the court-ordered homemaker actually visited the parents' home.

Some appellate courts analyze the effectiveness of services and whether the agency acted in good faith to provide services to the parents.<sup>323</sup> In a Delaware case experts informed the court and agency that the mother needed inpatient substance abuse treatment, but the agency did nothing but offer the mother referrals for out-patient treatment.<sup>324</sup> The appellate court held that the agency's efforts were not meaningful.

Some appellate cases hold that the services must be individualized to the child and family. For example, in the California case of *In re Dino E.*<sup>325</sup> the appellate court held that a mechanical approach to a reunification plan is not what the legislature intended. Moreover, some appellate cases hold that the services must address the problems that brought the child and family to the attention of the child protection agency and the court system. In a California case the appellate court held that the agency should have crafted a plan to help the father obtain housing,<sup>326</sup> In a Connecticut case the appellate court held that the state had not put into place adequate services to meet the needs of the mother and her children. The missing services included schooling for one child, respite care for the mother, an effective crisis telephone line, and therapy for one child.<sup>327</sup>

Judges should be prepared to determine whether the agency acted in good faith towards the parents and whether the agency carefully monitored the parent's efforts to participate in services.

## **10. Strengthening the Parent-Child Relationship**

Removing a child from parental care presents significant problems for the parent-child relationship. The child may not understand why the removal took place. The parent may feel guilty about the behavior that resulted in the removal, and the parent-child relationship may suffer. As a part of any reunification plan the agency should exercise diligent efforts to encourage or strengthen the parental-child relationship. The court held in the New York case of *In re Sheila G.* addressed this issue, finding that the agency failed in its duty to assist the mother and, in fact, had interfered with reunification.<sup>328</sup> The court explained that the agency must prove to the court by clear and convincing evidence "that it fulfilled its statutory duty to exercise diligent efforts to strengthen the parent-child relationship and to reunite the family."<sup>329</sup>

The Rhode Island appellate court reached a similar conclusion in the case of *In re William.*<sup>330</sup> In this case two developmentally disabled parents lost their children to the agency. Because they were not successful during the reunification period, their rights were terminated. On appeal the Supreme Court stated that "an evaluation of [the agency's] efforts to strengthen the bond between the parents

and the child is best achieved through a ‘totality of circumstances’ approach.” The court held that the agency must take every conceivable step to insure that reasonable services have been provided. Efforts to strengthen the relationship between the parents and the child may be adequate for average parents, but should be specialized for an intellectually limited parent. The “particular needs” of cognitively impaired parents must be considered and that “efforts to encourage and strengthen the parental relationship with respect to an average parent are not necessarily reasonable to an intellectually limited one.”<sup>331</sup> In another similar case, the New York appellate court affirmed the trial court dismissal of a petition to terminate the mother’s parental rights. Although the mother showed little interest in maintaining regular contact with the child during the reunification period, the court noted that the agency had not provided services to strengthen and encourage the mother’s relationship with her child.<sup>332</sup>

Judges should be sensitive to the parent-child relationship and the agency’s efforts (if any) to strengthen that relationship. Successful family reunification depends in great part on the connection between parent and child as well as the parent’s incentive to reunify.<sup>333</sup>

## **11. Timeliness of Services**

ASFA sets strict time limits on the goal for a permanent placement – a year, possibly 18 months. Congress fashioned this legislation based in large part on the recognition that children cannot wait, and that they are developing beings who need stability as soon as possible.<sup>334</sup> Federal law defines “time-limited family reunification services” to include services and activities that facilitate the safe and timely return of the child home that are offered within the first 15 months of the child entering foster care.<sup>335</sup> State plans include the requirement that states assure they are providing time-limited family reunification services.<sup>336</sup> Yet, rehabilitation and reunification efforts by parents can be difficult if they must wait for months to receive court-ordered services. Unfortunately, many jurisdictions offer limited services, and parents are placed on waiting lists before engaging in services. A few appellate cases discuss this problem, yet it presents a fundamental issue in child protection law: which policy should take preference, the child’s sense of urgency to reach a permanent plan or the parents’ need to have a fair opportunity to rehabilitate when services are not available in a timely fashion?

After the passage of ASFA many state courts understood the need for timely permanency and made efforts to limit the reunification period.<sup>337</sup> Moreover, these courts recognize that ASFA has shortened the time for reunification.<sup>338</sup> As a result a number of appellate decisions uphold the termination of reunification services in shorter periods of time than the ASFA’s twelve months.<sup>339</sup> Some appellate cases hold that parents must engage in services as soon as possible as parental delay can lead to a termination of services.<sup>340</sup> In each case the judge must decide whether the agency offered timely services, whether the parents promptly engaged in services, and whether the child’s need for timely permanency should be the over-riding concern.

## **12. Incarcerated Parents**

The United States incarcerates an inordinate number of people. According to the Census Bureau, over two million persons resided in prisons and jails in 2009, including over 113,000 women.<sup>341</sup>

Over 70% of these women are mothers, 90% of their children are under 18, and 60% had more than one child.<sup>342</sup> As a result, many child welfare cases involve incarcerated parents.

An incarcerated parent faces additional hurdles during the reunification period. Difficulties arise for attending court proceedings, participation in services, visitation, and contact with an attorney. The law in most jurisdictions confirms that incarceration does not automatically mean that a parent loses his or her children,<sup>343</sup> yet social worker responses to these parents have often been ineffective and, on occasion, unhelpful to the parent.<sup>344</sup> ASFA includes abandonment as an aggravating circumstance,<sup>345</sup> although state courts generally find incarceration is only a factor in determining whether a parent has abandoned a child.<sup>346</sup>

The judge must ensure that an incarcerated parent receives notice of the proceedings and that the parent is included in the case plan. The judge must also determine what services, if any, are available to the incarcerated parent. Is visitation possible, and if not, is phone or mail access possible? Can the parent be transported to court for hearings about the child? For example, under California law a prisoner/parent must be transported to the court if dependency proceedings have been instituted regarding the parent's child and the parent desires to attend the hearings.<sup>347</sup>

An Iowa court held that the father's misdeeds resulted in his incarceration, and blame should not be shifted to the agency for failing to provide all possible services to him.<sup>348</sup> The Hawai'i Supreme Court agreed stating it is "not reasonable to expect [the agency] to provide services beyond what [is] available within the corrections system."<sup>349</sup> For example, courts may not demand the agency provide visitation when the logistics are difficult and instead shift blame to the incarcerated parent.<sup>350</sup> However, some cases hold the agency responsible for failures to facilitate visitation for an incarcerated parent and have reversed the trial court's reasonable efforts findings. In a California case the father was incarcerated for 16 out of the 17 months of the reunification period. The agency offered him no services and did not contact the prison to determine what services might be available. The court of appeals reversed the termination of parental rights decision.<sup>351</sup> In another California case the trial court ordered visitation and the department agreed, but failed to facilitate even one visit during the many months the mother was incarcerated. The appellate court reversed a termination of parental rights stating that the agency failed to provide reasonable efforts to the mother.<sup>352</sup>

In the case of *In re Maria S.*<sup>353</sup> the mother gave birth while incarcerated and the agency filed a dependency action. The agency offered her no services until her release, but upon her release she was deported and not permitted to return to the dependency hearings. At the 12 month hearing the court found reasonable efforts had been provided and terminated services. The mother appealed the subsequent termination of parental rights determination. The appellate court reversed the trial court's finding of reasonable efforts holding that there was no good faith effort by the agency to provide services. The agency provided no evidence that it looked to see what services might be available while mother was incarcerated, nor offered any evidence that mother failed to cooperate. The court concluded that the mother was not given any reasonable opportunity to reunify with her daughter.<sup>354</sup> Reaching an opposite conclusion, the court in a Connecticut case upheld the finding of the trial court regarding reasonable efforts to reunify a child with an incarcerated father. The father claimed he



received inadequate services while in jail, but the court pointed out that the father had specific steps to complete when he was released and he did not even maintain visitation.<sup>355</sup>

Perhaps the most difficult problem facing an incarcerated parent is the statutory requirement of timely permanency. ASFA requires a permanent home within a year or 18 months. Given a criminal court sentence of many years, juvenile dependency courts may not order reunification services finding that long-term incarceration is similar to abandonment.<sup>356</sup> The California legislature addressed this problem by passing a statute that permits the juvenile court to extend services beyond 18 months to an incarcerated or parent participating in a court-ordered substance abuse treatment facility.<sup>357</sup>

Courts must not ignore incarcerated parents. Each parent represents approximately one-half of a child's relatives. The judge should take steps to include these parents and their relatives in the judicial proceedings and to ensure that they have safe contact with their children.

### **13. Are the Services Necessary?**

In addition to the considerations above, the court must also address an additional issue: are the services in the service plan necessary for the parent to rehabilitate and provide a safe home for the child? It is well known that many service plans contain "cookie cutter" services that all parents are presumed to need.<sup>358</sup> The service plan typically includes parenting classes, drug testing, and counseling even though they may have little or no connection to the presenting problem. Some cases hold that a parent's failure to complete a service unrelated to the issues that brought the child to the attention of the court should not be held against him or her.<sup>359</sup> For example, in *In re Child of E.V.* the Minnesota appellate court reversed a termination of parental rights stating that the mother did enough to address the problems that brought the child to the attention of the court. The trial court must explain "why certain case plan components were necessary to correct the conditions that first prompted public intervention." The case plan must not "consist of a litany of required services that [are] not related to the conditions that eventually gave rise to the dependency adjudication."<sup>360</sup> Trial courts should resist the temptation to add "helpful" but unnecessary and unrelated services to a case plan.

### **14. Access to Services: Are the Services Available?**

When the court approves of a case plan to assist parents to reunify with their children, it should determine if the plan is realistic. Were the services accessible to the child/family? Was transportation available? What time of day were services offered? Were the services offered in the parents' native language? Was child care needed and, if so, was it provided? Few appellate cases address these issues.

On the other hand, can the agency be held responsible for not providing services if the agency does not have adequate resources? Is it reasonable to require an agency to provide expensive resources? These issues arise in litigation around the country. Several appellate cases refer to resource limitations. The New Hampshire Supreme Court noted that a state witness testified the agency provided every available service.<sup>361</sup> A New Jersey Superior Court concluded that the state does not have an obligation "to expend its limited resources on attempting to reunify children with

abusive parents where aggravated circumstances...exist....”<sup>362</sup> One witness from Illinois testified at Joint Hearings held in the House of Representatives that “judges are finding the reasonable efforts requirement satisfied simply because services are unavailable.”<sup>363</sup>

One commentator concluded that courts are likely to find reasonableness “so long as the agency has done what it can.”<sup>364</sup> This book takes the position that judges should base any conclusion on what is reasonable, not what the agency currently has at its disposal. On occasion an agency will neglect to include a necessary service in its service array. The trial court should encourage the creation of new services if resources are available and make a “no reasonable efforts” finding in some circumstances.<sup>365</sup>

## 15. Other Issues

Several other potential reasonable efforts issues do not seem to have been litigated in the trial and appellate courts. These include whether the agency collaborated with the parents in creating the service plan,<sup>366</sup> whether the agency used reasonable efforts to locate and engage the father, and whether the agency used reasonable efforts to locate the child’s relatives.<sup>367</sup> Each of these responsibilities is legally required of the agency, is important for the child and family, and should be carefully monitored by judges and attorneys.

## 16. Parental Behavior

The preceding discussion in this section focuses upon the agency’s obligation to provide services throughout the life of a child protection case. Some cases stress that the agency’s obligation to provide services must be balanced against the parent’s obligation to participate meaningfully in services. Parental failures often result in the appellate court affirming a finding of reasonable efforts, even if the agency has not provided adequate services. For example, in *Armando L. v Superior Court* the father waited 13 months to agree to paternity testing and only then began to engage in services.<sup>368</sup> In the case of *In re T.G.*<sup>369</sup> the appellate court affirmed the termination of reunification services when the father did not keep the social worker advised of his whereabouts and failed to inform the social worker of his later incarceration or change of address.

Courts often balance the agencies failures to provide reasonable efforts with the parents’ participation or lack of participation in the case plan.<sup>370</sup> In one case the mother did not comply in good faith with the case plan,<sup>371</sup> and in another the court criticized the mother for a lack of cooperation.<sup>372</sup> The New Jersey Supreme Court noted that it will consider a parent’s active participation in determining whether the agency has fulfilled its duty to assist in the reunification process,<sup>373</sup> while the Rhode Island Supreme Court said it would consider “the conduct and cooperation of the parents.”<sup>374</sup> Massachusetts appellate courts have affirmed a reasonable efforts finding in a number of cases in which the trial courts focused on parental behavior and not on the reasonableness of the agency’s actions.<sup>375</sup> Likewise an Iowa appellate court upheld a “reasonable efforts” finding based upon the father’s resistance to participation in services.<sup>376</sup>

The case law makes clear that a parent must demonstrate an interest in the reunification process and engage in services or face the risk of termination of parental rights. One of the tasks of both the court and the agency is to encourage the parent to focus on the needs of the child by engaging actively in the offered services.

## **C. REASONABLE EFFORTS TO FINALIZE AN ALTERNATIVE PERMANENCY PLAN**

### **1. The Law**

A dependency case is not over after parental rights have been terminated. The child must be placed in a permanent home and the case dismissed. Federal law requires that the court hold a permanency hearing to select a permanent plan no later than 12 months from the date the child is considered to have entered foster care, and if the child remains in foster care, the state must obtain such a determination every 12 months thereafter.<sup>377</sup> Waiting 12 months between reviews for an infant's placement can inflict additional trauma upon a child who has already been in placement for months if not years.<sup>378</sup>

In order to fulfill ASFA's mandate and to serve the best interests of the child, a judge must monitor agency efforts to achieve timely permanency, even after parental rights have been terminated.<sup>379</sup> The same judge or judicial officer who has supervised the case from the outset provides the best oversight. Designating one judge to supervise a child's case from beginning to completion is a recognized best practice.<sup>380</sup> At these post-permanency hearings the judge should determine (1) whether the agency has identified an appropriate strategy to make and finalize a new permanent placement for the child, (2) whether the agency has made a diligent arrangement for the provision of those services, and (3) whether those services have been available on a timely basis.<sup>381</sup>

Few appellate cases address this issue. In *In Interest of L.W.*, the Florida appellate court held that the purpose of judicial review is to assure that the Department complies with reasonable efforts to assure the protection of the child. In this case the trial court determined that the agency was making no progress towards adoption as the agency refused to place the child in a therapeutic setting. The agency resisted the placement ordered by the trial court. The appellate court affirmed the trial court order and noted that the trial court has an obligation to review the efforts provided by the department to protect and find a permanent home (in this case adoption) for a child. The appellate court also held that after a termination of parental rights, the trial court maintains jurisdiction to review the status of the child.<sup>382</sup>

### **2. Delays in Finalizing a Permanent Plan**

In some jurisdictions, once the court terminates parental rights and the child is placed in a pre-adoptive home, the legal process slows down. As one social worker told the author at the outset of his assignment to juvenile court: "What's the hurry? Parental rights have been terminated and the child is safe in a new home."<sup>383</sup> What may seem stable and permanent to social workers and judges is not so for families who still have a social worker visiting their home and court hearings every six or twelve months. Permanency means ending state involvement with the family so that children and their

families can live normal lives.

Because the parties rarely litigate post-permanency issues in the trial court, these issues rarely appear in appellate decisions. New York appears to be an exception. Several cases reveal that New York's trial courts actively review this issue. In the case of *In re Taylor EE*,<sup>384</sup> the permanent plan for a disabled child was residential care and developing a connection with a supporting adult. The trial court ruled that the agency failed to make reasonable efforts to finalize the child's permanency placement plan. The agency efforts consisted of one unsuccessful suggestion that the child's placement facility find an adult resource and a discussion on the day of the hearing that one of the relatives who had adopted a sibling assume that responsibility. The agency conducted no investigation to find adults with a prior relationship with the child. Furthermore, the agency social report contained the social worker's negative comments about the child, thus underlying the agency's lack of reasonable efforts. The appellate court affirmed the finding of the trial court.<sup>385</sup> A few other New York appellate cases address this issue, in each case reversing a trial court finding of no reasonable efforts to finalize a permanent plan for a child.<sup>386</sup>

In spite of the lack of appellate cases, the law is clear: in order to determine whether the agency is taking timely effective steps to complete the adoption process and thereby finalize a permanent plan, the court must regularly review cases in which parental rights have been terminated and the child is awaiting permanency.<sup>387</sup> This is another area closely examined by the federal government during the CFSR process. Failures to reach timely permanency can result in penalties levied by the federal government.<sup>388</sup>

Delays in finalizing placement should be of great concern not only to judges but to attorneys and guardians *ad litem* who represent children. After the termination of parental rights, the agency attorney and the child's representative are the only attorneys remaining on the case. Speaking on behalf of the child, the attorney or guardian *ad litem* should advise the court of the child's need for permanency and should ask the court to hold the agency accountable for providing timely permanency.<sup>389</sup>

Local practice in some jurisdictions has recognized the importance of monitoring agency actions after the termination of parental rights. In Utah the legislature passed a statute mandating court reviews after termination.<sup>390</sup> In 2005, the Essex Vicinage, New Jersey, Family Court established a Post-Termination Project to ensure that children reached permanency in a timely fashion.<sup>391</sup> A judge assigned to all post-termination cases reviews the status of each child, usually every two months. A team consisting of a Deputy Attorney General, a representative from the Division, the assigned caseworker, and the Law Guardian for the child attend each hearing. Over 3,030 children have been adopted over the past ten years through this highly successful project.<sup>392</sup> The Executive Judge of Children in Court concludes that rigorous judicial oversight and collaboration ensure the successful implementation of the law.<sup>393</sup> New Jersey now requires this project statewide.<sup>394</sup>

<sup>131</sup> "Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems." *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect*

Cases, National Council of Juvenile and Family Court Judges, Reno, NV, (1995) at p. 30 (hereinafter *Resource Guidelines*); “The emergency hearing is often critical. Once a child is removed, it is easier for a judge to continue the placement.” Rauber, D., Granik, L., “Representing Parents: The Role and Duties of Respondents’ Counsel,” Chapter 20 in *Child Welfare Law and Practice*, edited by Ventrell, M. & Duquette, D., Bradford, Denver, 2005, at p.453. In addition to determining whether reasonable efforts to prevent removal have been provided by the agency, the judge must accomplish a great deal at the shelter care hearing. The judge must determine if all parties have been properly noticed for the hearing, explain the nature of the legal proceedings and advise the parties of their legal rights, determine where the child will live and, if the child is removed, what access the parents will have to the child, what services or examinations should be offered to the parents immediately, whether relatives or other responsible adults have been identified, and determine when the next hearing should take place.

[132](#) *Resource Guidelines*, *Id.*, and Frankel, H. “Family-centered, home-based services in child protection: A review of the research,” *Social Service Review*, Vol. 62, (1988) at pp. 132-57.

[133](#) 42 U.S.C. §671 (a)(15)(B)(i); *Resource Guidelines*, *op.cit.*, footnote 131 at p. 37.

[134](#) McKinney’s Family Court Act, section 1028 (section 1027 is of similar import).

[135](#) 26 Misc. 3d 580, 889 N.Y.S.2d 437 (N.Y Slip Op. 229458, 2009)

[136](#) *Id.*, at p. 446. Other examples of New York appellate decisions reviewing the reasonable efforts to prevent removal are collected in Appendix A under New York and in Section VII B 6 (Domestic Violence).

[137](#) *Nicholson v Scopetta*, 820 N.E. 2d 840 (N.Y. 2004) at p. 852; *In re David G.*, 29 Misc.3d 1178, at 1183-4.

[138](#) California Welfare & Institutions Code section 309(a), West, 2013 and see *In re Venita*, 191 Cal. App. 3d 1229, 236 Cal. Rptr. 859 (1987).

[139](#) California Rule of Court, rule 6.678(c)(2) reads as follows: “The court must not order the child detained unless the court, after inquiry regarding available services, finds that there are no reasonable services that would prevent or eliminate the need to detain the child or that would permit the child to return home. Rule 6.678(c)(3) reads in part: “If the court orders the child detained, the court must: (A) Determine if there are services that would permit the child to return home pending the next hearing and state the factual basis for the decision to detain the child.”

[140](#) *In re Ashly F.*, 225 Cal. App. 4<sup>th</sup> 803 (2014)

[141](#) 864 A.2d 888, 49 Conn. Supp. 132 (Super.Ct. 2004)

[142](#) 382 Pa. Super 166, 555 A.2d 123 (Pa. Super. Ct. 1989).

[143](#) *Id.*, at p. 176.

[144](#) *Interest of A.L.W., L.R.W., A.M.W. and H.A.K.*, 773 S.W.2d 120 (Mo. Ct. App. 1989)

[145](#) *In the Interest of M.D.S.*, 488 N.W. 2d 715 (Iowa App. 1992)

[146](#) *Id.*

[147](#) 42 U.S.C. §671(a)(15)(B)(ii). *Resource Guidelines*, *op.cit.*, footnote 131 at pp. 59 & 71; 42 C.F.R. §1356.21(b)(1).

[148](#) Harburger, D., and White, R., “Reunifying Families, Cutting Costs: Housing – Child Welfare Partnerships for Permanent Supportive Housing,” *Child Welfare*, Vol. 83, #5 Sept./Oct. 2004, p.501; Poe, J. and Kendall, P., “Cases of Neglect May Be Only Poverty in Disguise,” *Chicago Tribune*, Dec. 24, 1995, p. 6;

[149](#) 519 A. 2d 638 (Del. 1986). A similar case arose in the Pennsylvania courts; *In Interest of S.A.D.*, 555 A.2d 123 (Pa. Super. Ct. 1989).

- [150](#) A New York appellate court rendered a similar decision regarding a grandmother's request for housing assistance, stating that the assistance should include writing letters, making phone calls, and taking legal action on the grandmother's behalf to secure a preference in tenant selection for public housing. *In re Enrique R.*, 129 Misc. 2d 956, 494 N.Y.S.2d 800 (N.Y. Fam. Ct. 1985). In another similar ruling the New York appellate court held that the agency should have actively aided the mother in her search for suitable housing so that her child could be returned. *In the Matter of Jason S.*, 117 A.D.2d 605, 498 N.Y.S.2d 71 (N.Y. App. Div. 1986)
- [151](#) *In re Nicole G.*, 577 A.2d 248 (R.I. 1990).
- [152](#) *Id.*, at p. 250.
- [153](#) 524 N.Y.S.2d 121 (N.Y. Sup. Ct. 1989)
- [154](#) 555 A.2d 123 (Pa. Super. Ct. 1989)
- [155](#) *In re Welfare of J.H., B.H., J.C., K.C.*, 75 Wash. App. 887, 880 P.2d 1030 (1994).
- [156](#) *Washington State Coalition of the Homeless, et al. v Department of Social and Health Services, et al.*, 133 Wash. 2d 894; 949 P.2d 1291 (1997).
- [157](#) 125 Cong. Rec. s29943 (1979) (statement of Sens. Cranston, Ribicoff, Moynihan, and Dole).
- [158](#) Patel, "Homeless Children and the Welfare System: Forging a New Relationship," *Family Law Quarterly*, Vol. 28, 521, at p. 524 (1994).
- [159](#) U.S. Child Poverty Rate, 2010, U.S. Census Bureau, American Community Surveys; this figure is the highest since the ACS started collecting data in 2001.
- [160](#) Pelton, L., *For Reasons of Poverty: A Critical Analysis of the Public Child Welfare System in the United States*, Praeger, N.Y., 1989, at p. 108; "[T]here has always been a considerable number of children in the United States living in foster care... By and large they have continued to be poor children from impoverished families." At p. 5.
- [161](#) "It is more than half a century since the tenet was first enunciated that 'no child should be separated from his family for reasons of poverty alone.' It is unforgivable that in more than half a century this basic principle, to which there is such strong commitment, has not been implemented. It may be true that in many instances, we do not place for poverty alone, because poverty seldom comes 'alone.'" Boehm, B., "The Child in Foster Care," in Stone, H.D. (Ed.) *Foster Care in Question: A National Reassessment by Twenty-One Experts*, Child Welfare League of America, New York, 1970, at p. 222; Braveman, D., & Ramsey, S., "When Welfare Ends: Removing Children From the Home for Poverty Alone," *op.cit.* footnote 71 at 447-470, at 450-452.
- [162](#) "Poverty is the 'single most important predictor of placement in foster care and the amount of time spent there.'" Brooks, S. & Roberts, D., "Family Court Reform: Social Justice and Family Court Reform," 40 *Fam. Ct. Rev.* 453, 454 (Oct. 2002); Mabry, C., "Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty," *West Virginia Law Review*, Vol. 102, Spring, 2000, 607, at 612-614.
- [163](#) *In Interest of S.A.D.*, 382 Pa. Super 166, 555 A.2d 123 (Pa.Super.Ct. 1989), at p. 176; See also *In re T.G.*, 684 A.2d 786 (D.C. 1996); *In re Ardoin Children*, 667 So. 2d 1144 (La. 1996), *In re T.S.*, 464 So. 2d 677 (Fla. 1985).
- [164](#) *In re Hickman*, 489 So. 2d 601 (Ala. 1986)
- [165](#) *Id.* at pp. 602—603; and see similar cases cited in Mabry, *op.cit.* footnote 162 at p. 630.
- [166](#) *In re Jamie M.*, 472 N.E. 2d 311 (N.Y. 1984) at p. 314.
- [167](#) California Welfare & Institutions Code, §300(b), West, 2013.
- [168](#) "The more accurate reason for placement is very often that the family, frequently due to poverty, does not have the resources to offset the impact of situational or personal problems, which

themselves are often caused by poverty, *and the agencies have failed to provide the needed supports.*” Pelton, *op.cit.* footnote 160 at p. 52.

[169](#) *Id.* at p. 114.

[170](#) Mabry, C., *op.cit.*, footnote 162 at pp. 635-646.

[171](#) Fanshel, D., *On the Road to Permanency*, CWLA, New York, 1982, and see the sources cited in Edwards, L., “Judicial Oversight of Parental Visitation in Family Reunification Cases,” *Juvenile and Family Court Journal*, Vol. 53, No. 3, 2003, at pp. 1-24 pp 2-5; Hess, P. & Proch, K.O., *Family Visiting in Out-of-Home Care: A Guide to Practice*, Child Welfare League of America, Washington, D.C., 1988; Hess, P. “Case and Context: Determinants of Planned Visit Frequency in Foster Family Care”. CWLA, N.Y. Vol. LXVII, No. 4, July/August 1988.

[172](#) New developments in dealing with maltreating parent-child relationships have demonstrated significant improvements in those relationships. See Timmer, S., Urquiza, A., Zebell, N., & McGrath, J., “Parent-Child Interaction Therapy: Application to maltreating parent-child dyads,” *Child Abuse & Neglect*, Vol. 29 (2005) at pp. 825-840.

[173](#) Millham, S., Bullock, R., Hosie, K., & Haak, M., *Lost in Care: The Problems of Maintaining Links Between Children in Care and Their Families*, Hants, UK: Gower (1986).

[174](#) *Id.* “Visitation between parents and their children in foster care is generally considered to be the most important factor contributing toward timely family reunification, a major feature of permanency planning for children in foster care.” Roemer, L., “Information Packet: Visiting with Family in Foster Care,” April, 2008.

[175](#) Fanshel, D. “On The Road to Permanency,” *op.cit.*, footnote 171; Beckerman, A., “Charting a Course: Meeting the Challenge of Permanency for Children with Incarcerated Mothers,” *Child Welfare*, Vol. 77, No. 5, (Sept./Oct. 1998) at pp 513-529; Fanshel, D., & Shinn, E., *Children in Foster Care: A Longitudinal Investigation*, *op.cit.* footnote 10 pp. 85-111 & 486-495..

[176](#) Weinstein, E., *The Self-Image of the Foster Child*, Russell Sage Foundation, N.Y. 1960; “Final Report,” Michigan Parent-Child Visitation Task Force, March 2013 at pp 14-15; McWey, L., & Mullis, A. “Improving the Lives of Children in Foster Care: The Impact of Supervised Visitation,” *Family Relations*, Vol. 53, No. 3, April, 2004, at pp. 293-300.

[177](#) Cantos, A., Cries, L., & Slis, V., “Behavioral Correlates of Parental Visiting During Family Foster Care,” *Child Welfare*, Vol. 76, No. 2, (1997) at pp. 309-329.

[178](#) See the chart explaining appropriate visitation for different age groups written by Dr. David Arredondo, “Guidelines to the Developmental Needs of Children According to Age,” found in Arredondo, D., & Edwards, L., Arredondo, D., & Edwards, L., “Bonding, Attachment, and Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court,” *Journal of the Center for Families, Children & the Courts*, California Administrative Office of the Courts, 2000 at pp 109-127, Appendix A of that article.

[179](#) Goldsmith, D.F., Oppenheim, D., and Wanlass, J., “Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placement of Children in Foster Care,” *Juvenile and Family Court Journal*, Vol. 55, No. 2, 2004, at pp. 1-13, at p. 6.

[180](#) American Academy of Pediatrics Committee on Early Childhood, “Adoption and Dependent Care,” 2000 at p. 1148. “For very young children, infrequent visits are not enough to establish and maintain a healthy parent-child relationship.” Cohen, J., & Youcha, V., “Zero to Three: Critical Issues for the Juvenile and Family Court,” *Juvenile and Family Court Journal*, Vol. 55, No. 2 (Spring, 2004) at pp. 15-27, 22.

[181](#) Johnson, Hon. Douglas, “Babies Cry for Judicial Leadership: Reasonable Efforts for Infants and

- Toddlers in Foster Care, *The Judge's Page*, Online publication of National CASA, October, 2007.
- [182](#) NCJFCJ, *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, Reno, (1992) at pp. 4, 20-22.
- [183](#) Superior Court of San Francisco, Juvenile Division, Standing Order No. 201, found in Appendix D, Edwards, L. "Judicial Oversight of Parental Visitation in Family Reunification Cases," *op.cit.*, footnote 171 at p. 17.
- [184](#) "There is no question but that the power to regulate visitation between minors determined to be dependent children and their parents rests in the judiciary." *In re Jennifer G.*, 221 Cal. App. 3d 752; 270 Cal.Rptr. 548, 327 (Cal. Ct. App. 1990); *In re Shawna M.*, 24 Cal.Rptr. 2d 126 (Cal.Ct.App. 1993).
- [185](#) Hess, P.M. & Proch, K., "How the States Regulate Parent-Child Visiting, *Public Welfare*, Vol. 64 (1986) at p. 12
- [186](#) As one appellate court noted, denying visitation when visitation is possible is incompatible with encouraging and strengthening the parent-child relationship. *In re Guardianship of D.M.H.*, 736 A.2d 1261, 1274 (N.J. 1999) "Consistent efforts to maintain and support the parent-child bond are central to [a] court's determination" of whether the agency made reasonable reunification efforts." (at 1276). But some courts seem to blame the parents for poor visits. *Matter of V.M.S.*, 446 N.E.2d 632 (Ind. Ct. App. 1983) and *Matter of Christine Tate*, 312 S.E.2d 535 (N.C. Ct. App. 1986)
- [187](#) Edwards, L., "Judicial Oversight of Parental Visitation in Family Reunification Cases," *op.cit.* footnote 171 at pp. 1-24
- [188](#) Hess, P., "Visiting Between Children in Care and Their Families: A Look at Current Policy," available at [http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/visiting\\_report-10-29-03.pdf](http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/visiting_report-10-29-03.pdf).
- [189](#) *Id.*
- [190](#) Hess, P., "Visiting Between Children in Care and Their Families: A Look at Current Policy," The National Resource Center for Foster Care & Permanency Planning, Hunter College School of Social Work, A service of the Children's Bureau, October 2003 at p. 2.
- [191](#) Hess, P., "Case and Context: Determinants of Planned Visit Frequency in Foster Family Care," *op.cit.* footnote 171.
- [192](#) *J.J. v Ledbetter*, No. CV 180-84 (S.D. Ga. Slip ops. filed Aug. 27, 1984, Sept. 21, 1984, and Jan. 21, 1985. (A copy of these opinions is available from the author).
- [193](#) *Id.*
- [194](#) *G.L. v Zumwalt*, No. 77-0242-CV-W-4 (W.D. Mo. Consent decree filed Mar. 21, 1983). (A copy is available from the author).
- [195](#) See *Scrivner v Andrews*, 816 F.2d 261 (6<sup>th</sup> Circuit. 1987) and *State of Vermont Dep't of Soc. & Rehab. Serv. v U.S. Dep't of Health & Human Services*, 798 F.2d 261 (2<sup>nd</sup> Cir. 1986); *Winston v Children and Youth Services of Delaware County*, 948 F.2d 1380 (3d. Cir. 1991) – This was an action by parents whose children had been removed to establish specific rights to visitation. The federal court concluded that because of the vague language in the federal statute, the agency need not provide any particular amount of visitation or even no visitation at all if other services were provided. (at 1389-1390).
- [196](#) 762 A.2d 1193, 1195 (R.I. 2000). The benefits of frequent visitation are listed in "Smariga, M, "Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know," *Practice & Policy Brief*, ABA Center on Children and the Law, July 2007, at p. 6.
- [197](#) 520 A.2d (R.I. 1987)
- [198](#) Edwards, L., *op.cit.*, footnote 171 at pp. 9-12.



- [199](#) *In re Alvin R.*, 134 Cal.Rptr.2d 210, 217; the appellate court further noted that the department submitted no evidence of having made a good faith effort to arrange counseling sessions. Because the child needed therapy before being returned to his father, the trial court did not err in finding that such a return would have been detrimental...
- [200](#) 202 Cal.App. 4<sup>th</sup> 1415 (Cal. Ct. App. 2012)
- [201](#) *State ex rel. Children, Youth & Families Dep't*, 47 P.3d 859 (N.M. Ct. App. 2002)
- [202](#) *In re Brittany S.*, 17 Cal. App.4<sup>th</sup> 1399; 22 Cal. Rptr.2d 50 (1993)(agency did not provide visitation while mother was incarcerated); See also *In re David D.*, 28 Cal.App.4<sup>th</sup> 941 (agency and court placed an unreasonable burden on mother thus preventing her from visiting – TPR reversed); *Mark N. v Superior Court*, 60 Cal.App.4<sup>th</sup> 996 (1998) (agency did not follow court order to provide an incarcerated mother with visitation); *In the Interest of T.A. and O.A.* (2003 WL 21459553 Iowa App., 2003)
- [203](#) Or as the court put it, “Go to prison, lose your child” is an unacceptable maxim. *Id.* at p. 1402.
- [204](#) *In re Brown*, 648 N.E.2d 576 (Ohio, Ct. App. 1994)
- [205](#) *In re Hector L.*, 730 A.2d 106 (Conn. App. Ct. 1999); *In re Ebony H.*, 789.2d 1158, 1163.
- [206](#) *In re Guardianship of D.M.H.*, 736 A.2d 1261 (N.J. 1999); *Div. of Family & Youth Serv. v V.S.*, No. S-10350, 2002 WL 1004097 (Alaska May 15, 2002); *In re Nicole J.*, 2002 WL 1610216 (Conn. Super. Ct. June 25, 2002)
- [207](#) Fahlberg, V., *A Child's Journey Through Placement*, Jessica Kingsley, London, 2012, at pp. 141-175. Bowlby, J. *Attachment and Loss. Vol. 2 Separation*, New York, Basic Books, (1973)
- [208](#) Edwards, L., *op.cit.* footnote 171 at pp. 11-12.
- [209](#) Both Polk County, Iowa, and the state of Maine have developed visitation guidelines that are comprehensive and sensitive to the developmental needs of children. The Iowa guidelines were developed by both the agency and the courts. Tabor, Nancy, “State of Iowa Court Improvement Project, Resource Manual: Visitation Issues in Juvenile Court,” 22 *et.seq* (2001); Maine Department of Human Services, Child and Family Services Manual (2002).
- [210](#) *Id.*
- [211](#) 42 U.S.C. §§671(16) & 675(B) and 45 C.F.R. §1356.21(d)(4) & (g)(4)
- [212](#) *In re Riva M.*, 235 Cal. App.3d 403; 286 Cal. Rptr. 592, 599 (1991); See also *In re Doe*, 60 P.3d 285 (HI. 2002) (the plan must include those steps “necessary to facilitate the return of the child to a safe family home.” (at 289).
- [213](#) *In re Ty M.*, 655 N.W.2d 672, 688 (Neb. 2003).
- [214](#) *In re Child of E.V.*, 634 N.W.2d 443, 447 (Minn. Ct. App. 2001)
- [215](#) *In re Nicole J.*, 2002 WL 1610216 at 15 (Conn. Super. Ct. June 25, 2002).
- [216](#) *Id.* An alternative ground permitted the court to affirm the trial court and affirm the termination of parental rights (at 10 & 15).
- [217](#) *Division of Family Services v N.X.*, 802 A.2d 325 (Del. Fam. Ct. 2002).
- [218](#) *In re Alvin R.*, 134 Cal. Rptr. 2d. 210 (Cal. Ct. App. 2003).
- [219](#) *Id.*
- [220](#) *In re Edward B.*, 558 S.E. 2d 620 (W. Va. 2001)
- [221](#) *In re D.D.V.*, No.M2001-02282-COA-R3-JV, 2002 WL 225891 (Tenn. Ct. App. Feb. 14, 2002)
- [222](#) *In re Rogers II.*, No. 246085, 2003 WL 21752814 (Mich. Ct. App. July 29, 2003)
- [223](#) 134 Cal. Rptr.2d 210, 218 (Cal. Ct. App. 2003)
- [224](#) 808 A.2d 80, 87-88 (N.H. 2002)
- [225](#) *In re Dorrell R.*, 780 A.2d 944, 950 (Conn. App. Ct. 1999)

- [226](#) *Linking Child Welfare and Substance Abuse Treatment: A Guide for Legislators*, National Conference of State Legislatures, 2000; Feig, L., “Drug Exposed Infants and Children: Service Needs and Policy Questions,” U.S. Department of Health and Human Services, 1990; Kelleher, K., et.al. “Alcohol and Drug Disorders Among Physically Abusive and Neglectful Parents in a Community Based Sample,” *American Journal of Public Health*, Vol. 84, at 1586, (1999);
- [227](#) Center for the Future of Children, *The Future of Children*, David and Lucille Packard Foundation, Spring, 1991, Vol. 1, No. 1, at p. 22.
- [228](#) *In re Michelle M.*, 4 Cal. App. 4<sup>th</sup> 1024 (1992); *In re Michael R.*, 5 Cal. App. 4<sup>th</sup> 687 (1992); *Angela S. v. Mendocino County*, 36 Cal. App. 4<sup>th</sup> 758 (1995). Also refer to the cases in Section V of *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, *op.cit.* footnote 182 at pp. 39-44.
- [229](#) *Id.*
- [230](#) Many states require hospital staff to report the birth of a drug-exposed infant. See Sagatun-Edwards, I., Saylor, C., & Shifflett, B., “Drug Exposed Infants in the Social Welfare System and Juvenile Court,” *Child Abuse & Neglect*, Vol. 19, No. 1, pp. 83-91 (1995) at p. 83.
- [231](#) *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, *op.cit.* footnote 182 at pp. 39-44.
- [232](#) Sagatun-Edwards, I., Saylor, C., & Shifflett, B., “Drug Exposed Infants in the Social Welfare System and Juvenile Court,” *Child Abuse & Neglect*, Vol. 19, No. 1, pp. 83-91 (1995) *op.cit.* footnote 230.
- [233](#) The Celebrating Families parenting class is notable for its structure and its success in the reunification process. See [www.celebratingfamilies.net](http://www.celebratingfamilies.net).
- [234](#) *In re Randall*, 96 Or. App. 673, 773 P.2d 1348 (1989); *In the Matter of Milland*, 548 N.Y.S.2d 995 (Fam. Ct. 1989); *In re Destiny S.*, 210 Cal. App. 4<sup>th</sup> 999 (Cal. Ct. App. 2012).
- [235](#) *In re Ebony H.*, 789 A.2d 1158, 1162 (Conn. App. Ct. 2002)
- [236](#) *Jennifer R., v. Superior Court of San Diego*, (2012 Cal. App. LEXIS 5; WL 6016468 at 6 – unpublished) a copy is available from the author.
- [237](#) *Robert L. v. The Superior Court of San Benito County*, 45 Cal. App. 4<sup>th</sup> 619; 53 Cal. Rptr. 2d 41 (1996)
- [238](#) Bean, *op.cit.*, footnote 40 at p. 332.
- [239](#) This court has many different names including Family Wellness Court, Dependency Drug Treatment Court, and more. In this article the term Family Drug Treatment Court will be used. Edwards, L., & Ray, J., “Judicial Perspectives on Family Drug Treatment Courts,” *Juvenile and Family Court Journal*, Vol. 56, Summer, 2005, at pp. 1-27.
- [240](#) The dating of the early FDTCS comes from Caroline Cooper at the BJA Drug Court Clearinghouse, American University, Washington, D.C., cited in Edwards, L., “Sanctions in Family Drug Treatment Courts,” *Juvenile and Family Court Journal*, Vol. 61, No. 1 (2010) at pp. 55-62.
- [241](#) Marlowe, D., & Carey, S., “Research Update on Family Drug Courts,” *NADCP: Need to Know*, May, 2012; Worcel, S.D., Green, B.L., Furrer, C.J., Burrus, S.W.M., & Finigan, M.A., *Family Treatment Drug Court Evaluation: Final Report*, NPC Research Portland, OR, March, 2007.
- [242](#) *Id.*, Worcel, *et.al.*
- [243](#) “It should also be acknowledged that substance-abusing parents and their children are a relatively new population and a specialized field of endeavor for substance abuse professionals.” “Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases,”

*op.cit.* footnote 182 at p.32.

[244](#) *In re Heather A.*, 52 Cal. App. 4<sup>th</sup> 183, 60 Cal. Rptr. 2d 315 (1996); *In re Amodea D.*, 2013 WL 6824917 (N.Y. Appellate Division); *In re T.V.*, 217 C.A.4th 126 (Cal App. 2013).

[245](#) Stark, E., “The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response,” *Women’s Rights Law Reporter*, Vol. 23, No. 2, Spring 2002 at pp. 107-131, at pp. 109-110. When clients are screened for domestic violence, the percentage of cases involving domestic violence rises significantly.

[246](#) “A significant percentage of cases that appear before the dependency court screen positive for domestic violence.” O’Riley C., and Lederman, Judge Cindy, “Co-occurring Child Maltreatment and Domestic Violence: The Judicial Imperative to Ensure Reasonable Efforts,” *The Florida Bar Journal*, November 2001, Volume LXXV, No. 10 at p. 1; FitzGerald, Judge R., Bailey, C., & Litton, L., “Using Reasonable Efforts Determinations to Improve Systems and Case Practice in Cases Involving Family Violence and Child Maltreatment,” *Juvenile and Family Court Journal*, vol. 54, No. 4, Fall, 2003, pp. 97-107, at pp. 97-98; The California case of *In re Heather A.*, 52 Cal.App.4th 183, 60 Cal.Rptr.2d 315 (1996) is an example of a reported case dealing with domestic violence. Estimates are that from 30 to 60% of abuse and neglect cases involve domestic violence; Osofsky, J.D. “Prevalence of Children’s Exposure to Domestic Violence and Child Maltreatment: Implications for Intervention and Prevention,” *Clinical Child and Family Psychology Review*, (2003) Vol. 6 at pp 161-170.

[247](#) “Judges should not permit agencies to use mental health or substance abuse issues as excuses for failing to recognize and treat domestic violence,” and “Making reasonable efforts requires addressing all of the problems that compromise the child’s safety, and addressing those problems in a way that keeps adult victims of violence safe while they work on their other issues.” Goodmark, L. JD “Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence,” NCJFCJ, Reno, 2008, at p. 16; *In re Charles A.*, 738 A.2d 222 (Conn. App. Ct. 1999); See also *Bridget A. v. Superior Court*, 148 Cal. App. 4<sup>th</sup> 285, 312(2007) – “There is no statutory [time] limit on the provision of family maintenance services if the court believes the objectives of the service plan are being met.”

[248](#) 181 F. Supp. 2d182 (E.D. NY 2002); the court held that when a trial court is considering an application to remove an abused or neglected child, the court must consider whether (1) continuation in the child’s home would be contrary to the best interests of the child; (2) reasonable efforts were made prior to application to prevent or eliminate the need for removal; and (3) imminent risk to the child would be eliminated by issuance of a temporary restraining order of protection directing removal of a person from the child’s residence. See also *Nicholson v Williams*, 203 F. Supp. 2d 153; The Second Circuit affirmed but requested guidance from the N.Y Court of Appeals, 344 F.3d 154 (2nd Cir. 2003); The New York Court of Appeals ruled that the district court accurately reflected New York law (820 N.E.2d 840 (N.Y. 2004) and the parties reached a settlement.

[249](#) *Id.*, and FitzGerald, R., *et. al. op.cit.*, footnote 246 at pp. 102-103,

[250](#) Copps, K., “Comment: The Good, The Bad, and The Future of *Nicholson v. Scoppetta*: An Analysis of the Effects and Suggestions for Further Improvements,” *72 Albany Law Review* 497 (2009).

[251](#) Bonagura, R., “Redefining the Baseline: Reasonable Efforts, Family Preservation, and Parenting Foster Children in New York,” *18 Columba Journal of Gender & Law*, 175, 218-219 (2008)..

[252](#) *In re Donna KK.*, 819 N.Y.S.2d 582 (App. Div. 3rd Dep’t 2006)

- [253](#) *In re Mariano S., Jr.*, 795 N.E.2d 21 (N.Y. 2003)
- [254](#) *Id.* at p. 25.
- [255](#) *Matter of Raymond A.*, 26 Misc. 3d 394 (N.Y. Fam. Ct. 2009); *In re David G.*, 29 Misc.3d 1178, 909 N.Y.S.2d 891 (N.Y. Fam. Ct. 2010); *Matter of Naomi R.*, 296 AD 2d 503, 745 NYS 2d 485 (2d Dept 2002); *In re Kayla B.*, 262 A.D.2d 137 (1st Dept. 1999).
- [256](#) McKinney’s Family Court Act, §1022 (a)(iii)
- [257](#) McKinney’s Family Court Act, §1028 (section 1027 is of similar import.)
- [258](#) *Id.*, section 1028(b).
- [259](#) Telephone conversation and emails with Christine Kiesel on December 10, 2013.
- [260](#) “This observation is consistent with the *Resource Guidelines, op.cit.*, footnote 131. “Once a child is removed, it becomes logistically and practically more difficult to help a family resolve its problems.” At p. 30.
- [261](#) *In re Welfare of P.R.L* 622 N.W.2d 538, 544-45 (Minn. 2001). “Respondent’s relationship with [her abuser] is, and has been for years, the primary basis of her unfitness to be a parent.” At p. 545.
- [262](#) McGee, S. “20 Reasons Why She Stays: A Guide for Those Who Want to Help Battered Women,” <http://stopviolence.com/domviol/whytheystay.htm>; LaViolette, Al, & Barnett, O., *Why Battered Women Stay: It Could Happen to Anyone*, 3<sup>rd</sup> Ed., Sage Publications, 2013; See *In re E.B.*, (2010) 184 Cal. App. 4th 568 for an example of a case where the mother continued to return to her abusive partner.
- [263](#) *In re Charles A.*, 738 A.2d 222 (Conn. App. Ct. 1999). A different result was reached in a similar Minnesota case. *In re Child of E.V.*, 634 N.W.2d 443 (Minn. Ct. App. 2001) where the mother was also a victim of domestic violence.
- [264](#) *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice*, Family Violence Department, NCJFCJ, Reno, NV, 1999, at p. 100. (hereinafter, *Effective Intervention*)
- [265](#) *Judges Guide to Domestic Violence in Dependency Cases*, Center for Families, Children & the Courts, California Administrative Office of the Courts, San Francisco, 2012, at p. 30.
- [266](#) O’Riley C. & Lederman Judge Cindy, “Co-Occurring Child Maltreatment and Domestic Violence: The Judicial Imperative to Ensure Reasonable Efforts,” *op.cit.* footnote 246.
- [267](#) *Domestic Violence in Dependency Cases: A Judge’s Guide*, Revised 2012, *o p. cit.* footnote 265 at p. 26.
- [268](#) California Welfare and Institutions Code §319(a)
- [269](#) California Welfare and Institutions Code §319(d)(1).
- [270](#) General language such as “the child was exposed to domestic violence” and “the parents engaged in domestic violence” does not explain who the primary aggressor was and what happened. The petition should be specific about the actions that took place.
- [271](#) Edwards, L., “Domestic Violence & Reasonable Efforts at the Detention Hearing,” *op.cit.*, footnote 54 at p. 8; “Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence,” NCJFCJ, Family Violence Department, Reno, 2004.
- [272](#) See generally “Zimmerman, S., “Parents’ Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights – Issues Concerning Rehabilitative and Reunification Services,” 12 A.L.R.6th 417; Spreng, J., “The Private World of Juvenile Court: Mothers, Mental Illness and the Relentless Machinery of the State,” *Duke J. Gender L. & Pol’y*, Vol. 117 (2010) at pp. 189-218. It should also be pointed out that many of these parents’ children also suffer from mental health problems, thus making child safety and parental neglect issues even more challenging.

[273](#) N.Y. Soc. Serv. Law §384(b)(4)(c) McKinney, 2010. Courts have followed this statute and not ordered reunification services. *In re Harris AA*, 727 N. Y. S. 2d 769, 771 (App. Div. 2001); *In re Jammie CC.*, 540 N. Y. S. 2d 27, 28 (App. Div. 1989). Other states that permit the bypass of family reunification services based upon a parent's mental illness include South Carolina (S. C. Code Ann. Section 63-7-2570(6), 2010), Utah (Utah Code Ann. Section 78A-6-312(3)(d)(i)(B), (1996), California (Welfare and Institutions Code section 361.5(b)(2), Deering, 2008), and Colorado (Colo. Rev. Stat. section 19-3-604(1)(b)(I), 2013).

[274](#) *In the Interest of C.W.*, 414 N.W. 2d 277, 279 (Neb. 1987). The argument that services would be futile was repeated in *In the Matter of Appeal in Pinal County*, 729 P.2d 918 (Ariz. Ct. App. 1986) where the mother was diagnosed as a chronic paranoid schizophrenic. A similar result occurred in the New Jersey case of *N.J. Div. of Youth & Family Servs. v A.G.*, 782 A.2d 458 (N.J. Super. Ct., App. Div. 2001) where the court concluded that “no treatment would assist [the parents] in becoming better parents because they lack the necessary insight and skill.” (at 472). Accord, *In re Christopher B.*, 823 A.2d 301 (R.I. 2003)

[275](#) S. C. Code Ann. §63-7-2570(6). If the state chooses to proceed under this section of the code, it need not prove reasonable efforts. See *Orangeburg Cnty. Dept. of Soc. Serv. v. Harley*, 393 S.E.2d 597, 598 (S.C. Ct. App. 1990).

[276](#) *S.C. Dep't of Soc. Servs. v. Smith*, 429 S.E.2d 807,809 (S.C. 1993).

[277](#) *In re Natalya C.*, 946 A. 2d 198, 203, (R.I. 2008) and *Mary Ellen C. v Arizona Dep't of Econ. Sec.*, 971 P.2d 1046, 1053 (Ariz. Ct. App. 1999); *In re Eden F.*, 710 A.2d 771 (Conn. App. Ct. 1998); *Matter of Chapman*, 53 Or. App. 268, 631 P.2d 831 (1981); *In re W.W. Children*, 190 Misc. 2d 258, 735 N.Y.S.2d 567 (Fam. Ct. 2001). For a comprehensive review of cases involving mentally ill parents involved in the child protections system see Zimmerman, S., “Parents’ Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights – Issues Concerning Rehabilitative and Reunification Services,” *op.cit.* footnote 272.

[278](#) *In the Interest of N.B.*, 64 S.W.3d 907, 915 (Mo. App. 2002); the mother's mental illness resulted in removal of the child. The appellate court in reversing stated: “the mental illness of a parent is not *per se* harmful to a child.” The decision to terminate parental rights should be based upon an inability to provide a safe and healthy environment for the child rather than the illness of the parent. (at 915); *In the Interest of A.M.*, 702 Ga. App. 686 (Ga. App. 2010) – The mother's mental deficiency was not shown to have any impact on her parenting abilities. Accord, *Interest of T.O.*, 470 N.W.3d 8 (Iowa 1991), *Care and Protection of Bruce*, 44 Mass. App. Ct. 758, 694 N.E.2d 27 (Mass. App. Ct. 1998) and *In the Matter of C.R.T.*, 66 P.3d 1004 (Okla. Ct. App. 2003). See generally, Benjet, C., Azar, S. T., & Kuersten-Hogan, R. (2003) “Evaluating the parental fitness of psychiatrically diagnosed individuals: Advocating a functional-contextual analysis of parenting,” *Journal of Family Psychology*, Vol. 17, at pp. 238-251; as the Minnesota appellate court stated: “Mental impairment is not sufficient grounds to terminate a father's parental rights to his child where there is not evidence that the impairment interfered with his ability to be a party to the parent-child relationship.” *In the Matter of B.M., J.M. and C.G., Parents*, MN Court of Appeals, A13-2025 (2014).

[279](#) *In re Amanda A.*, 755 A.2d 243, 247, (Conn. App. Ct. 2000); *In re Welfare of H.S.*, 973 P.2d 474, 481 (Wash. Ct. App, 1999); *In re Welfare of S.Z.*, 547 N.W. 2d at 886 at 889 (Minn. 1996); *In re Joseph S.*, 788 A.2d 475 (R.I. 2002).

[280](#) *In the Interest of C.S.M.*, 805 P.2d at 1131 (Colo. Ct. App., 1990); *In re Adoption of Lenore*, 770 N.E.2d 498, 503, (Mass. App. Ct., 2002); *In re Hanks*, 553 A.2d, 1171 (Del., 1989). In the case

of *Adoption of Gregory*, 747 N.E.2d 120 (Mass. 001) the Massachusetts Supreme Court held that the department was required to accommodate a parent's disabilities, but held that the American Disabilities Act cannot be used as a defense in termination of parental rights proceedings. See also Margolin, D., "No Chance to Prove Themselves: The Rights of Mentally Disabled Parents Under the Americans with Disabilities Act and State Law," *Va. J. Soc. Pol'y & L.*, Vol. 15, (2007) at p. 112.

[281](#) *P.A. v Dep't of Health & Rehabilitative Services*, 685 So. 2d 92,93 (Fla. Dist. Ct. App., 1997)

[282](#) *In the Matter of Jamie C.*, 26 Misc.3d 580, 889 N.Y.S.2d 437 (2009);

[283](#) In the case of *In re Interest of C.S.M.*, 805 P.2d at 1131 the appellate court ruled that the state was not required to provide inpatient treatment recommended by the mother's doctors.

[284](#) *In re Anthony B.*, 735 A.2d 893 (Conn. App. Ct. 1999) – The court found the mother's failure or refusal to take advantage of the services offered rendered the agency's efforts futile.

[285](#) *In re Gabrielle D.*, 39 A.3d 655 (R.I. 2012)

[286](#) "A review of the literature concerning reunification services for such parents reveals that the efforts typically made by state child welfare agencies are frequently both unsuitable and ineffective." Kaiser, J., "Victimized Twice: The Reasonable Efforts Requirement in Child Protection Cases When Parents Have a Mental Illness," *Western New England University School of Law Legal Studies Research Paper Series*, No. 12-8, available at <http://ssrn.com/abstract=2056387> at pp 25.

[287](#) For example, in *In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 796 A.2d 778 (2002), in reversing a termination of parental rights regarding a cognitively limited father the Maryland appellate court noted that "[the Department] never offered any specialized services designed to be particularly helpful to a parent with the intellectual and cognitive skill levels [the Department] alleges are possessed by petitioner."

[288](#) *In re Victoria M.*, 207 Cal.App. 3d 1317, 255 Cal. Rptr.498 (1989).

[289](#) *Id.* at 504.

[290](#) *In re Victoria M.*, 207 Cal.App.3d 1317 (1989). In this case children were removed from a developmentally delayed adult living in filthy surroundings. The court ordered her to find housing and demonstrate suitable parenting skills. The appellate court reversed holding that clear and convincing evidence must show that services specially designed to meet the needs of the parent were explored, and, despite the availability of such services, it is in the best interest of the children to be declared free for adoption. The court pointed out the mother was given no assistance to find housing and was not referred to a regional center which could have assisted her. *In re Jamie M.*, 134 Cal.App.3d 530 (1982) held that there must be some nexus between the mother's mental illness and child endangerment before her children could be removed. In *In re Kimberly F.*, 56 Cal.App.4th 519 (1997) the appellate court held that a "narcissistic personality" is an insufficient basis for removal of children. A similar result occurred in the case of *In re Elizabeth R.*, 42 Cal. Rptr.2d 200 (1995).

[291](#) 191 Cal. App. 3d 1229, 236 Cal. Rptr. 859 (1987)

[292](#) *In re Elizabeth R.*, 35 Cal. App. 4<sup>th</sup> 1774; 42 Cal. Rptr. 2d 200 (1995)

[293](#) 28 Cal. App. 4<sup>th</sup> 941, 952, 956 (1994)

[294](#) *In the Matter of L Children*, 131 Misc. 2d 81, 499 N.Y.S.2d 587 (N.Y. Fam. Ct.1986)

[295](#) New York appellate courts reached similar results in the cases of *In the Matter of Shantelle W.*, 587 N.Y.S. 393, 185 A.D. 2d 935 (N.Y. 1992) and *In Matter of Star A.*, 55 N.Y.2d 560, 450 N.Y.S.2d 465, 435 N.E.2d 1080, (N.Y. 1982).

[296](#) "Here, ACS did not provide this mother with sufficient services or referrals in response to her significant psychiatric needs." *In re Jamie C.*, 26 Misc 3d 580, 889 N.Y.S. 2d 437 (N.Y. Slip Op. 229458, 2009), at 443.

- [297](#) 299 Or. 177, 700 P.2d 225 (Or. 1985)
- [298](#) *I.R. v Department of Children and Family Services*, 904 So.2d 583 (Fl. 2005); whether trial courts are receiving accurate information from mental health professionals is an open question. See Alexander, G., “Big Mother: The State’s Use of Mental Health Experts in Dependency Cases,” *Pacific Law Journal*, Vol. 24, 1993, at pp. 1465-1496. *V.M. v. State Dept. of Human Resources*, 710 So. 2d. 915 (Ala. Civ. App.1998); *Hroncich v Department of Health and Rehabilitative Services*, 667 So. 2d 804 (Fla. Dist. Ct. App. 5<sup>th</sup> Dist. 1995); *In re T.O.*, 470 N.W.2d 8 (Iowa, 1991).
- [299](#) *In re Christina L.*, 3 Cal. App. 4<sup>th</sup> 404 (1990); A similar result occurred in the case of *In re Walter P.* where the appellate court noted that the mother’s problem was less a function of her lack of mental ability than a poor attitude and a lack of motivation to parent a fragile child with special health needs. 228 Cal. App. 3d 113 (1991); See also *In re Antony B.*, 7335 A.2d 893, 902 (Conn. App. 1999) where the mother refused to participate in the services offered by the agency.
- [300](#) Kaiser, J., “Victimized Twice: *op.cit.*, footnote 286; Kaiser, J. “Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases,” *op.cit.*, footnote 70.
- [301](#) DeVault, E., “Reasonable Efforts Not So Reasonable: The Termination of the Parental Rights of a Developmentally Disabled Mother,” *Roger Williams U. L. Rev.*, Vol. 10, Spring, 2005, at 763; Zimmerman, S., “Parents’ Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights – Applicability of the Americans With Disabilities Act,” 119 *A.L.R.* 5<sup>th</sup> 351; Kerr, S. “The Application of the Americans with Disabilities Act to Termination of the Parental Rights of Individuals with Mental Disabilities,” 16 *Contemp. Health L. & Policy* 387 (2000); Dillion, D., “Comment: Child Custody and the Developmentally Disabled Parent,” 2000 *Wis. Law Review* 127 (2000); Watkins, C., Comment, “Beyond Status: The Americans with Disabilities Act and the Parental Rights of People Labeled Developmentally Disabled or Mentally Retarded,” 83 *California Law Review* 1415 (1995).
- [302](#) *In re Terry*, 610 N. W. 2d 563, at 570. (Mich. Ct. App. 2000. Other state courts have followed the holding in this case. See *In re Anthony P.*, 84 Cal.App.4th 1112, 101 Cal. Rptr. 2d 423 (4th Dist. 2000); Zimmerman, S., “Parents’ Mental Illness or Mental Deficiency as Ground for Termination of Parental Rights – Applicability of the Americans With Disabilities Act,” *op.cit.* footnote 301. Whether the ADA applies to the family reunification period is an open question. See Glennon, Theresa, “Symposium: Lawyering for the Mentally Ill: Walking With Them: Advocating For Parents With Mental Illnesses in the Child Welfare System,” 12 *Temp. Pol. & Civ. Rts. L. Rev.* 273 (Spring, 2003) and *Arkansas Dep’t of Human Services v Clark*, 802 S.W.2d 461 (Ark. 1991) where the appellate court affirmed the mandate for special reunification services based upon the ADA.
- [303](#) American Psychological Association, “Guidelines for Assessment of and Intervention With Persons With Disabilities,” *American Psychologist*, Vol. 67, No. 1, 42-62 (January, 2012).
- [304](#) DeVault, E., *op.cit.*, footnote 301 at p. 787.
- [305](#) According to the 2000 national census, one out of every four Americans is a race other than white, as opposed to one in eight as recorded in the 1990 national census. Hobbs, F., & Stoops, N, *Demographic Trends: Race and Hispanic Origin*, Bureau of Census (2002).
- [306](#) See generally Hughes, T., “The Neglect of Children and Culture: Responding to Child Maltreatment with Cultural Competence and a Review of Child Abuse and Culture: Working with Diverse Families,” 44 *Fam. Ct. Rev.*, 501, 503 (2006).
- [307](#) *Working With Lesbian, Gay, Bisexual, and Transgender (LGBT) Families in Adoption*, Series: Bulletins for Professionals, Author: Child Welfare Information Gateway, 2011; *Gay and Lesbian*

*Parenting*, American Psychological Association, Washington, D.C. 2005.

[308](#) *In the Interest of A.M.*, 702 S.E. 2d 686 (Ga. App. 2010):

[309](#) See generally, Clement, N., “Do ‘Reasonable Efforts’ Require Cultural Competence? The Importance of Culturally Competent Reunification Services in the California Child Welfare System,” *5 Hastings Race & Poverty L.J.* 397 (2008).

[310](#) *In re Dino E.*, 8 Cal. Rptr.2d 416; 6 Cal.App.4<sup>th</sup> 1768, 1777; *In re Michael S.*, 234 Cal. Reporter, 84, 97 (1997); *In re Edward C.*, 178 Cal. Rptr. 694, 701 (1981)

[311](#) *In re Kristin W.*, (1990) 222 Cal.App.3d 234, 254.

[312](#) *Id.*

[313](#) *Welfare of T.N.L.*, C4-00-1947, 2001 WL 379114 (Minn. Ct. App., 2001)

[314](#) *Maria L. v. Super. Court San Diego County* 2004 Cal. App. Unpub. LEXIS 2311, at 3 (Cal. Ct. App. March 12, 2004).

[315](#) *Id.* at p. 6, footnote 3.

[316](#) 2004 WL 605200 at 1 (Cal. Ct. App. March 26, 2004) – A Vietnamese mother refused to participate in a parenting class because of her fear of being talked about in the Vietnamese community.

[317](#) 62 Cal. Rptr. 2d 281 (1997)

[318](#) *Id.* at 294.

[319](#) *Making Reasonable Efforts: A Permanent Home for Every Child*, Youth Law Center, San Francisco, 2000, at pp. 66-67 (hereinafter “Making Reasonable Efforts.”)

[320](#) 166 Cal.App. 4<sup>th</sup> 1340

[321](#) *Robin V. v Superior Court*, 33 Cal.App. 4<sup>th</sup> 1158

[322](#) *In Matter of Jones*, 436 N.E. 2d 849 (Ind. Ct. App. 1982)

[323](#) *Div. of Family Serv. v. N.X.*, 802 A. 2d 325 (Del. Fam. Ct. 2002); *In re Kayla S.*, 772 A.2d 858, 862 (Me. 2001).

[324](#) *Div. of Family Serv. v N.X.*, 802 A.2d 325, 337 (Del. Fam. Ct. 2002)

[325](#) 6 Cal.App.4<sup>th</sup> 1768

[326](#) *In re G.S.R.*, 159 Cal. App.4<sup>th</sup> 1202

[327](#) *In re Eden F.*, 710 A.2d 771; (Conn. App. Ct. 1998), *reversed on other grounds*, 741 A.2d 873 (1998).

[328](#) 462 N.E. 2d 1139 (N.Y. 1984)

[329](#) *Id.*, at p. 1148.

[330](#) 448 A.2d 1250 (R.I. 1982)

[331](#) *Id.*, at p. 1256

[332](#) *In the Matter of Jason S.*, 117 A.D.2d 605, 498 N.Y.S.2d 71 (N.Y. App. Div. 1986)

[333](#) Arredondo, D., & Edwards, L., “Attachment, Bonding and Reciprocal Connectedness,” *op.cit.*, footnote 178 at pp. 109-127.

[334](#) Edwards, L., “Achieving Timely Permanency in Child Protection Courts: The Importance of Front Loading the Court Process,” *Juvenile and Family Court Journal*, Vol. 58, No. 2, Spring 2007, at pp. 1-37, 5;(hereinafter “Achieving Timely Permanency”); Goldstein, J., Freud, A., & Solnit, A. *Beyond the Best Interests of the Child*, The Free Press, N.Y. 1973, Chapter 3. *In re Micah S.*, 198 Cal.App.3d 557, 243 Cal.Rptr.756 (Cal. App. 1988), Brauer, J. concurring.

[335](#) 42 U.S.C. section 629(a)

[336](#) 42 U.S.C. section 629(b)



- [337](#) *In re Interest of Demarcus E.*, No. A-02-1092, 2003 WL 2196495 (Neb. Ct. App. July 1, 2003). “Children cannot, and should not, be suspended in foster care, or be made to await uncertain parental maturity.” (at 4); *In re K.C.*, 660 N.W.2d 2d 29 (Iowa 2003); *In re S.Z.*, 547 N.W.2d 886 (Minn. 1996); *G.C. v State Dep’t of Health & Human Services*, 67 P.3d 648 (Alaska, 2003)
- [338](#) *State ex rel. Children, Youth & Families Dep’t*, 47 P.3d 859, 863 (N.M. Ct. App. 2002) “[T]he duration of what constitutes reasonable efforts has changed considerably over the past several years.”
- [339](#) *Id.*, *In re J.J.*, 28 P.3d 1076 (Mont. 2001)(Mother offered 5 months, but did not begin to participate in services); *In re B.D.G.*, 586 S.E.2d 736 (Ga. Ct. App. 2003)(three months provided – mother failed to clean house).
- [340](#) *In re C.B.*, 611 N.W.2d 489, 495 (Iowa 2000) Parents must “actively and promptly respond to [the agency’s] services.” “[T]he problem ... was with [the mother’s] response to those services. She waited too long to respond, and the underlying problems which adversely affected her ability to effectively parent were too serious to be overcome in the short period of time prior to the termination hearing.” (at 494); *In re Lilley*, 719 A.2d 327, 332 (Pa. Super. Ct. 1998) “[I]f a parent fails to cooperate [with] ... reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate.”
- [341](#) U. S. Census Bureau, Statistical Abstract of the United States: 2012; “Prisoners in 2009”, Bureau of Justice Studies,
- [342](#) Bloom, B., & Steinhart, D., *Why Punish the Children*, National Council on Crime and Delinquency, January 1993, at p. 14.
- [343](#) *In re Doe*, 60 P.3d 285, 287 (Haw. 2002) “[I]ncarceration does not per se result in the forfeiture of parental rights.” *Matter of S.A.*, 912 P.2d 1235, 1239 (Alaska 1996) “[I]ncarceration ... [will not] relieve the State of its duty under ICWA to make active remedial efforts.” *In re A.M.I.*, 891 P.2d 815 (Alaska, 1995).
- [344](#) Bloom, B., & Steinhart, E., *op.cit.*, footnote 342 at pp. 41-43.
- [345](#) 42 U.S.C. section 671(a)(15)(D)(i); See *In re Children of Vasquez*, 658 N.W.2d 249, 254 (Minn. Ct. App.) where the appellate court stated: “Under Minnesota case law, imprisonment alone is not sufficient to constitute abandonment. But imprisonment combined with other factors, such as parental neglect and withholding parental affection, can support a finding that a parent has abandoned his child.”
- [346](#) *In re S.J.*, 620 N. W. 2d 522, 525 (Iowa Ct. App. 2000); *In re Shaylon J.*, 782 A.2d 1140, 1143 (R.I. 2001); *Michael J. v Arizona Dep’t of Economic Security*, 995 P.2d 682 (Ariz. 2000); *In re B.C. v Deborah*, 15 P.3d 8 (Okla. Civ. App. 2000).
- [347](#) California Penal Code §2625, West, 2013.
- [348](#) *In re J.K.*, No. 03-1413, 2003 WL 22346526 (Iowa Ct. App. April 10, 2002) “[the father’s] own actions brought about his incarceration,” and “[his] incarceration limited the availability of services.” Accord, *In re M.T.*, 613 N.W.2d 690 (Iowa Ct. App. 2000) and *In re Shanna W.* 799 N.E.2d 843 (Ill. App. Ct. 2003); *Johnson v Ark. Dep’t of Human Servs.*, 82 S.W.3d 183, (Ark. Ct. App. 2000).
- [349](#) *In re Doe*, 60 P.3d 285, 295 (Haw. 2002).
- [350](#) *In re Shaylon J.*, 782 A. 2d 1140 (R.I.2001); *In re N.H.*, 632 N.W.2d 451 (N.D. 2001)
- [351](#) *In re Sabrina N.*, 70 Cal. Rptr. 2d 603 (Cal. Ct. App. 1998)
- [352](#) *In re Precious J.* (1996) 42 Cal. App. 4th 1463; See also *In re Brittany S.*, 17 Cal. App. 4th 1399 (1993) – visitation with an incarcerated mother was not provided even though the prison was near the child’s foster home.

- [353](#) 82 Cal. App. 4<sup>th</sup> 1032 (2000)
- [354](#) *Id.*
- [355](#) *In re Kamal R.*, 142 Conn. App. 66, 2013 WL 1338809 (Conn. App. Ct. 2013)
- [356](#) *In re S.J.*, 620 N.W. 2d 522 (Iowa Ct. App. 2000); *In re Children of Vasquez*, 658 N.W.2d 249, 251, “[A] case plan aimed at returning the children to [the father’s] day-to-day care would be futile because of his lengthy incarceration...”
- [357](#) California Welfare and Institutions Code §361.5(a)(3).
- [358](#) “There are a number of boilerplate services commonly added to case plans across the country (e.g. parenting classes/counseling) without consideration of whether such services are specifically tailored to address the deficiency that prompted state intervention.” Crossley, *op.cit.*, footnote 3 at p. 305.
- [359](#) For example, in the case of *In re Matter of M.A.*, 408 N.W.2d 227, 236 (Minn. Ct. App. 1987)
- [360](#) *Id.* at p. 447.
- [361](#) *In re Jonathan T.*, 808 A.2d 82,88 (N.H. 2002).
- [362](#) *N.J. Div. of Youth & Family Servs. v. A.R.G.*, 824 A.2d 213, 233 (N.J. Super. App. Div. 2003)
- [363](#) “Foster Care, Child Welfare, and Adoption Reforms, 1988”; Joint Hearings Before the Subcommittee on Public Assistance and Unemployment Compensation of the House of Representatives Committee on Ways and Means and the Select Committee on Children, Youth, and Families, 100th Congress, 2nd Session 231 (1988)/
- [364](#) *Bean, op.cit.* footnote 40 at p. 366.
- [365](#) Refer to the discussion on “The Art of The No Reasonable Efforts Finding,” *infra* at Section XJ and the letter in Appendix D.
- [366](#) 45 CFR §1356.21(g)(1)
- [367](#) Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 (2008) §103
- [368](#) 36 Cal. App. 4<sup>th</sup> 549
- [369](#) 188 Cal. App. 4<sup>th</sup> 871 (2010)
- [370](#) *Bean, K., op.cit.*, footnote 40 at p. 362.
- [371](#) *In re Kayla S.*, 772 A.2d at 863 (Me. 2001).
- [372](#) *SD v. Carbon County Dep’t of Family Services*, 57 P.3d 1235, 1241 (Wyo. 2002).
- [373](#) *In re Guardianship of D.M.H.*, 735 A.2d 1261, 1274 (N.J. 1999)
- [374](#) *In re Jason L.*, 810 A.2d 765, 767 (R.I. 2002); Accord *In re Natasha M.*, 800 A.2d 430 (R.I. 2002); *In re Natalia G.*, 737 A.2d 506, 508 (Conn. App. Ct. 1999); *In re Kayla S.*, 772 A.2d 858 (Me. 2001); *S.H. v State*, 42 P.3d 1119, 1127 (Alaska 2002);
- [375](#) *Adoption of Mario*, 686 N.E.2d 1061 (Mass. App. Ct. 1997); *Adoption of Serge*, 750 N.E.2d 498 (Mass. App. Ct. 2001); *Adoption of Eduardo*, 782 N.E.2d 551 (Mass. App. Ct. 2003).
- [376](#) *In re M.B.*, 595 N.W.2d 815 (Iowa Ct. App. 1999)
- [377](#) 45 C.F.R. §1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C) and (F); 45 C.F.R. §1355.20.
- [378](#) “Heldman, J., “Court Delay and the Waiting Child,” *San Diego Law Review*, Vol. 40, 2003, at pp. 1001-1038, and see *In re Micah S.*, 198 Cal.App.3d 557, 243 Cal.Rptr.756 (Cal. App. 1988), Brauer, J. Concurring.
- [379](#) *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, NCJFCJ, Reno, 2000, at p. 7. (hereinafter *Adoption and Permanency Guidelines*). *In re N.A.C.*, 2013 WL 6383024 (Kansas Ct. App, 2013).
- [380](#) *Adoption and Permanency Guidelines, Id.* at p. 5; Edwards, L., “Improving Juvenile

Dependency Courts: 23 Steps,” *Juvenile and Family Court Journal*, Vol. 48, No. 4 (1997), pp 1-23, at pp. 5-6; McCully, Judge S., & Barnes, E.W., “Forever Families: Improving Outcomes by Achieving Permanency for Legal Orphans,” *Technical Assistance Bulletin*, NCJFCJ, Reno, 2013, at pp. 9-10. (hereinafter “Forever Families.”)

[381](#) *Guidelines for Public Policy and State Legislation Governing Permanence for Children*, *op.cit.* footnote 38 at pp III-6 & III-7.

[382](#) 615 So.2d 834, 838 (Fl. 1993)

[383](#) After hearing this statement, the author discovered that hundreds of cases existed where a permanent plan had been established, but the agency had not taken steps to complete the legal process of adoption or guardianship. The agency saw no urgency in completing the process and having the case dismissed. The author created a program to achieve permanency for these children and over 1,000 children were dismissed from the court system during the following 18 months.

[384](#) 80 A.D.3d 822, 914 N.Y.S.2d 404 (N.Y. Supreme Court, 2011).

[385](#) *Id.*

[386](#) *In the Matter of Blanca QQ*, 80 A.D.3d 809, 914 N.Y.S.2d 402 (N.Y. Supreme Court, 2011); *In the Matter of Michael WW*, 45 A.D.3d 1227, 846 N.Y.S. 739 (N.Y. Supreme Court, 2007).

[387](#) 42 U.S.C. §472 (a)(2)(A)(ii); 45 CFR 1356.21(b)(2) (2006); *Adoption Permanency Guidelines*, *op.cit.*, footnote 379 at p. 7. And see the discussion at Section VII C.

[388](#) Refer to the discussion *supra* in Section II D entitled “The Consequences of Reasonable Efforts Findings”

[389](#) McCully, Judge S., & Barnes, E.W., *op.cit.*, footnote 380 at p. 13.

[390](#) Refer to the discussion *infra* at section XH (The Value of Interim Reviews).

[391](#) Floria, Judge S. “More Good Than Harm: Legal Orphans and the New Jersey Post-Termination Project,” *Juvenile and Family Court Journal*, Vol. 59, No. 2, Spring, 2008, pp. 1-13.

[392](#) *The Model Court Effect*, NCJFCJ, Reno, 2008, p. 3.

[393](#) Floria, S., *op.cit.* footnote 391 at pp. 13-14. The adoption statistics come from Judge Sallyanne Floria and her staff. A copy of their communication is available from the author.

[394](#) “Forever Families,” *op.cit.*, footnote 380, at p. 27.

## VIII.

### **Challenges to Effective Use of the Reasonable Efforts Finding – Attorneys Representing Parents and Children**

Many state courts neglect to litigate the reasonable efforts/no reasonable findings early in the case. Some state courts only litigate the reasonable efforts issue in termination of parental rights proceedings many months or years after removal of the child. The reasons for this inattention include a number of policy and practice issues. This section discusses the role of parent's and children's attorneys in raising the reasonable efforts issue in court.

#### **A. THE IMPORTANCE OF ATTORNEYS**

[T]he quality of justice in the juvenile court is in large part dependent upon the quality of the attorneys who appear on behalf of the different parties before the court.<sup>395</sup>

Attorneys for children and parents provide critical support for their clients in child welfare cases. The complexity of these cases combined with the short time frame in juvenile dependency proceedings make their participation crucial for their clients and for the court. Judges do not work in a vacuum. The juvenile court bases its decisions on information received from the parties. Attorneys for the children and parents must provide the court with pertinent information. If the only information the court reviews comes from the agency, the judge will most likely make orders based on the agency's recommendations. Unrepresented parents and children cannot match the expertise and sophistication of government lawyers and trained child welfare workers in complex child abuse and neglect proceedings. Parents certainly do not have the experience to address the legal issues that the court must decide. Only with well-prepared lawyers present will the court receive information from multiple sources thereby providing the judge with alternative perspectives and recommendations to consider.

The reasonable efforts requirement provides attorneys for both children and parents with a powerful tool for enforcing their clients' rights to services. By advocating for services that make removal unnecessary and reunification possible, attorneys can ensure that all reasonable steps have been taken by the agency to maintain family integrity.<sup>396</sup> A number of barriers, however, prevent many attorneys from fulfilling these goals.

#### **B. PARENTS ARE UNREPRESENTED**

The United States Supreme Court ruled that parents in child welfare proceedings have no constitutional right to counsel, even when termination of their parental rights is at stake.<sup>397</sup> As a result

some states and local courts have been reluctant to spend taxpayer money for attorneys to represent parents in child protection proceedings. A national survey identified inadequate compensation as a barrier to effective representation of parents.<sup>398</sup> Some state government officials are reluctant to authorize money for parents' attorneys. In Wisconsin, for example, the legislature passed a law which forbids judges from appointing counsel for parents in these cases. A legal battle ensued, and the state supreme court held the statute unconstitutional, but because appointment is discretionary, some judges continue not to appoint counsel for parents in these cases.<sup>399</sup>

Appointment of counsel for parents varies from state to state. In some states the court does not appoint counsel for parents in child protection proceedings, appoints counsel in some cases, or appoints counsel only for certain hearings in the juvenile dependency process.<sup>400</sup> In some states, the court appoints attorneys for indigent parents only in termination of parental rights hearings.<sup>401</sup> Unrepresented parents do not understand the legal system, and, in particular, are not even aware of complex issues such as whether the agency has provided adequate services to prevent removal of their child from their care. The adversarial process anticipates that counsel will raise these issues, yet if parents are unrepresented, it is likely that no one will discuss these issues, much less challenge the actions by the agency.

In a national survey, professionals in each state were asked which areas most needed improvement in their juvenile dependency courts.<sup>402</sup> Twelve state court representatives indicated that representation (assuming appointment) is not adequate.<sup>403</sup> A Texas study of legal representation concluded that an insufficient number of attorneys represented parents, these attorneys received little training, the court appointed parents' attorneys late in the case, attorney compensation was inadequate, and the quality of representation was uneven.<sup>404</sup> In Texas the court appoints most parent attorneys at or after the Full Adversary Hearing<sup>405</sup>, thus making it difficult, if not impossible, for the reasonable efforts issue to be raised at that hearing.<sup>406</sup>

Most states appoint an attorney or guardian *ad litem* (GAL) for the child.<sup>407</sup> This appointment is mandated by the Child Abuse and Prevention and Treatment Act (CAPTA) originally enacted in 1974.<sup>408</sup> This legislation requires states to have provisions that ensure the GAL receives training appropriate to the role.<sup>409</sup> CAPTA also provides federal funding to states in support of services for prevention, assessment, investigation, prosecution, and treatment in child abuse cases. A review of appellate cases indicates that attorneys and guardians *ad litem* for children rarely, if ever, appeal trial court decisions relating to reasonable efforts.

### **C. COURTS APPOINT ATTORNEYS TOO LATE WHICH GIVES THEM INSUFFICIENT TIME TO ADEQUATELY PREPARE THE CASE**

Attorneys have significant responsibilities in child welfare cases. They must interview the client (parent or child) and family members, interview the social worker, investigate the facts of the case, and review reports including the social worker's file, all in an effort to determine whether the child can safely be returned to the family or relatives immediately. Additionally, the attorney must scrutinize whether the agency exercised reasonable efforts to prevent removal of the child.<sup>410</sup>

As a result of these demands, judges should appoint a separate attorney for each parent and for the child in every child welfare case.<sup>411</sup> The court should appoint these attorneys as soon as possible, preferably simultaneously with the filing of a petition and not at or after the shelter care hearing.<sup>412</sup> At the time of appointment the agency should provide the attorneys with a copy of the petition and supporting documents. Only with early appointment will the attorneys have sufficient time to be prepared for the critical shelter care hearing.

Because the attorney must complete these investigative tasks in a short time span, a few attorney offices have hired support staff to assist them in gathering information and working with the client.<sup>413</sup> This is a best practice and enables attorneys to be more effective in court. Unfortunately, the majority of jurisdictions provide no funding for support staff for either the attorneys for parents or the attorneys/GALs for children.<sup>414</sup>

Many states wait to appoint attorneys for parents at the shelter care hearing,<sup>415</sup> the first hearing after removal of the child. At this hearing or within sixty days of the physical removal, the juvenile court must make a finding whether the agency provided reasonable services to prevent removal of the child. This late appointment of an attorney effectively precludes him or her from preparing for and arguing the reasonable services issue. Appellate court decisions and comments from judges and attorneys reflect that the attorneys for the parents and children rarely raise the “reasonable efforts to prevent removal” issue in the trial courts.

Attorneys should approach the presiding juvenile court judge concerning early appointment. Alternatively, the unprepared attorney should request a continuance at the hearing.<sup>416</sup>

#### **D. ATTORNEYS LACK TRAINING AND ARE POORLY PAID**

Juvenile dependency court attorneys receive inadequate compensation and have low status in the legal system.<sup>417</sup> With a low level of remuneration, it is difficult to attract and retain talented attorneys.<sup>418</sup> Often representing parents in juvenile dependency court is the first job for a new attorney. After a year or two many are eager to move on to another legal field which offers significantly higher pay, and requires no “social work.”<sup>419</sup>

More interesting perhaps, is how very few state statutes articulate the training and qualifications required of attorneys as counsel in child abuse and neglect proceedings.<sup>420</sup>

Even if the parents are represented by counsel at the shelter care hearing, many attorneys lack training to alert them to the needs of their client, the existence of community resources, and to the reasonable efforts issue.<sup>421</sup> A national study of parents’ attorneys and guardians *ad litem* revealed that training was the area needing the most improvement.<sup>422</sup> National experts state that before accepting representation in a juvenile dependency case attorneys should be familiar with the following:

1. The causes and available treatment for child abuse and neglect.

2. The local child welfare agency's procedures for complying with reasonable efforts requirements.
3. The child welfare and family preservation services available in the community and the problems they are designed to address.
4. The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.
5. Local experts who can provide attorneys with consultation on the reasonableness and appropriateness of efforts made to maintain the child in the home.<sup>423</sup>

Early appointment, long-term assignments to the juvenile dependency docket, reasonable caseloads, and adequate training are critical if attorneys are to be effective in their representation of parents and children.

## **E. ATTORNEYS/GALS RARELY RAISE THE REASONABLE EFFORTS ISSUE**

An additional barrier to effective representation for parents is confusion about the role an attorney will play in the complex dependency system. Should attorneys raise the “no reasonable efforts” issue? Should the attorney be proactive and conduct research in order to understand family dynamics? Should the attorney be familiar with the availability of services in the community? The *Making Reasonable Efforts* study reported that two-thirds of the experts contacted indicated that attorneys appointed for parents are only ‘somewhat’ or ‘not at all’ proactive in their representation of their clients.<sup>424</sup>

Court decisions reflect that the attorneys and guardians *ad litem* for children rarely, if ever, raise the reasonable efforts issue.<sup>425</sup> It is likely that appointed attorneys/GALs do not believe that their role encompasses the adequacy and timeliness of services to parents as they may perceive these issues involve the parents and the children's services agency.<sup>426</sup>

## **E. ATTORNEY ATTITUDES – “WHAT GOOD WILL IT DO?”**

Attorneys may recognize that the child welfare agency stands to lose federal dollars if the court either fails to make a reasonable efforts finding or make a “no reasonable efforts” finding, yet these attorneys often fail to see any benefit to their clients should the court make a “no reasonable efforts” finding. The state may lose money, but they believe the finding will not greatly benefit their client in the case before the court. They also believe that the judge will not be receptive to a finding that will reduce the money coming to the agency from the federal government.

Two experienced California attorneys who represent parents in juvenile dependency cases offer several reasons why attorneys do not raise the reasonable efforts issue early in the case.<sup>427</sup> They say that return of the child is not an option that the court will consider even if they prevail on the

reasonable efforts issue. Thus, the reasonable efforts issue will not result in a finding their client will understand. Further they state that because the issue bears little or no relevance to the outcome of the hearing, raising it can frustrate the judicial officer by raising an additional issue. They also fear that the jurisdiction will lose federal funding when the judge makes a “no reasonable efforts” finding. Finally, they state that because no definition of reasonable efforts exists, attorneys do not participate in trainings that educate them about how they should approach the issue.

These attorneys are mistaken about the impact of a “no reasonable efforts” finding. Since the finding triggers a loss in federal funding, the agency takes these findings very seriously. If a judge determines that parental visitation is inadequate and makes a “no reasonable efforts” finding, the agency receives a clear message about the importance of visitation is important and will adjust agency policy and practice in the case before the court and in other cases they are managing. As a result the “no reasonable efforts” finding can have an important impact on agency practice and can improve services for all families, not just the one before the court. Moreover, many judges are receptive to reasonable efforts arguments.<sup>428</sup>

A well-prepared, trained attorney can make a significant difference in juvenile dependency proceedings. By insisting that the agency produce evidence of efforts to prevent removal and, if a child has been removed, to facilitate reunification the efforts, the attorney ensures that children are not unnecessarily removed from their families and that they are safely reunited, if possible. Studies demonstrate that enhanced legal representation results in more timely hearings, more family reunifications, fewer terminations of parental rights, and children reaching permanency sooner, thus accomplishing several major goals of the child welfare system.<sup>429</sup> Additionally, when children reach permanency sooner, savings accrue to the child welfare agency, the courts, and service providers.<sup>430</sup>

<sup>395</sup> Advisory Committee Comment to Section 24 of the California Standards of Judicial Administration. (now Standard of Judicial Administration 5.40, California Rules of Court).

<sup>396</sup> “*Making Reasonable Efforts*,” *op.cit.*, footnote 319 at p. 11.

<sup>397</sup> *Lassiter v State Department of Social Services*, 452 U.S. 18 (1981). The majority opinion held that the Fourteenth Amendment does not require courts to appoint counsel for indigents in every parental status termination proceeding. The court noted that there was no loss of liberty at stake. In order for counsel to be appointed in a civil case the trial court must weigh several factors including the private interest at stake, the government’s interest, and the risk that the procedures used will lead to erroneous decisions. The dissenting justices pointed out the seriousness of a termination of parental rights case and the necessity of counsel to “require that higher standards be adopted than those minimally tolerable under the Constitution.” The dissenting justices also stated that “[i]nformed opinion has clearly come to hold that an indigent parent is entitled to the assistance of appointed counsel not only in parental termination proceedings, but in dependency and neglect proceedings as well.” (at pp. 33-34); the Supreme Court of Mississippi in *K.D.G.L.B.P. v. Hinds County Department of Human Services*, 771 So.2d 907, 92 A.L.R.5th 735 (Miss. 2000), reh’g denied, (Dec. 7, 2000), held that the mother was not deprived of the right to due process of law as guaranteed by the Fourteenth Amendment when the chancery court failed to appoint an attorney to represent her in the termination of parental rights proceeding.

<sup>398</sup> *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective*



*Practice, Technical Assistance Bulletin, NCJFCJ, Reno, Vol. II, no. 2, 1998, at p. 89.*

[399](#) *Joni B. v Wisconsin*, 549 N.W.2d 411 (1996); this conclusion is based on conversations between the author and several judges in Wisconsin. See Edwards, L., “Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment,” *op.cit.*, footnote 107 at p. 23.

[400](#) For example, in Texas most parent attorneys are appointed after the critical Full Adversary Hearing. “Legal Representation Study *op.cit.*, footnote 99 at pp 10-14; as one judge stated “Parents are generally unaware of their ability to have an attorney appointed.” at p. 24; Edwards, L., “Representation” *Id.*

[401](#) Colorado, Indiana, and Wisconsin. See Dobbin, S., Gatowski, S. and Springgate, M., “Child Abuse and Neglect: A National Summary of State Statutes,” *Juvenile and Family Court Journal*, vol. 48, Nov, 1997, at pp. 43-54, at p. 49.

[402](#) “Child Abuse and Neglect Cases: Examining State Statutes in Everyday Practice,” Technical Assistance Bulletin, Permanency Planning for Children Project, National Council of Juvenile and Family Court Judges, Reno, 1997.

[403](#) *Id.*, at p. 18.

[404](#) “Legal Representation Study” *op.cit.*, footnote 99 at pp 10-14.

[405](#) Tex. Fam. Code section 262.201

[406](#) “Legal Representation Study,” *op.cit.*, footnote 99 at pp. 20-23.

[407](#) States give much more attention to child representation than to either parent or agency representation. “National Survey of Child Welfare Legal Representation Models,” Ruiz, R., & Trowbridge, S., National Child Welfare Resource Center on Legal and Judicial Issues, ABA Center on Children in the Law, Washington, D.C., 2009, at p. 7; Child Abuse Prevention and Treatment Act of 1974 (CAPTA), 42 U.S.C. § 5103(b)(2)(G) & §5106a. In some states the appellate courts have mandated representation for parents in abuse and neglect cases. See *Danforth v. State Department of Health and Welfare*, 303 A.2d 794, (Me., 1973). However, in Tennessee, “[m]ost children receive the benefit often advocate only at the termination of the parental rights stage, if at all.” Brooks, S. & Roberts, D., “Reflections,” *op.cit.* footnote 162 at p. 1043.

[408](#) P.L. 93-247 section 106(b)(2)(B)(xiii). CAPTA was amended several times, most recently in 2010 (P.L. 111-320).

[409](#) *Id.*

[410](#) There are still more responsibilities. These listed above are only a summary. See “*Making Reasonable Efforts*,” *op.cit.*, footnote 319 at pp. 11-30.

[411](#) Edwards, L., “Improving Juvenile Dependency Courts: Twenty-Three Steps,” *op.cit.*, footnote 380 at pp. 1-24, at p. 7. There is almost always a legal or factual conflict between parents in child protection cases. One attorney cannot ethically represent both parents in these cases.

[412](#) ABA/NACC Standards of Practice for Representation of Children, <http://www.naccchildlaw.org/?page=PracticeStandards>, ABA Standards of Practice for Representation of Parents, [http://www.americanbar.org/groups/child\\_law/tools\\_to\\_use.htm](http://www.americanbar.org/groups/child_law/tools_to_use.htm), Peters, J.K., J.P. *Representing Children in Child Protection Proceedings: Ethical and Practical Dimensions*, LexisNexis, 2d. edition, Mathew Bender, Newark, 2001, at p. 905; Edwards, L., “Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment,” *op.cit.*, footnote 107; *In re Hannah YY*, (3 Dept. 2008) 50 A.D. 3d 1201, 854 N.Y.S.2d 797 – Mother’s fundamental rights were violated when she was not advised of her right to counsel until after the removal hearing was over, at which point the Public Defender’s office was assigned to

represent her in subsequent proceedings. “The practice in 27 states is to appoint counsel for parents at the initial or shelter care hearing. In 11 states appointment occurs at the filing of the petition, and two states appoint counsel upon removal of the child. Of the remaining states, half appoint counsel for parents at the adjudicatory hearing, and half at the termination hearing.” “Child Abuse and Neglect Cases: Representation” *op.cit.*, footnote 398 at pp. 25-26.

[413](#) Ruiz, R., & Trowbridge, S., “National Survey of Child Welfare Legal Representation Models,” *op.cit.*, footnote 407 at pp. 5, 17.

[414](#) *Id.*

[415](#) “The practice in 27 states is to appoint counsel for parents at the shelter care or emergency hearing... Of the remaining 10 states, half appoint counsel for parents at the adjudicatory hearing, and half at the termination hearing.” *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*, *op.cit.*, footnote 398 at pp 25-26.

[416](#) *Smith v Edminston*, 431 F. Supp. 941 (W.E.Tenn.1977); Edwards, L., “Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment,” *op.cit.*, footnote 107. In the alternative, the court could set a second shelter care hearing similar to what occurs in Multnomah County (Portland), Oregon. “The Portland Model Court Expanded Second Shelter Hearing Process: Evaluating Best Practice Components of Front-Loading,” *Technical Assistance Bulletin*, NCJFCJ, Vol. VI, No. 3, July, 2002.

[417](#) Children’s Advocacy Institute, “A Child’s Right to Counsel: A National Report Card on Legal Representation for Abused and Neglected Children,” 3<sup>rd</sup> Ed., San Diego, 2013, at pp. 13-14. “Attorneys representing all parties in juvenile court are hampered by high caseloads, low status and pay, lack of specific training and experience, and rapid turnover.” Hardin, M., “Responsibilities and Effectiveness of the Juvenile Court in Handling Dependency Cases,” *The Future of Children: The Juvenile Court*, Center for the Future of Children, The David and Lucile Packard Foundation, Vol. 6, No.3, Winter, 1996, at pp. 111-125, 118; In Tennessee when the Supreme Court mandated that attorneys be appointed for indigent parents in dependency cases, the court simultaneously lowered the cap on attorneys fees from \$1,000 to \$500. See Brooks, S. and Roberts, D., *op.cit.*, footnote 162 at p. 1039.

[418](#) “Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads. Reasonable compensation of attorneys for the important work is essential. Rather than a flat per case fee, compensate lawyers for time spent. This will help to increase their level of involvement in the case and should help improve the image of attorneys who are engaged in this type of work... The need for improved compensation is not for the purpose of benefitting the attorney, but rather to ensure that the child receives the intense and expert legal services required.” *Adoption 2002: The President’s Initiative on Adoption and Foster Care: Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children’s Bureau (1999) at VII-4.

[419](#) Edwards, L., “Representation of Parents and Children in Abuse and Neglect Cases: The Importance of Early Appointment,” *op.cit.*, footnote 107, at p. 24. “Edwards, L. “The Juvenile Court and The Role of the Juvenile Court Judge,” *Juvenile and Family Court Journal*, Vol. 43, No. 2, 1992, at p.35; *Chen v County of Orange*, 96 Cal.App.4<sup>th</sup> 426; California Standard of Judicial Administration 5.40(c)(4) Advisory Committee Comment; Sankaran, V. “Protecting a Parent’s Right to Counsel in Child Welfare Cases,” *ABA Child Law Practice*, No.7 (2009) at p. 101.

[420](#) Dobbin, et.al., *op.cit.*, footnote 402 at p. 49; See also Bailie, K., “Note: The Other ‘Neglected’ Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers who

Represent Them,” *Fordham Law Review*. Vol. 66, 1998, at pp. 2285-2331.

[421](#) “In the majority of states, attorneys for parents currently receive only some or no additional training.” Dobbin et.al. *op.cit.*, footnote 398, at p. 33; “Child Abuse and Neglect Cases: Examining State Statutes in Everyday Practice,” *op.cit.*, footnote 402 at p. 18.

[422](#) “The number one area identified as needing the most improvement with regard to representation was training of attorneys and guardians *ad litem* (GAL’s).” Dobbin, *Id.*, at p. 15.

[423](#) *Making Reasonable Efforts*, *op.cit.*, footnote 319 at pp. 12-14.

[424](#) *Id.*, at p. 39.

[425](#) This book contains references to several hundred appellate cases dealing with reasonable efforts. In almost all of these cases, the parent is the party appealing the trial court’s decision. In the remaining few cases, the state is the appellant. There are no cases in which the attorney or guardian *ad litem* was the appellant.

[426](#) The National Association of Counsel for Children (NACC) recommends that attorneys for children be prepared to appeal trial court decisions that unfairly impact their clients. “The system of representation must provide an opportunity to appeal an adverse ruling.” “NACC Recommendations for Representation of Children in Abuse and Neglect Cases,” NACC, Denver, 2001, at p. 8.

[427](#) A full statement of their reasons is contained in the case law summary in Appendix A under California.

[428](#) See the comments of the judges in California, New Jersey, and New York in Appendix A.

[429](#) Courtney, M., Hook, J., & Orme, M., “Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care,” *Partners for Change: Discussion Paper*, Vol. 1, Issue 1, Seattle, WA, February 2011; “Improving Parents’ Representation in Dependency Cases: A Washington State Pilot Program Evaluated,” NCJFCJ, Permanency Planning for Children Department, Reno, August, 2003; Gemma, C. “Quality Representation of Parents Improves Outcomes for Families,” *Child Court Works*, Vol. 6, April 2003, ABA Center on Children and the Law; Bridge, B., & Moore, J. “Implementing Equal Justice for Parents in Washington,” *Juvenile and Family Court Journal*, Fall, 2002, pp. 31-41; Thornton, E., & Key, Judge Michael, “The Judge’s Role in Ensuring Quality Representation for Parents,” *Child Law Practice: Online*, Vol. 31, No. 3, ABA (2014) at p 2.

[430](#) Courtney, M. *et.al.*, *Id.*; Thornton, E. & Gwin, B. “Improved Outcomes for Families and Potential Cost-Savings Associated with Providing Parents with High Quality Legal Representation (2012) (unpublished manuscript, available from the author at Elizabeth.thornton@americanbar.org)

## IX.

### Challenges to Effective Use of the Reasonable Efforts Findings – Judges

#### A. WHAT JUDGES SHOULD KNOW

In order to make effective and proper orders in juvenile dependency cases judges should have some background in child development, service availability and delivery, as well as issues relating to the operations of the local child welfare agency.<sup>431</sup> The judge should be familiar with the agency's policies regarding the removal of children, how the agency provides services to prevent removal, the services the agency uses to help reunify families, and the availability of services (including how long must families wait for services). The court also should know the experts the agency uses to make difficult decisions (*i.e.* the mental health of family members), whether the agency has wrap-around services available, what alternative dispute resolution procedures the agency uses, if any, and what the agency policies and procedures the agency uses to locate fathers and relatives. Because this information cannot be learned in a short period of time, juvenile court judges should remain in that assignment for extended periods of time and both organize and participate in regular trainings.<sup>432</sup>

#### B. JUDICIAL KNOWLEDGE OF AVAILABLE SERVICES

A more complex issue involves the judge's knowledge of community resources. In order for judges to make informed decisions about reasonable efforts, the judge should have comprehensive knowledge of the needs of the family as well as the child welfare and family preservation services in the community.<sup>433</sup> As a California Standard of Judicial Administration states: "Judges of the juvenile court...are encouraged to (2) Investigate and determine the availability of specific prevention, intervention, and treatment services in the community for at-risk children and their families."<sup>434</sup> This knowledge can best be gained by holding regular trainings for judges, attorneys, and others who participate in the juvenile dependency system. The trainings should feature agency practices, service providers in the community, and experts in mental health, substance abuse treatment, and domestic violence programs.

Often a new social worker will not be aware of community services of which the judge knows. Since the judge reviews case plans regularly, he or she will naturally build up a storehouse of information about available community services. For example, the judge may know of domestic violence shelters that provide housing for a victim of violence and the child before the court. The judge may know of homeless shelter resources available for parents or specialized parenting classes.

Should the court make reference to these services when the social worker and attorneys do not? This issue has ethical overtones if the parties are litigating the reasonableness of services, and the

judge knows of services that none of the parties has mentioned. In this situation, the judge must disclose what the court knows and provide the parties an opportunity to respond to the court's information.<sup>435</sup> Following that procedure, the parties and any appellate court will know the basis of the court's ruling.

### C. SHOULD JUDGES RAISE THE REASONABLE EFFORTS ISSUE?

Trial judges face a number of unique challenges regarding the reasonable efforts issue. They understand that they have a legal responsibility to address the reasonable efforts issue several times during the life of a dependency case. After all, federal and state statutes require these findings, which are necessary for the state agency to receive monies for foster care. Yet, if the attorneys fail to raise the issue, do judges have a responsibility to discuss it with agency representatives in court? Many judges are understandably reluctant to take such action *sua sponte*. They are more comfortable in a "neutral role," one in which they hear counsel present evidence, and then make a decision based upon the evidence and argument. Of course, unrepresented parents and unprepared or untrained attorneys are unlikely to raise the issue.

Several studies indicate judges' reluctance to address the reasonable efforts or "rubber stamp" agency requests for a reasonable efforts finding.<sup>436</sup> In a New York report the authors concluded that the reasonable efforts issue is "very rarely addressed," and that judges admit they often routinely approve requests to take away children even when they don't really believe the agency has made an adequate case.<sup>437</sup> The report concluded that [s]uch practice...comes frighteningly close to abdicating the Court's basic responsibility to protect the rights of children and families."<sup>438</sup> A Michigan survey reported that 20 percent of the judges always found that reasonable efforts had been made, and another 70 percent said they rarely concluded otherwise. Moreover, 40 percent admitted that they lied about reasonable efforts being made because the state would otherwise lose federal aid.<sup>439</sup> In another survey of over 1,200 juvenile court judges around the country, only 44 judges responded that they had made at least one negative reasonable efforts finding during their tenure on the bench.<sup>440</sup> These and other reports led one commentator to conclude that the reasonable efforts requirement simply does not work.<sup>441</sup>

The better practice is for judges to raise the issue even if the attorneys neglect to mention it.<sup>442</sup> In fact, the judge should make it clear from the outset that the reasonable efforts issue will be discussed, and if not by the attorneys, the court will inquire. This approach puts the attorneys and agency on notice of the importance of the issue to the court. It also informs the agency that the court is monitoring their actions. After all, trial court monitoring of agency actions is a principle reason Congress passed the AACWA and ASFA.

The law requires that the court base a reasonable efforts finding upon evidence produced at the hearing. The evidence may be in the form of testimony<sup>443</sup> or reports, but cannot consist of allegations contained in a petition.<sup>444</sup> Judicial enquiry into the evidence presented can be critical to a resolution of the reasonableness of the services provided. For example, the court may learn from the parties that services unknown to the social worker could make possible a safe return of the child.

A recent study highlights the importance of judicial questioning at the shelter care hearing.<sup>445</sup> The National Council of Juvenile and Family Court Judges (NCJFCJ) conducted an experiment in three juvenile courts in different states – Omaha, Nebraska, Portland, Oregon, and Los Angeles, California. The judicial officers spent additional time at the shelter care hearing and asked specific questions from a bench card.<sup>446</sup> The results were stunning. This study demonstrated that an enhanced shelter care hearing, including representation for all parties and judicial questioning, resulted in more children being returned to a parent at the first hearing, more family and relative placements, and fewer children placed in non-relative foster homes.<sup>447</sup>

## **D. JUDICIAL DETERMINATION OF REASONABLE EFFORTS**

What should a judge consider when determining whether reasonable efforts have been provided by the agency? At the outset the judge should understand the problem that brought the child to the attention of the agency. This should be reflected in the petition. The judge's understanding determines the relevance of any services provided. In order to ensure a full and fair hearing on the merits, the court should permit all parties to review the child welfare agency's records concerning the decision to remove the child. Then the court should require the agency to prove that it made reasonable efforts. Any party should have the right to present testimony on the issue of reasonable efforts. After the parties submit their evidence, the court should determine whether the services offered were adequate, available, accessible, and realistic. The existence of a service that is not immediately available, or a service that is inaccessible to a parent without transportation arguably would not qualify as reasonable. On the other hand, a service that would be too costly, such as a 24 hour live-in social worker, would not be considered reasonable. The court forms developed in several states and contained in Appendix C have proven useful for the parties and the court to read what the agency has done to prevent removal or facilitate reunification.

## **E. SHOULD JUDGES MAKE A “NO REASONABLE EFFORTS” FINDING?**

Yes! When the facts reveal that the agency has not provided adequate services to prevent removal of the child, to assist the parents reunify with their child, or to finalize permanency, the court has a legal and ethical obligation to make that finding. Federal and state legislations gives trial courts the duty to monitor the actions of the agency. Judges should acknowledge that responsibility and follow the law.

The court owes a duty to the child and family to hold the agency accountable for its performance. A number of options exist for the court to consider when making a reasonable efforts determination.

- subpoena agency witnesses to testify about the agency's failure to make reasonable efforts.
- allow the agency a brief continuance to show why a negative finding should not be made.
- order the agency not to seek reimbursement for the cost of the child's care.
- order the agency to develop specific services and file appropriate documents where

- necessary.
- issue orders to show cause or contempt orders.
- submit reports on noncompliance to state or federal agencies.<sup>448</sup>

Many judges are reluctant to make “no reasonable efforts” findings because the child welfare agency loses money, often the local agency is under-resourced, and a loss of money would further weaken the agency.<sup>449</sup> Judges must overcome that reluctance to ensure that the agency is doing its job.

<sup>431</sup> *Making Reasonable Efforts*, *op.cit.* footnote 319 at pp. 34-35.

<sup>432</sup> Edwards, L., “Judicial Rotation—One Judge-One Family,” *The Bench*, the official magazine of the California Judges Association, Spring, 2008.

<sup>433</sup> “*Making Reasonable Efforts*,” *op.cit.*, footnote 319 at pp. 31-33; *Making Reasonable Efforts: Steps for Keeping Families Together*, NCJFCJ, Child Welfare League of America, Youth Law Center, National Center for Youth Law, San Francisco, 1999, at pp. 9-10;

<sup>434</sup> California Standard of Judicial Administration 5.40(e)(2).

<sup>435</sup> Edwards, L., *The Role Of the Juvenile Court Judge: Practice & Ethics*, California Judges Association, The Rutter Group, (2012) at 77-81.

<sup>436</sup> Hardin, M., *Ten Years Later: Implementation of Public Law 96-272 by the Courts*, American Bar Association Center on Children and the Law, Washington, D.C., 1990 at p. 54; Carns *et.al.*, Alaska Judicial Council, “Improving The Court Process for Alaska’s Children in Need of Aid,” *op.cit.*, footnote 102 at pp 98-100, reporting that judicial officers rarely touched upon the reasonable efforts issue and usually checked a box on a form rather than writing out separate findings; Shotton, *op.cit.*, footnote 3, at pp.227-228.

<sup>437</sup> Special Child Welfare Advisory Panel, “Advisory Report on Front Line and Supervisory Practice,” Annie E. Casey Foundation, March 9, 2000, pp. 47-48.

<sup>438</sup> *Id.*

<sup>439</sup> Muskie School of Public Service Cutler Institute For Child and Family Policy, University of Maine and The American Bar Association Center for Children and the Law, *Michigan Court Improvement Program Reassessment*, August 2005.

<sup>440</sup> This study was conducted by staff at the Youth Law Center in the summer of 1989. The judges were sent a two-page survey which contained questions such as: Have you ever made a negative finding of reasonable efforts and, if so, how many times, in what types of case, and at what kind of hearing? This survey was reported in Shotton, *op.cit.*, footnote 3 at p. 236.

<sup>441</sup> National Coalition for Child Protection Reform, “The Unreasonable Assault on ‘Reasonable Efforts,’” Issue Paper 9.

<sup>442</sup> “The second is to indoctrinate them with a commitment to monitor the dependency adjudication and dispositional process and to apply the inherent powers they possess to assure that the service providers do in fact make the reasonable efforts in a timely fashion. Judicial pressure can do wonders in moving cases and assuring compliance with the legislative mandate.” Tamilia, Hon. P, Symposium: A Response to Elimination of the Reasonable Efforts Required Prior to Termination of Parental Rights Status,” *U. Pitt. Law Review*, Vol. 54, Fall, 1992, at pp., 211-228, at 224.

<sup>443</sup> See *In re Armand*, 433 A.2d 957, 962 (R.I. 1981)

<sup>444</sup> Ratterman, *et.al.*, *op.cit.* footnote 42 at p.10.

<sup>445</sup> “Right From the Start: The CCC Preliminary Protective Hearing Benchcard Study Report: Testing a Tool for Judicial Decision Making,” NCJFCJ (2011). Copies of the Benchcards are

reproduced in Appendix H.

[446](#) A benchcard is a one or two page sheet of questions that a judge should ask at a particular hearing or when a particular issue arises. The NCJFCJ has produced bench cards for several types of hearings and issues. Examples of benchcards used regarding reasonable efforts findings are contained in Appendix H.

[447](#) “Right From the Start: The CCC Preliminary Protective Hearing Benchcard Study Report: Testing a Tool for Judicial Decision Making,” NCJFCJ (2011), at p. 3. Copies of the benchcards are reproduced in Appendix H.

[448](#) “*Making Reasonable Efforts,*” *op.cit.*, footnote 319 at p. 33.

[449](#) The next section of this paper (IX E) offers a suggestion entitled The Art of The No Reasonable Efforts Finding. It presents a strategy that may accomplish the legislative goal without the agency suffering financial consequences.



## X.

### Recommended Judicial Strategies

How should judges approach the reasonable efforts issue? This section details a number of strategies designed to offer a comprehensive approach to the role of the judge when presiding in child welfare proceedings.

#### A. EARLY APPOINTMENT OF COUNSEL FOR PARENTS AND CHILDREN

Judges should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. Judges should be prepared to appoint counsel for indigent parents and guardians *ad litem* for all children who are the subject of child welfare proceedings.<sup>450</sup> The appointment should take place as early as possible so that counsel can be prepared for the shelter care hearing.<sup>451</sup> The court should order the agency to provide copies of the petition and supporting documents immediately after filing the legal action.<sup>452</sup> Attorneys appointed at the time of the shelter care hearing cannot be prepared for the hearing.<sup>453</sup>

Unfortunately, judges often resist appointing counsel for parents in juvenile dependency cases or do so late in the case. Their reluctance often is based upon concern with the cost of counsel and pressure from the other branches of government not to spend money on attorneys for parents.<sup>454</sup> Yet as indicated in the previous discussion, early appointment can save money for the state by returning more children safely to family members and doing so in a timely manner.

#### B. ENSURING HIGH QUALITY LEGAL COUNSEL

Since well-trained attorneys serve both their clients and the court process well, judges must take a leadership role in attorney training.<sup>455</sup> First, judges should require that any attorney seeking appointment to represent a parent or child in child welfare proceedings participate in continuing education regarding issues related to these cases.<sup>456</sup> Second, judges should encourage monthly or quarterly training sessions available to attorneys, judges, social workers, CASA volunteers, and service providers.<sup>457</sup> Such trainings should include social worker practice and services available in the local community. Third, judges should encourage attorneys to practice in juvenile dependency court for substantial periods of time. Fourth, judges should work with court administrators and local bar associations in an effort to persuade law firms or small groups of lawyers to apply to the court for a contract to provide legal representation for parents and/or children. This legal services model for clients appearing before the juvenile court has proven effective in a number of jurisdictions across the country.

## C. EARLY ATTENTION TO REASONABLE EFFORTS

### 1. Why Early is Better

Early attention to reasonable efforts means that critical issues will be addressed quickly and efficiently.<sup>458</sup> Delay is built into the legal process. It takes time to arrange for legal counsel, to read investigative reports, to interview clients, to find a time when all parties can be present, and to have witnesses available. The complexity of juvenile dependency cases with several parties, social workers, attorneys, and relatives means that a deliberative process can take months to resolve.

Yet as one commentator has stressed, everyone, and particularly the judge should “treat each case as though it were an emergency.”<sup>459</sup> “It is difficult for participants in the juvenile court to remember that every case before the court is an emergency for the families involved. Children and families are in trauma as the result of social services and court intervention. The longer the process takes, the more extensive the trauma.”<sup>460</sup>

The best approach for the legal system involves spending significant time as soon as possible to address all possible issues.<sup>461</sup> An examination of appellate case law reveals that many critical issues do not arise until a hearing to terminate parental rights, the last legal hearing in a juvenile dependency case. When an appellate court hears arguments that the agency failed to provide adequate and timely services to the parents, the court also knows that the child has been waiting for years, often residing in a possible adoptive home. A reversal will necessarily cause additional trauma to the child.<sup>462</sup> It will delay permanency, and it may result in another change of custody.<sup>463</sup> As a result of this reality, many appellate courts prefer to find that any efforts by the agency are sufficient to satisfy the reasonable efforts requirement.<sup>464</sup> As one commentator wrote:

Only when TPR procedures roll around do the courts take the reasonable efforts requirement seriously... At this point, rehabilitation is usually hopeless and requiring the agency to make reasonable efforts at this late date merely punishes the child for the agency’s failure.<sup>465</sup>

As the Iowa Supreme Court has pointed out, the parent should address a lack of services early in the case.<sup>466</sup> The trial judge and the attorneys should also create opportunities to examine whether the correct services are in place and whether the parents have access to those services. Early inquiry into these issues will result in earlier determinations regarding reunification. It will serve the best interest of children and their families.<sup>467</sup>

### 2. At the Shelter Care Hearing

The judge should discuss the reasonable efforts issue at the shelter care hearing.<sup>468</sup> If the attorneys fail to address the issue, the judge should review the actions taken by the agency to prevent removal of the child including issues such as whether there have been changes that would permit the child safely to return home, whether another parent is available for custody, whether a relative is willing and able to care for the child, and whether the addition of services would make any of these

alternatives possible.<sup>469</sup>

## **D. EARLY RESOLUTION OF PETITION THROUGH ADJUDICATION**

After the shelter care hearing the court should schedule an adjudication hearing in a reasonable time and in no case later than 60 days.<sup>470</sup> Most states comply with this recommendation, but three states have no statute governing the time to adjudication.<sup>471</sup> Early adjudication establishes judicial authority over the child, gives the parents an opportunity to challenge the allegations in the petition, clarifies what services best serve the parents, and moves the case from an adversarial to a rehabilitative posture.<sup>472</sup>

## **E. REASONABLE EFFORTS TO REUNIFY**

The court must also review the services that the agency has provided to assist the parents address the issues that brought their child to the attention of the court.<sup>473</sup> At hearings throughout the remainder of the case, including at any hearing to terminate parental rights, the court should review what services the agency has provided to assist the parents reunify with their child. In other words, has the agency provided timely, relevant, and effective services to the parents? Failure to do so can and often should result in a judicial “no reasonable efforts” finding.

## **F. REASONABLE EFFORTS TO FINALIZE A PERMANENT PLAN**

ASFA added another duty for the court – to monitor the agency’s efforts to finalize a permanent plan for the child.<sup>474</sup> In other words, if reunification has failed and a permanent plan has been established, the agency must take steps to complete that plan. Once again the court must monitor the agency’s efforts, and the failure of the agency to finalize a permanent plan can result in a “no reasonable efforts” finding. Attorneys and guardians *ad litem* for children, in particular, should also monitor whether the agency is providing reasonable efforts to finalize a permanent plan. They may be the only representative for the child after parental rights have been terminated. They should insist that the court finalize a permanent plan for the child at every hearing.

Several state courts conduct rigorous post-termination reviews to prevent children from lingering in foster care. New Jersey’s Orphans Project resulted in thousands of children finding permanent homes.<sup>475</sup> Georgia juvenile courts developed a Cold Case Project that focuses upon children in lingering in long-term foster care with a goal of securing them a permanent home. A Texas report urges juvenile court judges to make significant changes in practice so that permanency hearings (called PMCs) become more effective in finding permanent homes for children.<sup>476</sup>

## **G. JUDICIAL TRAINING**

Judges at both the trial and appellate level must be trained and educated on the importance of judicial oversight of agency actions through “reasonable efforts” findings.<sup>477</sup> Many judges simply do

not understand the critical importance of these findings in juvenile dependency cases. They also do not understand or are reluctant to question the social worker about efforts expended on behalf of parents to prevent removal or provide services to assist parents reunify with their children. As two commentators put it,

Judges are not trained in matters over which the juvenile court has jurisdiction, and because of rotation schedules, remain in the assignment for a short period of time. Consequently, they do not acquire the experience needed to handle these sensitive cases. While judges in some localities make a good faith effort to determine whether adequate services have been offered to the family, in many localities a positive finding is merely a matter of checking a box on a preprinted form,<sup>478</sup>

The National Council of Juvenile and Family Court Judges has issued several comprehensive benchcards which outline questions that judges should ask social workers at the shelter care hearing.<sup>479</sup> They are useful guides for the questions that a judge should be address at this hearing.<sup>480</sup>

## **H. THE VALUE OF INTERIM REVIEWS**

An interim review is a non-statutory hearing usually set by the judge to address one or more specific issues that require special attention.<sup>481</sup> Judges schedule interim hearings for a number of reasons including: to complete paternity determinations, review whether a child is an Indian child pursuant to the ICWA, and determine whether mental health evaluations and reports have been completed. Judges also hold interim review hearings to learn whether visitation is occurring as ordered by the court, whether the child's relatives have received notice of the proceedings pursuant to federal law, to make certain that pre-adoption home studies have been completed, and other issues that require special attention, and cannot wait for the next six or twelve month hearing.<sup>482</sup> In particular, interim reviews can determine whether the agency is providing the services ordered by the court and determine the effectiveness of these services in addressing the problems that brought the child to the attention of the court.<sup>483</sup> The Iowa appellate courts pay particular attention to the importance of identifying service problems early in the case and not at a termination of parental rights hearing. A frequently repeated phrase in their appellate decisions is “[w]e have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.”<sup>484</sup>

Interim hearings take very little court time, but provide useful information about case progress and remind the parents of the critical nature of the proceedings. Perhaps most importantly, an interim review scheduled shortly after the court establishes a service plan identifies and solves problems early in the case rather than at the termination of parental rights hearing when it may be too late to do so. The AACWA, national policy experts, and appellate case law support the use of interim reviews.<sup>485</sup> For example in Hamilton County, Ohio, a Model Court,<sup>486</sup> the court frequently holds post-dispositional review hearings in all open cases. These oversight hearings make certain that the case is moving toward a final decision and that the parties are working to achieve consistent goals.<sup>487</sup> A typical review in Hamilton County would include inquiries into the following issues:

- Where is the child and is the child having any problems in the foster home or at school?
- What has been done to provide services to parents?
- Do parents feel that services are helpful and do parents think that they are making progress as a result of the services?
- What, exactly, is the level of parental participation in services and what progress are the parents making?
- Is the Agency satisfied with the progress of the parents?
- What visitation has occurred and how has it gone?
- Does return home seem likely, and what needs to be done to achieve it? How will the parents know whether the child is ready to be returned home?<sup>488</sup>

Even after a termination of parental rights, an interim review of a child's progress towards permanency proves very useful.<sup>489</sup> If the court orders an adoption, the judge should take an aggressive approach to achieve that plan. Through interim reviews the court can put pressure on the agency to take prompt action to finalize the permanent plan. Knowing that the judge is concerned about the child's future serves as a powerful incentive to take timely action.<sup>490</sup>

The Utah legislature passed a statute which requires post-termination reviews every 90 days.<sup>491</sup> The statute reflected practice that Judge Sharon McCully, the former presiding judge of the Salt Lake City Model Juvenile Court, and other Utah juvenile court judges previously implemented. Judge McCully reviewed every case monthly, usually together with other post-termination cases. All parties were expected to appear. Judge McCully reports that the most frequently discussed issues involved potential adoptive parents "not being ready," problems procuring the adoption subsidy, and hesitancy by a child whose consent was necessary.<sup>492</sup>

The National Council of Juvenile and Family Court Judges strongly supports interim reviews. In its "Key Principles for Permanency Planning for Children" it declares:

Judges must provide fair, equal, effective and timely justice for children and their families throughout the life of the case, continually measuring the progress toward permanency for children. The same judge should oversee all cases impacting the care, placement, and custody of a child. Through frequent and thorough review, without needless delay, judges must regularly exercise their authority to set and monitor the timelines, quantity, quality, and cultural responsiveness of the services for children and families. Judge should ensure that there is communication, collaboration and cooperation among all courts handling cases involving any given family.<sup>493</sup>

Social workers may object to interim reviews believing that they require more report writing and take time away from their other duties. The forms displayed in Appendix J were created by the

author and the Director of Children's Services in Santa Clara County so that they would take very little time to complete, but would contain critical information for the judge and attorneys.

## **I. ENGAGING FATHERS AND RELATIVES**

One strategy to avoid placement and facilitate reunification involves the identification and engagement of fathers and relatives. For a variety of reasons fathers are often not involved in the juvenile dependency process.<sup>494</sup> Yet fathers may provide a placement for the child and have resources that benefit the child. By identification and engagement the father also dramatically increases the number of the child's relatives.

The federal government recognized the importance of relatives in child welfare cases when it passed the Fostering Connection to Success and Increasing Adoptions Act in 2008.<sup>495</sup> This Act emphasizes the importance of identifying and engaging family members and mandates that local social service agencies actively and diligently identify, locate, and give notice to a child's relatives within thirty days of the child's removal from the home.<sup>496</sup> The Act indicates that relatives are preferred placements for children who must be removed from their biological parents.<sup>497</sup> The Act identifies several best practices including family finding,<sup>498</sup> family group conferencing,<sup>499</sup> and guardian kinship navigators,<sup>500</sup> all processes which help engage and assist families participate in child welfare proceedings. The legislation encouraged adoption of all three of these best practices by offering grant monies to help initiate these practices locally.<sup>501</sup>

While some commentators believe that families often do not have the capacity to provide safe care for abused and neglected children, the federal government and other commentators conclude that relatives offer the best placement for children removed from parental care.<sup>502</sup> Judges should enforce this new law by using the "reasonable efforts" finding in relation to agency efforts to identify and locate fathers and relatives in a timely fashion. The engagement of fathers and relatives reduces the number of children placed in foster care with strangers.<sup>503</sup>

## **J. THE ART OF THE NO REASONABLE EFFORTS FINDING**

Judges are often reluctant to make "no reasonable efforts" findings. The parties rarely try the issue and the court does not want to see the local children's services agency lose money, particularly when services are difficult to fund.<sup>504</sup> It is not necessary, however, to make "no reasonable efforts" findings and have the state lose federal funding. Judges can use the finding strategically through an approach called "The Art of the No Reasonable Efforts Finding." The judge states that the court is prepared to make a no reasonable efforts finding, but that it will continue the matter for one week for a progress report. In most cases the agency understands what they need to do and takes that action. Most likely, the agency will respond and the court will not have to make a "no reasonable efforts" finding at the subsequent hearing.

The "no reasonable efforts" finding also increases the pool of available services in the

community. The court may conclude that there are services that should be in place within the judge's community. Using the possibility of a "no reasonable efforts" finding, judges have persuaded the agency to establish a visitation center, housing for teens with babies, parenting classes, and other services that once created became available to all families in the child protection system. As Judge Richard FitzGerald wrote:

Judges can use "reasonable efforts" determinations to set court expectations as to appropriate responses by the child welfare system to families experiencing both domestic violence and child abuse or neglect.<sup>505</sup>

The court can also use the "no reasonable efforts" finding in creative ways that do not penalize the agency for its inaction. The court can make a "no reasonable efforts" finding and suspend that finding for a week in order for the agency to comply with court orders. A number of judges found that the agency responds to this type of order.<sup>506</sup> For example, the agency may not have completed a background check on a relative who wants the child placed with him or her. The court could make a "no reasonable efforts" finding, but continue the case for a week for completion of the investigation. When the case returns to court, the check has been completed and the court sets aside the finding of "no reasonable efforts."

This strategy offers the judge the opportunity to pressure the child welfare agency to do the work that the judge finds they are obliged to do. Such a strategy can also create services previously unavailable to parents in the community.<sup>507</sup> Finally, one commentator argues that safely preventing placing a child in foster care saves money.<sup>508</sup>

## **K. AN ALTERNATIVE APPROACH**

Some judges resist making "no reasonable efforts" findings. Judge John Steketee formally a juvenile court judge in Kent County (Grand Rapids), Michigan, stated that he and his colleagues do not make negative reasonable efforts findings.<sup>509</sup> Although Michigan law requires the court to make findings whether reasonable efforts have been made to prevent the child's removal from home and whether reasonable efforts were made to rectify the conditions that caused the child's removal from home, the Kent County judges question the agency at each hearing and sometimes direct the agency to perform certain tasks.<sup>510</sup> On occasion the judge contacts a supervisor or director and asks that a particular problem be addressed.<sup>511</sup>

Judge Steketee informed the author that Kent County had such excellent preventive services that:

[b]y the time a petition is filed, the family has been given a wide array of social services. Those are well documented. Filing a petition clearly becomes a last resort. The result is that Kent County more than 50% of the petitions which are filed result in a termination of parental rights and an adoption. All parties agree that social services has offered whatever services were appropriate, but the family was not in a position to take advantage of them.<sup>512</sup>

Judge Steketee stressed that holding the agency accountable can be done in other ways. For example, meetings with the court, attorneys, and agency representatives examine system problems.<sup>513</sup> Through more frequent hearings, the court can monitor the efforts of the agency to resolve individual problems. He reported that the court addresses the reasonable efforts issue at all hearings. Attorneys for the parents cross-examine the social worker on specific tasks they performed and whether the treatment plan is appropriate for the client.<sup>514</sup>

The judicial officers in Hamilton County, Ohio, take a similar approach and rarely make negative comments concerning the reasonableness of agency efforts.<sup>515</sup> They suggest or order additional steps to be taken by the agency and “focus closely on the sufficiency of Agency efforts to assist the family.”<sup>516</sup> The court scrutinizes the adequacy of agency services to the family throughout the time the child remains in agency custody.

Several attorneys who practice in the Allegheny County, Pennsylvania juvenile court, report that the reasonable efforts issue is not often tried in that court.<sup>517</sup> Their reasons resemble those reported by Judge Steketee’s – the agency does such a remarkable job of providing services that everyone in the court understands that filing a petition in court was a last resort.

Even in the most progressive jurisdictions, the court must be assured that the agency performs its job thoroughly. That can be accomplished by addressing the issue at each hearing, particularly early in the case. In that way the appropriate services can be identified as soon as practical and any failures to connect parents to these services can be addressed. Of course, if the agency failed to provide the appropriate services in a timely fashion, the court should hold the agency accountable.

**L. CAN AGENCIES FULFILL THE REASONABLE EFFORTS REQUIREMENT?**

At least one commentator believes that the reasonable efforts concept may be “too ambitious in the context of resource starved public child welfare systems.”<sup>518</sup> His criticisms of the reasonable efforts failures include many of the arguments detailed in this paper. He believes that if agencies and courts paid greater attention to state of the art research in guiding placement decisions, there would be better results for foster children.

The research results documented in this book indicate that some states use the reasonable efforts concept effectively while others do not. Through emphasis on early attention to the case plan and the services designed to rehabilitate parents, appointment of attorneys early in the process, ensures that the attorneys are well-trained, and by strong judicial oversight of agency decisions, the concept can realize even more positive results.

Judges can make a significant difference in the development of services. As one national publication indicated:

- Judges must exercise leadership in (a) analyzing the needs of deprived children and (b) encouraging the development of adequate resources to meet their needs.



- In order to improve children’s services, each community, under leadership of the juvenile and family court, should analyze the needs of children and encourage legislative, executive and taxpayer support for adequate resources for:
  - Preventative programs and treatment facilities and services, such as day care, early childhood education, homemaker services, crisis nurseries, aftercare, mental health, foster care, school-located services, self-help groups and parenting training; and
- Cost-effective programs to limit excessive or lengthy out-of-home placements of children.<sup>519</sup>

Another commentator agreed, stating that judges can use the possible “no reasonable efforts” finding to persuade elected officials to provide additional services.

That’s the beauty of this damned system. If he’s really serious about it, a judge can say, “This is the service I want, and county, you provide it.” This then gives the county the leverage to go to the Board of Supervisors and say, “This is mandated; it’s on the books, you have to fund it.” Either way, the judges are going to do that, or someone’s going to bring a class action suit.<sup>520</sup>

Both Appendices D and E offer examples of how a judge can oversee the expansion of social services in the community.

## **M. BEST PRACTICES AND REASONABLE EFFORTS**

The field of child welfare has developed significant best practices over the past decade. These include family finding, dependency mediation, wrap-around services, family group conferencing, parent-child interaction therapy (PCIT)<sup>521</sup> and multi-systemic therapy, to name a few.<sup>522</sup> The federal Fostering Connections to Success and Increasing Adoptions Act of 2008 identified family finding, family group conferencing and kinship guardian navigators as best practices and provided grant funding to jurisdictions in order to implement these practices.<sup>523</sup>

Agency directors and juvenile court judges should know and understand these best practices. Cross-trainings in every court system should describe new best practices, and judges and attorneys should inquire of agency representatives whether these innovations have been implemented. A failure to use some of these best practices may be sufficient to question whether the agency is providing reasonable efforts for a particular family.<sup>524</sup>

## **N. JUDICIAL LEADERSHIP**

In order for reasonable efforts findings to be a meaningful part of juvenile dependency cases, judges must take the lead and make it happen.<sup>525</sup> If judges do not accept the responsibility for holding the agency accountable for providing services to families, no one else will. As stated in a NCJFCJ

publication:

Judicial commitment and leadership is the key factor in any effort to improve systems response to child health and safety needs, and to provide stable and permanent homes for children. A judge sets the tone for the entire system by expressing a commitment to timely permanency, setting clear expectations of all parties, and demonstrating congruent behaviors from the bench. Through persistent pursuit of good practice and by initiating improvement efforts, a judge can create a culture of excellence that involves the court staff and other system participants.<sup>526</sup>

No judge can fulfill these leadership responsibilities unless the judge remains in juvenile court for a significant period of time. The rotation of judges or the movement of a case among several judges is detrimental for the children and families appearing in court, and for implementation of the law. Judicial leadership requires long-term assignments to the juvenile court.<sup>527</sup>

<sup>450</sup> *Resource Guidelines: op.cit.*, footnote 131 at pp. 22 & 43-44; “Legal Representation Study,” *op.cit.*, footnote 99; Edwards, L., “Early Appointment,” *op.cit.*, footnote 107; at pp. 23-25.

<sup>451</sup> Edwards, L., *Id.* An evaluation of practice in the Utah juvenile courts found that in almost all cases, parents and children were represented at the shelter care hearing (held within 72 hours of removal). “An Evaluation of Utah Court Improvement Project Reforms and Best Practices: Results and Recommendations,” *Technical Assistance Bulletin*, NCJFCJ, Reno, 2003 at §§ 3.4 & 3.5.

<sup>452</sup> Edwards, L., “Representation of Parents,” *op.cit.*, footnote 107.

<sup>453</sup> The author has discussed this issue with several attorneys around the country. They uniformly state that if they are appointed at the shelter care hearing, they do not have sufficient time to prepare for all of the issues that arise at the hearing.

<sup>454</sup> Edwards, L., “Representation of Parents,” *op.cit.*, footnote 107.

<sup>455</sup> “*Making Reasonable Efforts*,” *op.cit.*, footnote 319, at p. 38; California Standard of Judicial Administration recommends active judicial support of attorney training. Refer to Appendix K; see also Thornton, E., *op.cit.*, footnote 418 at pp 1-13.

<sup>456</sup> See Appendix K and Thornton, E. *op.cit.*, footnote 430.

<sup>457</sup> *Id.*

<sup>458</sup> “[I]t is preferable for the state agencies to show reasonable efforts early on in each case...;” Crossley, *op.cit.* footnote 3, at p. 314.

<sup>459</sup> Edwards, L., “Improving Juvenile Courts,” *op.cit.*, footnote 380, at p. 1; and see *In re Micah S.*, 198 Cal. App.3d 557, 243 Cal.Rptr.756 (Cal. App. 1988), Brauer, J., Concurring.

<sup>460</sup> *Id.* at p. 10.

<sup>461</sup> “Parent’s counsel should focus on and encourage other participants in a family’s case to think about reasonable efforts at the start of the case and continue the focus as the case progresses.” Watson, A., “A New Focus on Reasonable Efforts to Reunify,” *op.cit.*, footnote 4 at p. 3.

<sup>462</sup> “However, taking this option (reversal) could wreak disaster of the life of a young child.” Kaiser, J., *op.cit.*, footnote 70 at p. 112.

<sup>463</sup> One author points out that the pressure on appellate courts has resulted in rubber stamping the trial court’s determination that reasonable efforts have been made in order to avoid the trauma of extended legal proceedings. Kaiser, *Id.* at 100-101, 103.

<sup>464</sup> *Adoption of Gregory*, 501 N.E.2d 1179 (Mass. App. Ct. 1986); *State ex rel. Children, Youth &*

*Families Dept.*, 47 P.3d 859 (N.M. Ct. App. 2002); *Adoption of Nicole*, 662 N.E.2d 1058 (Mass. App. Ct. 1996).

[465](#) Herring, D., “Inclusion of the Reasonable Efforts Requirement in Termination of Parental Rights Statutes: Punishing the Child for the Failures of the State Child Welfare System,” *U. Pitt. L. Rev.*, Vol. 54 (1992) 139 at p. 194 (footnote). Another commentator (Crossley, *op.cit.* footnote 3 at p. 314) argues that the court should make a ‘reasonable efforts’ finding at a termination hearing. Many states require such a finding, but as pointed out throughout the text, it is difficult for a judge to delay permanency at this late stage of the proceedings. Delays traumatize the children involved.

[466](#) The Iowa Supreme Court stressed the “critical role of reasonable efforts from the very beginning of intervention” and “the critical need for services to be implemented by the [agency] early in the intervention process.” *In re C.B.*, 611 N.W.2d 489, 493, 495 (Iowa 2000); other Iowa appellate cases have repeated this statement. Refer to the Iowa case law in Appendix A.

[467](#) One commentator concluded that the systems for ensuring reasonable efforts early in a case have never been fully effective. Crossley, W. *op.cit.*, footnote 3 at p. 299. Based on the evidence presented in this book this commentator appears to be accurate in some states. However, in a number of states judges have demonstrated that early review of reasonable efforts is possible if they make specified structural and case processing modifications as recommended in this book.

[468](#) *Resource Guidelines, op.cit.*, footnote 131 at pp. 37-38.

[469](#) The questions contained in the bench cards in Appendix I can be useful in this regard.

[470](#) Edwards, L., “Achieving Timely Permanency” *op.cit.*, footnote 334 at pp. 1-37.

[471](#) Connecticut, New Jersey and New York have no statutory provision addressing when adjudication must be completed. New Jersey created a court rule specifying the time for adjudication, and the Connecticut practice is to adjudicate before 60 days. Adjudication in New York often takes a year to complete.

[472](#) Edwards, L., “Achieving Timely Permanency,” *op.cit.*, footnote 334.

[473](#) [R]easonable efforts shall be made to preserve and reunify families – (ii) to make it possible for a child to safely return to the child’s home.” 42 U.S.C. §671(a)(15)(B)(ii).

[474](#) 42 U.S.C. §671(a)(15)(C); 42 CFR §1356.21(b)(2).

[475](#) “Promising Court Practices: Strategies to Achieve Timely Permanency,” Casey Family Programs, November, 2009, at p. 10.

[476](#) *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas’ Courts & Legal System*, Texas Appleseed, November, 2010, at pp. 5-22

[477](#) Tamilia, Hon. P., *op.cit.*, footnote 442 at p. 224.

[478](#) Goodman, S., & Hurley, J., *Reasonable Efforts: Who Decides What’s Reasonable*, U.S. Department of Health and Human Services, Washington, D.C., 1993 at p. 8.

[479](#) See Miller, N. & Maze, C., “Right From The Start,” *op.cit.*, footnote 445 A copy of several benchcards is contained in Appendix I.

[480](#) A copy of the benchcards is reproduced in Appendix H. See also “Reasonable Efforts Checklist for Dependency Cases Involving Domestic Violence,” *op.cit.*, footnote 271.

[481](#) Edwards, L., *Interim Hearings*, THE BENCH, California Judges Association, August, 2009, at pp. 9-10. Available at [judgeleonardedwards.com](http://judgeleonardedwards.com) in the publications blog.

[482](#) 42 U.S.C. §671(a)(29).

[483](#) “Review is vital to cases involving each child within the court’s jurisdiction.” At an interim review the judge can address whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of the child. *Resource Guidelines, op.cit.* footnote 131 at

pp. 66-71.

[484](#) *In re C.B.*, 611 N.W.2d 489 (Iowa Supreme Court, 2000), at pp 493-494; *In re C.H.*, 652 N.W.2d 144, 147 (Iowa, 2002); *In re B.J. & W.J.*, (WL 2420006, Iowa App., 2011); *Washington State Dependency Best Practices Report*, Fall, 2012 at p. 16.

[485](#) *Effective Intervention*, *op.cit.*, footnote 264 at p. 100; No. 88178 (Circuit Court for the State of Oregon for Multnomah County, Juvenile Dept.)(Nov. 26, 1986). *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas' Courts & Legal System*, *op.cit.* footnote 476 at pp 96-98. "Resource Guidelines, *op.cit.*, footnote 131 at pp. 66-71. Some examples of interim review forms are contained in Appendix K.

[486](#) A Model Court is one identified by the National Council of Juvenile and Family Court Judges as exemplifying best practices. See NCJFCJ.ORG, Model Courts.

[487](#) Hardin, M., *Judicial Implementation of Permanency Planning Reform: One Court That Works*, American Bar Association, Chicago, 1992, at p. 41.

[488](#) *Id.* at p. 67.

[489](#) "Frequent post-TPR review hearings provide opportunities for trouble-shooting and problem-solving that could go unnoticed and unattended if the court waited six months or a year for the ASFA-mandated minimum time frames for hearings." McCully, S., & Barnes, E.W., "Forever Families: *op.cit.* footnote 380 at p. 14.

[490](#) Judge Sharon McCully, retired presiding judge of the Salt Lake City, Utah, juvenile court, scheduled interim reviews after a termination of parental rights every 30 days until the adoption was completed. (author's conversation with Judge McCully).

[491](#) Utah Code Annotated Title 78A-6-512.

[492](#) Email from Judge Sharon McCully (ret.) sent December 2, 2013. A copy is available from the author.

[493](#) "Key Principles for Permanency Planning for Children," *Technical Assistance Bulletin*, NCJFCJ, Reno, 2011

[494](#) Edwards, L., "Engaging Fathers in the Child Protection Process: The Judicial Role," *Juvenile and Family Court Journal*, Vol. 60, No. 2, Spring 2009, at pp. 1-29, at p.1.

[495](#) Fostering Connections to Success and Increasing Adoptions Act of 2008, H.R. 6893/P.L. 110-351 (2008).

[496](#) *Id.* §103

[497](#) *Id.*

[498](#) *Id.*; Family Finding uses search engines to locate family members of children involved in child welfare proceedings. See Campbell, K., "Lighting the Fire of Urgency: Families Lost and Found in American Child Welfare System," *Permanency Planning Today*, Fall, 2003, at p. 12. Beck, K.L. "Finding Family Connections for Foster Youth," with co-authors, *ABA Child Law Practice*, Vol. 27, No. 8, October, 2008, at p. 113.

[499](#) Family Group Conferencing brings extended families together to address the needs of children in the child welfare system. See Sagatun, I., and Edwards, L., "The Transition to Group Decision Making in Child Protection Cases: Obtaining Better Results for Children and Families," *Juvenile and Family Court Journal*, Vol. 58, Winter, 2007, at pp. 1-16.

[500](#) Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351, (2008) §102.

[501](#) *Id.*

[502](#) Edwards, L., "Relative Placement in Child Protection Cases: A Judicial Perspective," *Juvenile*

- and Family Court Journal*, Vol. 61, No. 2, Spring 2010, pp. 1-44, at 503
- 503 Wentz, R.M. & Beck, K.L., “Unlocking ‘Reasonable Efforts’: Kinship is Key,” *Clearinghouse Rev.* Vol. 46, July/August, 2012, at p. 99
- 504 “The result is that many judges simply ignore the reasonable efforts requirement or else make positive findings based on inaccurate or incomplete information. For many judges, determining whether reasonable efforts have been made involves little more than checking a box on a court form, with no discussion of the issue.” Shotton, A., *op.cit.*, footnote 3 at pp. 2-3.
- 505 FitzGerald, R., *op.cit.*, footnote 246 at p. 105.
- 506 See the examples set out in Edwards, L., “Improving Implementation,” *op.cit.*, footnote 67, *Resource Guidelines, op.cit.*, footnote 131, Appendix C. at pp. 155-156; also found at *Juvenile and Family Court Journal*, Vol. 45, No. 3, 1994 at pp. 22-23.
- 507 *Resource Guidelines, Id.*, at pp. 167-168. (these pages are reproduced in Appendix C)
- 508 Shotton, A., *op.cit.*, footnote 3 at pp. 13-14.
- 509 Hardin, M., Rubin, H.T., & Baker, D.R., *A Second Court That Works: Judicial Implementation of Permanency Planning Reforms*, Edna McConnell Clark Foundation and the ABA Center on Children and the Law, 1995, at p. 87.
- 510 Mich. Comp. Law §712A.18f(4).
- 511 “*A Second Court That Works*,” *op.cit.*, footnote 509 at p. 87.
- 512 Phone calls between Judge John Skeketee and the author (February to April, 1994), cited in “Improving Implementation,” *op.cit.*, footnote 64 at p. 18.
- 513 “*A Second Court That Works*,” *op.cit.*, footnote 509 at p. 87.
- 514 *Id.* at p. 88.
- 515 *One Court That Works, op.cit.*, footnote 487 at pp. 74-75.
- 516 *Id.*
- 517 The author discussed these issues with Scott Hollander and Cathy Volponi both of whom practice in the Allegheny County juvenile court.
- 518 Herring, D., “The Reasonable Efforts Requirement – A Critique and A Proposal,” *The Judge’s Page*, National CASA, October, 2007, at p. 20; and see the comments of Chief Judge Patricia Fitzgerald, Jefferson County Family Court, Louisville, Kentucky, in Appendix A under Kentucky.
- 519 Recommendation 6, *Deprived Children: A Judicial Response: 73 Recommendations*, NCJFCJ, Reno, 1985-1986.
- 520 This was a statement by Elsa ten Broeck, then a social services administrator in San Mateo County, California, as quoted by Claudia Morain in “Making Foster Care Work,” *California Lawyer*, January 1984, at p. 27.
- 521 Timmer, S., Urquiza, A., Zebell, N., & McGrath, J., “Parent-Child Interaction *op.cit.*, footnote 172 at pp. 825-840.
- 522 Edwards, L., “The Future of the Juvenile Court: Promising New Directions,” *The Future of Children: The Juvenile Court*, “Family Connections Hawai’i: Final Report, Department of Human Services, State of Hawai’i, 12/31/2012; Wice, P., “Court Reform and Judicial Leadership: A Theoretical Discussion,” *The Justice System Journal*, Vol. 17, No. 3, (1995) at pp. 309-321 – “... [R]egardless of how sound the new concept and how plentiful the resources, without strong judicial leadership, meaningful reform is nearly impossible.” At p. 319.
- 523 P.L. 110-351, §§ 101-103
- 524 For example, when searching for relatives, the use of family finding tools may identify and locate relatives that even the parents do not know of.

[525](#) “Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases,” National Council of Juvenile and Family Court Judges, Technical Assistance Bulletin, Volume II, No. 5, July, 1998; “Juvenile Courts: Reforms Aim to Better Serve Maltreated Children,” *Report to the Chairman, Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives*, U.S. GAO, January, 1999, at pp. 21-22; Miller, N., “Judicial Leadership and Citizen Involvement: Improving Child Welfare Systems,” *Capital University Law Review*, Vol. 28, 1999, at pp. 111-119.

[526](#) *Judge’s Guidebook on Adoption and Other Permanent Homes for Children*, Technical Assistance Bulletin, Volume II, No. 1, February, 1999, Permanency Planning Department, NCJFCJ; “Building a Better Collaboration: Facilitating Change in the Court and Child Welfare System,” Technical Assistance Bulletin, NCJFCJ, Volume VIII, No. 2, April, 2004, at pp. 24-30.

[527](#) “Juvenile Courts: Reforms Aim to Better Serve Maltreated Children,” *op.cit.*, footnote 525 at p. 12; Edwards, L., “Improving Implementation,” *op.cit.*, footnote 67 at p. 13; *Washington State Dependency Best Practices Report*, Fall 2012, at p. 14. <http://www.uwcita.org/>, *California Blue Ribbon Commission on Children In Foster Care*, Recommendation 2A, California Judicial Council, August, 2008; *California Standard of Judicial Administration*, Standard 5.40(a), California Judicial Council, West, 2007.

## XI.

### CONCLUSION

One may ask why do we give all this attention to what may seem to be a technical legal issue? Why urge judges and attorneys to spend extra time in court when the result may be that the local agency loses money and is less able of providing services? The answer is simple. We are a society that believes that children belong with their own family. When that family abuses or neglects their child, we intervene to protect the child, and in the great majority of cases, we support and successfully maintain the family unit. The services that social agencies and service providers offer will usually make the difference between maintaining the family and permanent removal.

Critics argue that the reasonable efforts requirement does not accomplish what Congress intended because judges do not carefully examine the issue and hold the agency accountable.<sup>528</sup> In some states these critics are correct, but in others they are not. In some states judges take the “reasonable efforts” and “contrary to the best interest” requirements seriously by monitoring the agency early and often, and providing effective judicial oversight of agency practice.<sup>529</sup> The judicial oversight process established by the federal law can and does work. Judges have demonstrated they can thoughtfully and effectively monitor child welfare agency actions. Following the suggestions contained in this book will result in improvements resulting in a fairer, faster, more effective child welfare system.

In order to fulfill the expectations of both federal and state legislatures, judges must devote more time and attention to the children and families appearing in their dependency courts. Judges must appoint attorneys for parents and children immediately when legal proceedings have been initiated. These attorneys must be prepared to address the “reasonable efforts” issue at every hearing. Judges must determine (1) What was the danger that brought the child to the attention of the court? A well-drafted petition and supporting documents should provide that information. (2) What family problems are causing the danger? (3) Has the agency identified the services that will best alleviate or reduce the danger to the child and permit the child safely to return home? (4) Have caseworkers diligently arranged for those services? (5) Are these services available to the family in a timely basis? At each hearing the judge should ask whether circumstances have changed such that the child can return home, have additional and higher quality time with his or her parents, or can move to a relative home. These issues must be addressed throughout the life of a juvenile dependency case, but, in particular, at the shelter care hearing and early in the case.

Equally important is the role of the judge in making critical decisions early in the case.<sup>530</sup> The court must address reasonable efforts and often. The court must also determine at the outset of the case whether the agency actions can return a child home safely or can result in a relative placement. If reasonable efforts cannot prevent removal, the court must make certain that the agency offered the

correct services to the parents in order to reunify with their child. Most of the appellate cases in each state examine the reasonable efforts issue at the termination of parental rights hearing. That is simply too late to have a positive outcome for the child and family. Early attention to reasonable efforts enables the judge to ensure that the correct services are in place in time to give the parents a fair opportunity to rehabilitate and regain custody of their child.

We do not have better alternatives for children than to be reared in a family. Many infants are successfully adopted, but foster care and group home care often do not produce successful outcomes for children removed from their homes.<sup>531</sup> The best answer, the solution identified by our legislatures, is to provide services to the family so that they can make the changes necessary to become safe parents. The reasonable efforts enquiry is about making certain that even the most destitute family has a fair opportunity to make the necessary changes so that their child can be maintained in their custody. That is why judges and attorneys should take this enquiry very seriously.

Tension will always exist between what the agency believes is reasonable and affordable and what advocates for parents and children argue is necessary and therefore reasonable. The judge will find that each decision reflects that tension. The judge will ask: Shall I hold the agency accountable and make a “no reasonable efforts” finding, or shall I just let it go since they are doing the best they can with limited resources, and I do not want to risk having the state lose federal dollars? The best practice is to set fair (reasonable) standards and hold the agency to those standards. Let the agency know what is appropriate and reasonable in each case. Once the court sets the standard, the judge should expect compliance by the agency in subsequent cases. A finding in one case will have an impact on the entire child protection system. In some cases the judge should issue a warning to the agency that a “no reasonable efforts” finding may be possible and also note that the court can give the agency an opportunity to provide those efforts immediately. When the agency complains that it does not have sufficient resources, the judge should be willing to work with agency leadership to obtain additional resources.

It goes without saying that judges should never simply rubber stamp the actions of the agency to prevent removal, to assist in family reunification, or to provide timely permanency. Case and statutory law require that the judge examine these issues carefully and make judgments about the reasonableness of the agency’s efforts. That finding depends on the resources available in each particular community and in the agency, meaning that in order to make the reasonableness finding, the judge must have an understanding of service availability in the community. This fact supports the notion that juvenile court judges should remain in the assignment for several years as it takes time to understand the service delivery system in one’s community.<sup>532</sup>

Removal of children from parental care is not about punishing the child or the parent for abusive or neglectful behaviors. The criminal law is written to address punishment for bad actions. Rather the child protection system is concerned with protecting children, supporting parents’ growth, if possible, safely reunifying children with their parents, and ensuring that children reach a permanent home in a timely fashion. Additionally, the child protection system is designed to serve the best interests of children. The child welfare agency is responsible for working with families to accomplish these goals, and the court must make certain that the agency does its job.



“Reasonable efforts” deserves careful judicial attention. Making reasonable efforts findings based on an examination of the local community’s capacity means that the judge is following the law. The judge determines whether the agency is doing what the law requires and what the agency has promised to provide to parents. Used properly the judge can effectively and fairly oversee the child protection system. The judge will also be able to improve outcomes for children and families who appear before the juvenile dependency court.

[528](#) Crossley, *op.cit.*, footnote 3 at 312; Kaiser, *op.cit.*, footnote 70 at 104; Graf, J., *op.cit.*, footnote 89 at p. 112-114;

[529](#) For example, in Appendix A see the comments of Judge Lewis (Virginia), Judge McCully (Utah), Judge Lucero (California), Judge Clark (Pennsylvania), Judge Steketee (Michigan), and Judge Turbow (New York). Also refer to “One Court That Works,” *op.cit.*, footnote 487 and “A Second Court That Works,” *op.cit.*, footnote 509.

[530](#) Edwards, L., “Achieving Timely Permanency,” *op.cit.* footnote 334.

[531](#) Brown, W.&, Seita, J., *Growing Up in the Care of Strangers*, William Gladden Foundation Press, Tallahassee, 2009.

[532](#) *Adoption and Permanency Guidelines*, *op.cit.*, footnote 379 at p. 7; Edwards, L., “The Juvenile Court and the Role of the Juvenile Court Judge,” *op.cit.*, footnote 419, pp. at 36-37; Edwards, L., “Juvenile Judge’s Corner: Rotation”, *The Bench op.cit.* footnote 432; also found at Judgeleonardedwards.com, publications blog under Running the Juvenile Court; “Improving the Lives of Children,” *op.cit.*, footnote 476 at pp. 75-76; “The policy of one year assignments practiced in many jurisdictions, however, precludes the judges from becoming committed or the court from having consistent and evolving progress.” Tamilia, Hon. P., *op.cit.*, footnote 442 at p. 228; “Policy Alternatives and Current Court Practice in wthe Special Problem Areas of Jurisdiction Over the Family,” National Center for Juvenile Justice, Pittsburgh, 1993, at pp 21-25.

# APPENDICES

## INTRODUCTION

The appendices supplement the text by offering information about court practice in each jurisdiction. Appendix A lists the statutes, relevant case law, and commentary from judges, attorneys, court improvement directors, and writers. Appendix B lists state definitions of reasonable efforts taken from statutes and case law. Appendix C sets out court forms used in a number of jurisdictions. Social service workers document their actions to provide reasonable efforts with these forms. Appendix D contains a letter from a juvenile court judge to the Director of Social Services explaining why the judge made a “no reasonable efforts” finding. The judge sent a copy of the letter to many parties in an effort to alert leaders in the community about the need for the particular services. Appendix E contains several documents about the inadequacy of visitation between parents and their children who have been placed in foster care. First is a letter from the judge asking two psychologists to make a study of the visitation program established by the Department of Children’s Services for families whose children are in foster care. Second is a psychological report concerning the quality and quantity of visitation for these families. Third is a letter from the juvenile court judge to the Director of Social Services concerning the inadequacy of visitation, a letter that includes a copy of the psychological report. Fourth is a letter from the director to the judge. Fifth is a letter from the judge to the local newspaper, and sixth is a copy of a court order regarding visitation.

Appendix F sets out the Code of Federal Regulations 45, §1356.21. This section is referred to throughout the text. Appendix G contains a copy of 45 CFR §1355.25 – Principles of Child and Family Services. These principles provide guidelines for the states in their efforts to provide services to families who have lost or who are at risk of losing custody of their children. Appendix H contains several shelter care hearing (preliminary hearing) benchcards developed by the Courts Catalyzing Change project at the NCJFCJ. These benchcards have been used by many judges across the country in order to ensure that reasonable efforts have been offered to families appearing before the court. Appendix I contains several forms developed by the author for use at interim reviews, while Appendix J reproduces California Standard of Judicial Administration 5.40(c) and (d) regarding the judge’s responsibility to attract competent lawyers to represent children and parents in abuse and neglect cases.

# Appendix A

## Reasonable Efforts: State-by-state analysis of statutes, case law, and commentary

### INTRODUCTION

Appendix A reviews state statutes and case law in all 51 jurisdictions. Commentary from judges, attorneys, court improvement directors, and legal writers supplement the material from each state and the District of Columbia. In most states the great majority of appellate cases arise from appeals from a termination of parental rights (TPR) hearings. Few appellate cases address “reasonable efforts to prevent removal” or “reasonable efforts to finalize an alternative permanency plan.” Commentary from judges and attorneys supports this conclusion.

The striking variations in the numbers of appellate decisions from state to state and the comments made by participants in the court systems reveal that court attention to the reasonable efforts requirements varies significantly around the country. In some states such as California, Connecticut, and New York, the appellate courts have issued numerous rulings regarding reasonable efforts. Even in some smaller states such as Alabama, Alaska, Rhode Island, and Wyoming, reasonable efforts appears frequently in appellate decisions. On the other hand, in some jurisdictions “reasonable efforts” cases rarely appear in appellate decisions (*e.g.* The District of Columbia, Kansas, Louisiana, South Carolina, Nevada, and Wisconsin). This may mean that the reasonable efforts issues are not litigated or that appellate cases are not reported. Because of the large number of appellate cases in three jurisdictions (California, Connecticut, and New York) the case law in those states has been divided by the subject matter of the reasonable efforts discussion. In all states, if there are appellate decisions relating to mental health issues, the ICWA, or aggravated circumstances, those cases appear under a separate heading.

### ALABAMA

**STATUTES:** Ala. Code §§ 12-15-1 et.seq. and 12-15-65(g). Definition of Reasonable efforts found at § 12-15-312(b); § 12-15-301(10); 26-18-7(a)(6); Egregious harm when no reasonable effort are required: Ala. Code § 12-15-65 (1986); § 12-15-319 (2011). Grounds for termination of parental rights; factors considered; presumption arising from abandonment.

### CASE LAW:

*H.H. v Baldwin County Department of Human Resources*, 989 So. 2d 1094 (2008) – TPR – Reversed.

A termination of parental rights judgment must be reversed when the DHR did not use reasonable efforts to reunite the mother with the child. DHR failed to offer mother any services to assist her in

overcoming her drug problem, in obtaining appropriate housing, or in obtaining employment or steady income.

*In re B.R.M. v State Dept. of Human Resources*, 626 So. 2d 648 (Ala. Civ. App. 1993) – TPR – Affirmed.

The mother placed her children in foster care and developed a plan with the social worker. Mother entered several drug rehabilitation programs, but never completed one, never attended counseling sessions, and failed to use the services made available to her. Reasonable Efforts met.

*D.S.S. v. Clay County Dept. of Human Resources*, 755 So. 2d 584 (Ala. Civ. App. 1999) – TPR proceeding. Evidence did not support a finding that the county department had made reasonable efforts towards rehabilitation of father. He lived outside of the state, but the department made no effort to investigate whether he was in need of rehabilitation or that he had failed to take advantage of rehabilitation services.

*C.B. v State Dep't of Human Res*, 782 So. 2d 781, 785 (1998) – TPR – Reversed.

The court found that the mother had, to the best of her ability, maintained visitation, that she had paid child support for the children, that she had no history of drug or alcohol abuse, and that no one contended that she has abused the children. The order terminating the mother's parental rights was reversed because the mother would obviously benefit from training in parenting and the termination of parental rights was not warranted. "DHR has the duty to make reasonable efforts to rehabilitate [a parent] so that family reunification might be attainable."

*J.P. v S.S. and C.S.*, 989 So.2d 591 (2008) – TPR – Affirmed.

While DHR has the duty to make reasonable efforts to rehabilitate [the parent], here the DHR made reasonable efforts to reunite the father with the child and that the father did not make sufficient progress. The agency provided parental and mental-health counseling and arranged for visits.

*J.J. v Lee County DHR*, 979 So. 2d 823 (2007) – TPR – Affirmed.

The juvenile court found that mother could only parent the child with constant supervision by persons trained in the proper parenting techniques. DHR did not have the resources to employ a person 24 hours a day to supervise and guide the mother's interaction with the child.

*S.A.R. v Mobile County DHR*, 845 So. 2d 825 (2002) – TPR – Reversed.

The appellate court found insufficient evidence that DHR had made reasonable efforts to rehabilitate the father. A specific finding of abandonment would be necessary to avoid the reasonable efforts requirement.

*A.M. v Lamar County DHR*, 848 So. 2d 258 (2002) – TPR – Affirmed.

Reasonable efforts were offered by DHR. A viable alternative of DHR providing intensive in-home help was not required and would have been futile. A number of in-home services had been provided to help the parents with their newborn daughter. The parents were unable to learn the basic tasks of parenting. There had been 10 years of intervention.

*J.W. v State DHR*, 855 So. 2d 539 (2003) – TPR – Affirmed.

Father appealed TPR stating DHR failed to offer him reasonable efforts. DHR referred him to counseling and after 28 visits the counselor opined that father could never be the sole parent.

*M.A.J. v S.F.*, 994 So. 2d 280 (Ala. Civ. App., 2008) – TPR – Affirmed.

The court found by clear and convincing evidence that the mother was unable to safely care for her twins despite reasonable efforts made to assist her including training and assistance from the child welfare agency, multiple service providers and community volunteers. Mother still continued to struggle with basic tasks such as changing diapers and preparing formula. The case examines how long reasonable efforts must be made. The appellate court concluded that 8 months of services in this case was sufficient. “Juvenile courts should give parents a reasonable opportunity to rehabilitate, and reasonable rehabilitation efforts should continue at least to the time of the permanency hearing so long as the parent is progressing toward the ultimate goal of family reunification. But if the evidence clearly establishes that the parent is not progressing and that further rehabilitation efforts would not help achieve the overall goal of family reunification, it would be unreasonable to continue such efforts simply out of acknowledgment of the 12-month deadline set out in § 12-15-62(c).”

*McCullough v State Dept of Human Resources*, 536 So. 2d 68 (Ala. Civ. App. 1988) – TPR – Affirmed.

Mother failed to provide for her numerous children and they were removed. There was sufficient evidence that the mother had failed to establish a stable residence, secure employment, or change her circumstances. The trial court determined the mother was unwilling to discharge her responsibilities to the children, that she had made no effort to change her circumstances, and that the efforts of DHR had failed. The trial court further noted that the mother’s conduct was such as to render her unlikely to change in the future. The court concluded she was unable to care for the needs of her children..

*Daniels v State Dept of Human Resources*, 530 So. 2d 841 (Ala. Civ. App. 1988) – TPR – Affirmed.

Unmarried teenage mother refused or neglected to properly care for her child even when services were offered and provided. This constituted a danger to the child’s health.

*S.C.D. v Etowah County Dept. of Human Resources*, 2002 WL 31270285 (Ala. Civ. App. 2002) – TPR - Affirmed.

The department had been involved with the family for more than four years before petitioning to terminate parental rights. The children were in foster care for 40 months. After the children were placed in her care, mother was unable to care for them.

*T.M.S. v Elmore County Dept. of Human Resources*, 647 So.2d 746 (Ala. Civ. App. 1994) – TPR Affirmed.

The child had multiple and special medical needs, neglected by mother who was non-responsive to efforts by the Department for over a year. Mother failed to take advantage of services offered. *Ezekiel v. State Dept. of Human Resources*, 562 So.2d 524 (Ala. Civ. App. 1990) – TPR – Affirmed. The court must consider prior to TPR whether reasonable efforts to rehabilitate the mother were exhausted prior to terminating her rights and whether such efforts failed. In this case the child had been returned to the mother, but she failed to complete the services offered her. The court ruled that the evidence, which showed that the mother did not complete all of the screenings for alcohol use as she had agreed and had ceased attending homemaker classes, established that reasonable efforts to

rehabilitate her were exhausted prior to terminating her rights and that such efforts failed.

*E.J.W. v. State Dept. of Human Resources*, 709 So. 2d 57 (Ala. Civ. App. 1998) – TPR - Affirmed on appeal.

The department offered drug treatment, employment assistance, housing arrangements, and parenting classes – all of which she refused. The department exhausted all reasonable efforts.

In several cases the Alabama appellate courts reversed termination of parental rights because it was “premature,” and the appellate court concluded that the parent had shown recent progress and “[r]eunification of a parent and family reunification take time.” See *D.O. v Calhoun County DHR*, 859 So. 2d 439 (2003), *V.M. v State Department of Human Resources*, 710 So. 2d 938 (1998), and *B.G. v State DHR*, 875 So. 2d 305 (2003)

*T.G. v Houston County Dept. of Human Resources*, 6 So.3d 1182 –TPR – Affirmed.

The mother lacked stable housing and employment. Reasonable efforts were found by trial court and affirmed by the appellate court. Mother did not pursue rigorously and referrals to employment provided. She also continued her relationship with the children’s abusive father.

*B.J.K.A. v. Cleburne County Dep’t of Human Res.*, 28 So. 3d 765, 2009) – TPR – Affirmed.

The mother had her children removed twice because of drug abuse. After the third removal, the agency filed for a TPR. The appellate court affirmed the trial court. DHR has expended much time and effort to rehabilitate the mother in the present case. We reject her characterization of DHR’s failure to resume efforts at rehabilitation that have proven futile as a failure to fulfill its statutory duty to make reasonable efforts to rehabilitate her and to reunify her family. As we have said before:

“Based on these circumstances, the juvenile court reasonably could have concluded that an adequate amount of time and effort had been expended in an attempt to rehabilitate the mother but that further time and effort would not help achieve the goal of family reunification in light of the mother’s lack of progress over a [five]-year period. We note that the law speaks in terms of ‘reasonable’ efforts, not unlimited or even maximal efforts. In this case, DHR used reasonable efforts to rehabilitate the mother, and the juvenile court did not err in concluding that it would be unreasonable to prolong those efforts.”

*K.C. v. Jefferson County Dep’t of Human Res.*, 54 So. 3d 407 (Ala. Civ. App. 2010) The trial court ordered placement with relatives as a permanent plan. The trial court was affirmed on appeal. Based on the children’s statements and other evidence, the DHS and the juvenile court concluded that the mother would not protect the children from her paramour and that reunification of the family was impossible as long as she continued to live with him. There was sufficient evidence to support the juvenile court’s determination that continuing placement with their respective relative custodians was in their best interests. Further, it was a permanency plan in accordance with Ala. Code § 12-15-315(3). It allowed the mother and children to continue and attempt to repair their relationship but it recognized reuniting the family was not warranted under the current situation.

## **Mental Health Issues**

*T.L.W. v State Dept of Human Resources*, 678 So.2d 128 (Al. Civ. App. 1995) – TPR - Affirmed. The mother loved her children, but could not rehabilitate herself sufficiently to parent them safely. The agency provided services to no avail. Mother’s mental condition as confirmed by her psychologist along with her drinking problem was sufficient basis for finding that she would never be able to care adequately for her children.

*J.D. v Cherokee County Dep’t of Human Resources*, 858 So. 2d 274 (Ala. Civ. App. 2003) – TPR – Affirmed.

The mother had intellectual limitations, and was both emotionally and mentally unstable. The department offered services and she made efforts, but they fell short of demonstrating she could be a safe parent.

*D.M.P. v State Dept. of Human Services*, 871 So. 2d 77 – TPR – Affirmed.

Reasonable Efforts found. Newborn – mother suffered from mental deficiencies. She was offered assistance that she could not take advantage of. Neither parent was able to follow the case plan.

*V.M. v. State Dept. of Human Resources*, 710 So. 2d 915 (Ala. Civ. App. 1998) – TPR – Reversed.

The appellate court set aside an order terminating the parental rights of a mentally ill mother who had made remarkable progress toward reunification and was on the verge of being able to resume parenting her children calling the trial court decision “plainly and palpably wrong”. The court observed that the children had been placed in foster care during a difficult period in their mother’s life, when she struggled with mental illness and substance abuse. However, in the year before the final hearing, the mother had made a concerted effort to straighten out her life and made considerable progress toward rehabilitation. She had been drug and alcohol free for almost a year, had been placed on medication for her mental illness and her condition had stabilized, she visited her children consistently while they were in foster care and maintained a loving relationship with them, had lived in stable housing with her mother for an extended period of time, and was actively seeking employment.

*Ruffner v State of Ala., Dep’t of Human Resources*, 518 So. 2d 141 (Ala. Civ. App. 1987) – TPR – Affirmed.

The case involved a mentally deficient father and borderline intellectual functioning for both parents. Children were removed because of a filthy home and environment for the family and a failure to thrive. Many services offered but father developed “learned helplessness” and neither parent could meet the emotional and physical needs of the children.

*W.F. v State Dept. of Human Resources*, 704 So. 2d 483 (Ala. Civ. App. 1997) – TPR – Affirmed.

The mentally ill mother and alcoholic father were unable to take advantage of services, the father refusing to participate at all. The youngest child had been hospitalized three times for failure to thrive. The court found that neither parent was likely to change for the better in the near future in spite of services offered.

*Cope v. State Dep’t of Human Resources*, 549 So. 2d. 982 (1989) – TPR – Affirmed.

The record showed that the mother had been diagnosed as schizophrenic, mildly retarded, and suffering from hallucinations. As a result, she had been committed for treatment at hospitals, both

voluntarily and involuntarily. The mother was continuing treatment as an outpatient and was taking medication. The record also showed that DHR had made reasonable efforts to assist the mother in raising the child initially and thereafter by attempting to reunite the mother and child. The mother had failed to cooperate with DHR.

*J.W. v State Dept of Human Resources*, 855 So. 2d 539 (Ala. Civ. App. 2003) – TPR – Affirmed. The mentally ill mother made improvements, but never admitted that she was ill and refused to take her prescribed medications until shortly before the termination hearing. The court stated that her recent agreement to take the medications was too little too late and that there was no assurance she would continue to take the medications.

*N.R. v. State Dept. of Human Resources*, 606 So. 2d 161 (Ala. Civ. App. 1992) - TPR – Affirmed. The court rejected the arguments of two mentally retarded parents that their parental rights had been improperly terminated before the state Department of Human Resources gave them rehabilitative services and before the court explored alternatives to termination. Responding to the first point, the appellate court noted that the trial court expressly found that since the conduct or condition of the parents was such as to render them unable to properly care for their children, and that such conduct or condition was unlikely to change in the foreseeable future, Ala. Code § 26-18-7(a)(6), which required the state to provide rehabilitative services, did not apply. In rejecting the second ground for appeal, the court noted that the parents had in fact received a great deal of social services when the children were in their custody but were unable to properly care for their children even with assistance. During that time, the children had been diagnosed with failure to thrive, were unkempt, and had been treated for multiple suspicious injuries. Once the children entered foster care, they thrived. The court also observed that the counselor who performed intelligence tests on the parents expressed concerns regarding their abilities to parent regardless of any possible intensive supervision by state agency, and found that there was no suitable alternative placement for children.

*T.W. v. Madison County Department of Human Resources*, 946 So. 2d 469; 2006 Ala. Civ. App. LEXIS 336 - Appeal of a temporary order and dismissal removing a child from mother and giving father custody. At the shelter care hearing the court found that the agency had exercised reasonable efforts to prevent removal, and had placed the child with the father. On appeal, the appellate court ruled that before the case was dismissed (with father retaining custody), there should have been a custody hearing.

*D.B. v State Dept. of Human Resources*, 778 So. 2d 837 (Ala. Civ. App. 2000) – TPR – Affirmed. A mentally ill mother made some improvements, but the trial court found she consistently failed to take her medications and thus her equilibrium to be able to care for her children. She had also not improved other aspects of her life such as housing, employment, and a safe social environment.

*Menniefield v State Dept. of Human Resources*, 549 So. 2d 496 (Ala. Civ. App. 1989) – TPR – Affirmed.

The agency made numerous, unsuccessful attempts to work with the mentally deficient mother that made her unable to care for the child's needs. The court considered the mother's failure to visit, abuse in the mother's home, and intensive services including a homemaker. The mother did not understand, nor did she learn how to care for an infant.



## ICWA

*Long v. State*, 527 So. 2d 133 (Ala. Civ. App. 1988) - Removal of children – Affirmed.

The parents appealed, arguing that the DHR failed to actively provide remedial services to prevent the family's breakup as required by §1912(d) the Indian Child Welfare Act, 25 U.S.C.S. §1912. The parents also argued that the trial court erred in finding that the DHR had presented clear and convincing evidence, including the testimony of expert witnesses, that the continued custody of the children by the parents would likely result in serious emotional or physical damage to the children. The court affirmed, holding that there was sufficient evidence that the DHR made every effort to prevent the breakup of the family by offering services such as day care, housing assistance, clothing and food, and counseling sessions.

### **Aggravated Circumstances**

*S.A.B. v Mobile County Dept of Human Resources*, 845 So.2d 825 – TPR – Reversed.

The appellate court held that the trial court findings were ambiguous concerning whether father had abandoned child. If he had abandoned them, a reasonable efforts finding would not be necessary. On remand, the trial court found the father had abandoned the child and, on appeal, the TPR was affirmed.

*D.W. v State Dep't of Human Resources*, 595 So.2d 502 (Ala. Civ. App. 1992) – TPR – Affirmed.

No reunification services were offered because the parent's mental condition was so severe that services would not be beneficial. Clear and convincing evidence showed the father was a paranoid schizophrenic and sometimes violent, frequently hospitalized, abused drugs and alcohol and could not deal with the stress of raising a child.

*J.B. v Jefferson County Department of Human Resources*, 869 So. 2d 475 (2003) – TPR – Affirmed.

DHR did not have a duty to "reunite" the child with the mother (convicted of manslaughter of child) or father (who had never seen the child). Thus no reasonable efforts were required. (at p.483-484). "...[A]ssuming that DHR has some duty to reunite a parent and a child in a particular case, what constitutes 'reasonable efforts' is a fact-dependent inquiry."

*M.H. v Calhoun County*, 848 So. 2d 1011 (2002) – TPR – Affirmed.

The mother claimed no reasonable efforts provided after she moved to Iowa. The mother had received 2 years of reunification services before her move and had shown no signs of improvement. The court found that she abandoned her children when she moved to Iowa thus making reunification services unnecessary under the law.

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### I. Areas in Need of Improvement: Court Orders

§ Judicial determination in removal order addressing Contrary to the Welfare;

§ Judicial determination of Reasonable Efforts to Prevent Removal; and

§ Judicial determination of Reasonable Efforts to Finalize a Permanency Plan.

Findings from cases reviewed during the Title IV-E Eligibility Foster Care Review revealed a number of issues related to court order language and timing. Required court order language is

sometimes missing or contradictory. For example, the first order sanctioning removal of a child does not always contain appropriate language regarding Contrary to the Welfare. In addition, language related to reasonable efforts to prevent removal is sometimes missing and reasonable efforts to reunite are addressed instead. In some orders, both circumstances are addressed. Reasonable efforts to prevent removal must be addressed with 60 days of removal of the child from the home. Reasonable efforts to reunite should be addressed in later court orders. Permanency orders were rarely found to address reasonable efforts to finalize the permanency plan. These orders were not very child-specific and sometimes used inappropriate permanency goals, e.g., long term foster care or independent living. Many of these orders contained contradictory information such as including Contrary to the Welfare, Reasonable Efforts to Prevent and Reasonable Efforts to Reunite in the permanency hearing order. Inclusion of this language makes the orders seem to be “canned”, and lacking in child specificity.

This is a portion of Title IV-E Eligibility, Program Improvement Plan for Alabama, 2003

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## **ALASKA**

**STATUTES:** ALASKA STAT. § 47.10.086(a)-(b) (Michie 2002) – The law establishes that the “department’s duty to make reasonable efforts...includes the duty to: identify family support services..., actively offer the parent or guardian, and refer the parent or guardian to, those services; ...and document the department’s actions that are taken...” § 47.10.088(a) (Michie 2002). But proof of R/E at TPR need only be proven by a preponderance of the evidence. § 47.10.088(a) (2). If in custody R/E not necessary if the parent is “unavailable to care for the child during a significant period of the child’s minority.” Alaska Stat. § 47.10.086(c)(10) (Michie, 2002); Alaska Stat. § 47.10.086(c)(5) – mental illness can result in no reunification services.

## **CASE LAW:**

*R.M.J. v State Dep’t of Health and Social Services*, 973 P.2d 79 (Alaska Supreme Court, 1999) – The Alaska Supreme Court upheld the constitutionality of the state’s child protection statute.

*In re S.D., Jr.*, 549 P.2d 1190 (Alaska Supreme Court, 1976) – the Supreme Court listed the services it expects the Department of Health and Social Services to offer parents in order to preserve or reunite families.

*Casey K. v. State, Dep’t of Health & Soc. Servs*, 311 P.3d 637 (Alaska, 2013) – TPR – Affirmed. The child was removed because of family violence and substance abuse. The mother did not tell the truth during her substance abuse assessment and was incarcerated on and off several times during the reunification period. The mother (Casey) argued that there was a lapse in providing substance abuse services. “Casey properly notes that OCS’s failure to timely provide required collateral information to the substance abuse treatment assessor prevented her from receiving an accurate substance abuse evaluation for eight months. Although this failure may have made it more difficult for Casey to

receive immediate treatment for her substance abuse issues, it did not preclude her from remedying her substance abuse problems within a reasonable time.”

*Sean B. v State Dept. of Health and Social Services*, 251 P.3d 330, 338 (Alaska, 2011) – TPR – Affirmed.

The child was removed from mother and step-father. The biological father appealed the TPR. Held: OCS caseworkers made efforts to maintain contact with the father, connected him with services, and documented communications.” OCS tried to introduce father into the child’s life. Father failed to participate in his case plan. Just because OCS also helped facilitate out-of-home placement does not undercut the reasonable efforts finding. The state created 3 reunification plans for father.

*Jeff A.C. v State of Alaska*, 117 P.3d 697 (Alaska Supreme Court, 2005 – TPR – Affirmed.

Only the father appealed the trial court ruling. The father was not involved with the child until a year after birth. The father could not be found. The state proceeded on an abandonment theory – no visits for 6 months. Mother told the court that current boyfriend was the father. Until paternity was determined, the father was not contacted. After contact, father did not visit although given the opportunity. The agency notified father, returned his calls, gave him information, mailed him documents, and advice to increase communication, but the father showed little interest in reunification. “The state’s efforts toward reuniting Jeff with his daughter were not exemplary, neither were they unreasonable.” (p.706). He was given an opportunity to work with foster mother and declined. “Jeff never remotely committed to the job of parenting Jasmine.” (707).

*Frank E. v State of Alaska*, 77 P. 3d 715 (Alaska Supreme Court, 2003) – TPR – Affirmed.

The father was incarcerated. Held: reasonable efforts offered. The father had 12 more years to serve in prison for sexual abuse of daughters (on appeal). The state identified services and actively offered the parent the services. And the state documented their efforts. Held: family reunification was unnecessary because of length of sentence. The department did what it could given the father’s situation.

*Ralph H. v State Dept. of Health and Social Services*, 246 P. 3d 916. (Alaska Supreme Court, 2011) – TPR – Affirmed.

General neglect over several years led to termination. Reasonable efforts found. Trial court may consider all efforts made by OCS, not just those within a specific time period. There were 10 years of OCS involvement in the family’s life. During that time the agency provided parenting classes, referrals to public and mental health services, infant learning program, head start, a housing organization, donations of food and laundry cards, home visits, an offer to repair heating system, obtained cabin and mattresses, and tried to get father a job. After removal OCS provided DV classes, anger management, therapy, housing assistance, drug treatment referral, gas vouchers and referral to Alaska Housing Finance Corporation. Father argued that court should only consider services after child was removed from parental custody. Held: the overall efforts were reasonable.

*In re Barbara P. v State*, 234 P.3d 1245 (Alaska, Supreme Court, 2010) – TPR – Affirmed.

Incarcerated father. Father argued he was not given visitation while in custody. Held: the department offered reasonable efforts before incarceration. A failure to provide R/E during only a part of the reunification period is not enough for reversal.

*Burke P. v State*, 162 P. 3d 1239 (Alaska Supreme Court, 2007) – TPR - Affirmed.

OCS offered family services and father did not participate. A second incident occurred and no services were offered. Held: reasonable efforts were not necessary the second time since father did not cooperate the first time. **Dissent** argues that OCS should have referred father to individual therapy and informed father to leave the mother who was the danger to the child.

*G.C. v State Dep't of Health & Human Servs.*, 67 P.3d 648, 653-54 (Alaska, 2003) – TPR – Affirmed.

The court held that reasonable efforts were provided when father's identity was not discovered until TPR on mother was filed and father was in jail in a different state. The child in was foster care for a significant period of time. Allowing more time would be inconsistent with the child's best interests.

*S.H. v State*, 42 P.3d 1119, 1127 (Alaska, 2002) – TPR – Affirmed.

The father had “consistently refused to participate in [the agency's] case plans,” Held: Reasonable efforts provided. The court noted it had previously “held that a parent's demonstrated lack of willingness to participate in treatment may be considered in determining whether the State has made reasonable remedial efforts.”

*Doug Y. v. State*, 243 P.3d 217 – TPR – Affirmed.

OCS took custody of the minor child and developed a case plan involving anger management classes, parenting classes, and a psychological evaluation. Father showed “a lack of engagement in case plans.” Father complained that OCS failed to help pay for therapy, obtain a bonding parenting assessment, allow father to participate in family team meetings, or allow visitation. The appellate court stated “[the father's] inability to pay [for therapy] was a secondary reason why he did not attend.” Further, certain efforts were unnecessary because of father's failure to make progress and his hostile attitude.

*Winston J. v State*, 134 P.3d 343 – (Alaska Supreme Court) – TPR – Affirmed.

Domestic violence in the family and the mother was drug addicted. The children were born while father was incarcerated. Father appeals. Reasonable efforts found. The agency provided parenting and anger management for father, plus parenting classes and counseling and brought him from Seattle to Alaska at state expense to visit children, but father only attended 2 sessions of violence prevention program.

*Audrey H. v State Office of Children's Services*, 188 P.3d 668 – TPR – Affirmed.

The children were referred to the agency because of a lack of food in the home, mother's violence towards her daughter and suspected drug use. Reasonable efforts found as the agency repeatedly arranged evaluations/services for mother, bus passes, visitation, and transportation assistance.

*D.H. v State Dep't of Health and Social Services*, 929 P.2d 650 (Alaska, 1996) – TPR appeal by the mother. The state had assisted the alcoholic mother participate in substance abuse treatment programs, but the mother consistently left the programs before completion. TPR and reasonable efforts affirmed on appeal.

*J.H. v State Department of Health & Social Services*, 30 P.2d 79 (Alaska 2001) – TPR – appeal – Affirmed.

The department made a plan of reunification. After ASFA passed, the department abruptly changed the plan to adoption. Held: the mother did not address her problems in a reasonable time.

### **Mental Health Issues**

*Audrey H. v State of Alaska, Office of Children's Services*, 188 P. 3d 668 (Alaska Supreme Court, 2008) – TPR – Affirmed.

The children were referred to the child welfare agency because of a lack of food in the home. The children were removed due to mother's violence toward daughter (threw books at her) and suspected drug use by mother. Held: state provided reasonable efforts (neuropsychological evaluation, counseling, drug testing, visitation, medication). Mother with serious mental health disabilities, did not follow through with the medication recommendations, missed visits and appointments. OCS also documented its efforts as required by statute. The trial court considered efforts going back several years.

*V.S.B. v State, Dep't of Health and Services*, 45 P.3d 1198 (Alaska, 2002) – TPR – Affirmed.

The mentally ill mother (bipolar disorder) stabilized her condition with medication. She followed the case plan and left the man who had abused her children. Nevertheless the appellate court affirmed the termination stating that she did not improve sufficiently to an adequate level.

*K.N. v State*, 856 P.2d 468 (Alaska 1993) – TPR – Affirmed.

The father denied he was mentally ill and required medication, did not follow the treatment plan and did not cooperate in setting up an alternative plan. The court concluded any further efforts would be futile particularly in light of the father's attitude.

### **Aggravated Circumstances:**

*J.S. v State*, 50 P.3d 388 (Alaska, 2002) – TPR – Affirmed.

The father was convicted of first-degree sexual abuse regarding his 3 boys and sentenced to 19 years in prison. One parole condition was no contact with sons all of whom were Indian children. Normally "active efforts" would be required, but turning to ASFA, the Supreme Court concluded that sexual abuse was included in "aggravated circumstances." Held: the state is not required to provide active efforts to the mother when she refused to discuss the case based on her privilege against self-incrimination. This holding was criticized as inconsistent with the ICWA in an article by Mark Andrews: "Comment: Terminating Active Efforts: The Alaska Supreme Court Misfires in *J.S. v State*," *Alaska Law Review*, vol. 20, December, 2003, at pp. 305-320.

### **ICWA CASES:**

*Wilson W. v. State*, 185 P.3d 94, 61 A.L.R.6th 767 (Alaska 2008) – TPR – Affirmed.

The parent of an Indian child claimed that the State declined to make active efforts because his caseworkers considered him threatening and that the caseworkers' hostility towards him inspired them only to make passive or token efforts for services addressing his abusive tendencies. The Alaska Supreme Court found that the parent had a history of violent behavior and threatened his caseworkers and refused to co-operate with the Office of Children's Services. Nevertheless, the court ruled that

the facts of the case overwhelmingly showed that the parent's caseworkers, despite being threatened by a man with a violent past, made sincere but unsuccessful efforts to help the parent address domestic violence problems.

*Sandy B. v. State, Dept. of Health & Social Services, Office of Children's Services*, 216 P.3d 1180 (Alaska 2009) – TPR – Affirmed.

The children were removed because of parental substance abuse. The parents started participation in an in-patient program just weeks before the trial. Active Efforts affirmed. The appellate court held that what is critical in determining whether the State Office of Children's Services (OCS) made active efforts under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)), as opposed to passive efforts, is the involvement of the OCS with a parent after it has drawn up the parent's case plan. OCS makes active efforts, the court said, when it helps the parents develop the resources necessary to satisfy their case plans, but its efforts are passive when it requires the parents to perform such tasks on their own.

*N.A. v. State*, 19 P.3d 597 (Alaska, 2001) – TPR – Affirmed.

The father argued that the state had not provided active efforts to reunify him with his two daughters. The Supreme Court affirmed stating that active efforts occur “where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own.” The determination of active efforts is done on a case-by-case basis. In this case, the state's efforts were more than active; they were exemplary. The division and the Department of Corrections worked together with the Tanana Chiefs Conference to provide numerous and varied types of assistance to N.A. A partial list of recent efforts includes: placing N.A. at the TCC Paul Williams House; enrolling N.A. in three different substance abuse treatment programs (Fairbanks Rescue Mission, Women's and Children's Residential Program, Regional Center for Alcohol and Other Addictions); completing a psychiatric evaluation; providing psychiatric therapy (monthly visits scheduled with Dr. Gooding); encouraging attendance at Alcoholics Anonymous meetings (weekly attendance scheduled); enrolling N.A. in parenting classes; allowing weekly visitation with her children; arranging transportation for the visits; and taking temporary custody of the children so that N.A. could receive medical care.

*Kyle S. v State, Dept. of Health & Social Services* 309 P.3d 1262 (Alaska 2013). – Appeal of dependency determination – Affirmed.

The question whether the Office of Children Services (OCS) made active efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family is a mixed question of law and fact. The appellate court affirmed the trial court's finding of active efforts. An “active efforts” requirement of ICWA is more demanding than a “reasonable efforts” requirement of AS 47.10.086(a). An appellate court reviews a decision that OCS makes active efforts on a case-by-case basis. As opposed to passive efforts such as simply developing a plan for a parent to follow, active efforts require that the State actually help the parent develop the skills required to keep custody of the children. The appellate court considers the State's involvement in its entirety in assessing whether the State meets its burden.

*Div. of Family & Youth Serv. v V.S.*, No. S-10350, 2002 WL 1004097 (Alaska, May 15, 2002) - Termination of Parental Rights of an Indian Child. The Supreme Court upheld the trial court finding of active efforts noting that the father failed to visit with his child and failed to seek assistance in arranging visitation.

*Matter of S.A.*, 912 P.2d 1235, 1239 (1996) – TPR – Reversed.

The mother lost her children because of alcohol abuse. She remained sober for 2 years. “Alaska CINA R. 18(c)(2) (2000) prohibits termination of the parental rights of a Native parent unless the evidence shows beyond a reasonable doubt that custody of the child by the Native parent will likely cause the child to suffer serious emotional or physical damage. [I]ncarceration...[will not] relieve the State of its duty under ICWA to make active remedial efforts.”

*A.A. v State*, 982 P.2d 256 (Alaska Supreme Court, 1999) – TPR – Affirmed.

The father appealed the TPR and his motion to continue the case until his murder trial could be heard. The appellate court held that he had been offered active efforts while in custody, but had not taken advantage of them and that he was a violent man. The court held that “no pat formula” distinguishes active from non-active efforts. The court defined active efforts stating “[p]assive efforts are where a plan is drawn up and the client must develop his or her own resources towards bringing it to fruition. Active efforts, the intent of the drafters of the Act, is where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own. For instance, rather than requiring that a client find a job, acquire new housing, and terminate a relationship with what is perceived to be a boyfriend who is a bad influence, the Indian Child Welfare Act would require that the caseworker help the client develop job and parenting skills necessary to retain custody of her child. To be read with *David S. v State*, 270 P.3d 767 (Alaska, 2012)

*Matter of J.W.*, 921 P.2d 604 (Alaska, 1996) – TPR – Affirmed.

The child had been in state custody for 5 years. DFYS provided extensive services to the alcoholic father. After 2 years the state ended its efforts because the father was not cooperating. The Supreme Court affirmed the “active efforts” finding indicating that a parent’s unwillingness to participate in rehabilitation may be considered when reviewing the state’s active efforts.

*A.M. v State*, 891 P.2d 815 (Ala. 1995) – TPR – The appellate court reversed and remanded the case to the trial court to determine whether the children fell under the Children in Need of Assistance (CINA) statute. Father had raped one of the children in the home. “[I]ncarceration ...[will not] relieve the State of its duty under ICWA [Indian Child Welfare Act] to make active remedial efforts.” (p. 827). This case was retried and TPR was affirmed by the Supreme Court. 945 P.2d 296. The Supreme Court found that active efforts had been provided by the state including sex offender and substance abuse programs while father was in prison. Father demonstrated a lack of willingness to participate in treatment.

*Darcy F. v State*, 252 P.3d 992 (Alaska, 2011) – TPR – Affirmed.

Appellate court finds that active efforts were provided for her substance abuse issues even though mother’s medical issues remained.

*Lucy J. v State*, 244 P.3d 1099 (Alaska, 2010) – TPR – Affirmed.

Four years of services to mother were found by the court to be active efforts. The services took into account the mother’s disability.

*Dale H. v State*, 235 P.3d 203 (Alaska 2010) – TPR – Affirmed.

Father was provided active efforts, but he failed to participate in those services and then moved to another city and “dropped out of his child’s life.”

*Pravat P. v State Dep’t of Health and Social Services*, 249 P.3d 264 (Alaska, 2011) – TPR – Affirmed.

The father was incarcerated during much of the reunification period. There were also language difficulties. The department provided an interpreter and reached out to a Buddhist priest to help understand the cultural differences. The additional services father requested would not have changed the result. “[T]he active efforts requirement does not require perfection.”

*C.J. v. State, Dep’t of Health & Soc. Services*, 18 P.3d 1214 (Alaska, 2001) – TPR – Reversed on several grounds including a failure to make active efforts at reunification.

The parent lived in Florida and the state did not get evidence of the parent’s progress, but relied on Florida reports. The ICWA “active efforts” is a “more stringent” burden than “reasonable efforts.” Here the court found only “minimal efforts” by the department. The court also held that the active efforts requirement even applies in termination of parental rights cases with a non-Indian parent.

*In the Matter of J.W.*, 921 P.2d 604; 1996 Alas. LEXIS 72 – TPR – Affirmed.

The children were removed because of parental neglect. The parents were frequently intoxicated and father was mentally ill, leaving the children in dangerous situations. The Supreme Court affirmed the trial court’s finding of ‘active efforts’ ruling that the father’s lack of motivation made success unlikely.

*T.F. v State Department of Health & Social Services*, 26 P.3d 1089 (Alaska 2001) – TPR of 2 Alaskan Natives – Affirmed. After ASFA, the agency moved to terminate parental rights. The parents argued their rights were prematurely terminated. **DISSENT** argued that the agency did not properly apply the standards found in the ICWA, in particular §1912(d) which requires active efforts before termination and that federal law takes precedence over state law.

*Philip J. v Dep’t of Health & Social Services*, 2013 Alas. LEXIS 164, – TPR – Affirmed.

The father’s lack of cooperation with the case plan permitted the court to conclude that further active efforts were not required under the ICWA. Though the father completed some services while incarcerated and after his release, that was not enough as the father had failed to comply with the agency many times. Accord: *Christopher C. v. State, Dept. of Health & Social Services, Office of Children’s Services*, 303 P.3d 465 (Alaska 2013). Generally, active efforts will be found in a termination of parental rights case involving Indian children when Office of Children’s Services (OCS) takes the client through the steps of the plan rather than requiring that the plan be performed on its own, but not when the client must develop his or her own resources towards bringing the plan to fruition, citing the Indian Child Welfare Act of 1978, § 102(d), 25 U.S.C.A. § 1912(d).

*David S. v State*, 270 P.3d 767 (Alaska 2012) – TPR – Affirmed.

The father was in custody for months after his child was born. After he was released, he developed a relationship with her and then absconded for 9 months. The TPR took place shortly after he returned. Active efforts were provided. The phrase “active efforts” in its plain and ordinary meaning and, in particular, have concluded that the word “active” cannot include “passive.”

*A.H. v State Dep’t of Health & Social Services*, 10 P.3d 1156, 1164 (Alaska 2000). – TPR –



Affirmed.

The children were removed because of domestic violence and the parent's mental health issues. The appellate court wrote that in termination proceedings, AS 47.10.086 requires the State to make reasonable efforts to identify support services and to actively offer those services to the parents. In addition, because A.H.'s children are Indian children within the meaning of ICWA, the State was required to prove by a preponderance of the evidence that its active efforts to provide remedial services were unsuccessful. Reasonable efforts services can include financial management services and alcohol recovery support.

*E.A. v State Division of Youth and Family Services*, 46 P.3d 986 (Alaska 2002) – TPR – Affirmed.

The mother had a serious substance abuse problem; The Supreme Court held (1) the state made active, unsuccessful efforts to prevent a termination of parental rights; (2) although the state failed to obtain an updated psychological evaluation of the mother following the child's allegation of abuse, an update would not have helped because of the mother's inability to maintain long-term sobriety and her resistance to receiving treatment; (3) substantial evidence supported the superior court's finding that returning the child to his mother's custody would result in serious emotional harm; and (4) the record showed that the mother had not overcome her substance abuse, and could not address her parenting issues. State's failure to make active efforts in a particular seven-month period was insignificant in light of extensive remedial efforts the state provided throughout its involvement with family apart from that seven-month period);

*Maisy W. v. State ex rel. Dept. of Health and Social Services, Office of Children's Services*, 175 P.3d 1263 (Alaska 2008) – TPR – Affirmed.

The OCS created and updated more than ten case plans for the mother and her family; arranged visitation; carried out home visits; coordinated Native-oriented services; and offered assistance with housing. The State made sufficient efforts to try to help the mother's family over a period of several years. The court acknowledged the State's concession that it failed to make active efforts for three months in 2005 but stated that the trial court properly looked to the entirety of the State's efforts from the time the Office of Children's Services became involved in February 2004 until trial in March 2007.

In a series of cases the Supreme Court affirmed a finding of "active efforts" in termination of parental rights proceedings. The common themes included lack of parental cooperation with the service plan and extensive services over a long period of time. These cases include the following:

*Dashiell R. v State* 222 P.3d 841 (Alaska 2009)

*Neal M. v State*, 214 P. 3d 284 (Alaska, 2009)

*Ben M. v State*, 204 P. 3d 1013 (Alaska, 2009)

*Jon S. v. State*, 212 P.3d 756 (Alaska, 2009)

*Thomas H. v. State*, 184 P.3d 9 (Alaska, 2008)

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Court observation and interviews combined gave a picture of Alaska practice in which judges routinely touched upon reasonable efforts at each of these points, but typically very briefly. Most hearings lasted only a few minutes, and the judge's

attention often focused on a specific action of agreement. Usually, judges adopted orders that the social worker or assistant attorney general prepared before the hearing. Often, all parties agreed to the order before entering the courtroom.<sup>533</sup>

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## **REASONABLE EFFORTS – ALASKA**

“Reasonable efforts’ was not tried regularly in my court as to whether reasonable efforts were made to prevent removal at the initial probable cause hearing. However, it was not uncommon to have the issue raised on subsequent interim review hearings prior to disposition. The scenario often revolved around one of two issues: (1) lack of frequent visitation opportunities which often prolonged removal, and (2) inordinate delay in getting parents into substance abuse treatment thereby impacting reasonable efforts to achieve reunification.

“At the other end of the case, reasonable efforts sometimes became an issue in failure to achieve permanency.

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“We had a great number of cases of Indian children. Statewide in about 2010 the percentage of Indian children in foster care hovered around 62%, a lot of that being prevalent in rural areas. In Anchorage probably a third of our cases involved the application of ICWA standards of active efforts. The Supreme Court has done a good job of outlining the parameters of active efforts in many of their TPR opinions.

“I agree with your observation that most litigation around reasonable/active efforts arises in the context of TPR. Pre-disposition proceedings after initial removal tended to be summary hearings which did not lend themselves to extensive examination of reasonable efforts. Sometimes the most useful method of enforcing the mandate to provide services and visitation was sort of the “hostage” approach—that is, withholding a finding of reasonable efforts for perhaps 30 days to force the Agency to get moving on its case plan.”<sup>534</sup>

It should be noted that Native Americans and Alaska Natives represent a disproportionate number of children in the child welfare system. In one study Alaska Natives comprising approximately 17% of the total population were the subject of 45% of all reports for child abuse and neglect.<sup>535</sup>

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## **ARIZONA**

**STATUTES:** A.R.S. § 8-846(A) & (B) (1) (b); § 8-533(B)(3) & (10); Ariz. Stat. Ann. §8-846(1) (b) – mental illness can be a reason for bypass of reunification services. ARS §8-829. A.3 and Rule 47.1.D require reasonable efforts to prevent removal within 60 days of removal. What are Reasonable efforts? A.R.S. §§ 8-801; 8-891.

## **CASE LAW:**

*Mary Lou C. v Arizona Department of Economic Security*, 971 P.3d 1046 (Arizona Appellate, 1999) – TPR – Affirmed.

Incarcerated Mother – The baby was born substance abused. Mother had previously lost children because of substance abuse, one within 2 years of this case. A relative caretaker decided she would not care for child and a petition was filed. Concurrent plan adopted by the court. It appears that juvenile court did not make a specific finding that ADES provided reasonable efforts to the mother. The facts show, however, that reasonable efforts would have been futile because of the severity of mother's substance abuse problem.

*Matter of Appeal in Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 869 P. 2d 1224, 1232-3 (Ariz. App. 1994) – TPR – Affirmed.

The court found that the mother did not address her substance abuse problem. The mother was only given one year to be rehabilitated from her problem. “Individuals who are unwilling or unable, due to drug addiction, to accept their parental responsibilities and who thereby lose custody of their children to the state need to be aware that they run the risk of having their parental rights permanently terminated if they substantially neglect to remedy their addiction in the year following the removal of their children.”

*Kent K. v Bobby M.*, 110 P.3d 1013 (Ariz. App. 2005): In a TPR proceeding the burden of proof for all elements other than the best interest finding is “clear and convincing.”

*Matter of Appeal in Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 884 P.2d 234 (Ariz. App. 1994) – TPR – Affirmed.

Reasonable efforts finding affirmed. The agency offered parenting classes, multiple drug treatment programs and set up psychological evaluations which mother refused to participate in. The agency also arranged visitation when requested.

*Michael J. v Arizona Dep't of Economic Security*, 995 P.2d 682 (Ariz. 2000) – TPR – Affirmed.

The TPR was affirmed on an abandonment theory, but reversed on the theory that father's criminal convictions for violent behavior were a proper legal basis for TPR. The father was serving 3 years in prison. The appellate court noted that incarceration can be a factor to consider in termination cases.

## **Mental Health Issues**

*Mary Ellen C. v ADES*, 193 Ariz. 185, 192, 971 P.2d 1046 (Arizona appellate court, 1999) – TPR – Reversed.

The state did not provide reasonable efforts to the mentally ill mother, nor did it show by clear and convincing evidence that additional efforts would be futile. Before termination the state has an obligation “to make all reasonable efforts to preserve the family relationship.” The agency only offered mother a telephone number for self-referral for treatment. The doctor experts were not aware of mother's recent improvements. The parent's fundamental liberty interest in caring for her child required the court to read the reasonable efforts requirement into the statute. (at 1053-1055)

*Vanessa H. v ADES*, 215 Ariz. 252; 159 P.3d 562; Arizona App. 2007) – TPR – Affirmed.

The mother was mildly retarded and had a history of institutional placement. The baby was removed

when she left it alone. She needed an adult to help her care for child. Services were provided and the mother was in 5 different placements in next 2 years with beyond control behavior throughout. All experts agree – mother would be unable to safely care for child. The state was required to demonstrate it has “made a reasonable effort to preserve the family.” This is an element of TPR proceedings. Held: Nothing could have been done in this case. **DISSENT:** Reasonable efforts could have equipped the mother to adequately care for child. When are reasonable efforts “futile”?

### ICWA Cases:

*Matter of Appeal in Pima County Juvenile Action No. S-903*, 130 Ariz. 202, 635 P.2d 187 (Ct. App. Div. 2 1981) – TPR – Reversed.

The appellate court held that active efforts to provide remedial services were not made as required under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) and, accordingly, the Indian mother’s parental rights should not have been terminated. Noting that the adoptive parents contested the mother’s revocation of her voluntary relinquishment of the child for adoption, the court directed that the child be returned to her mother because there had been no attempt to preserve the parent-child relationship.

*Yvonne L. v. Arizona Dep’t of Econ. Sec.*, 227 Ariz. 415, 258 P.3d 233 (Ariz. App.2011) – TPR – Affirmed.

Physical abuse and substance abuse by the mother led to removal and later TPR. The mother appealed the trial court’s termination of parental rights decision regarding her three children. Under ICWA, a showing of active efforts does not require “that ADES provide every imaginable service.” “ADES cannot force a parent to participate in recommended services.” Other state courts applying ICWA have adopted varying standards of proof for the “active efforts” finding. One court concluded that because application of “beyond a reasonable doubt” better protects Indian families, it would adopt that standard. *In re G.S.*, 2002 MT 245, 312 Mont. 108, 59 P.3d 1063, 1071 (Mont. 2002).

*Pinal County Juv. Action No. S-389*, 151 Ariz.564, 729 P.2d 918 (Ariz. App. 1986) – TPR – Affirmed.

“[A]ttempts to preserve or restore the long-abandoned family unit by measures in which appellant refuses to participate would be futile.” In sum, the record supports the court’s finding that ADES provided active efforts to satisfy ICWA.

*Maricopa County Juv. Action No. JS501904*, 180 Ariz. 348, 884 Pac.2d 234 (Ariz. App. 1994) – TPR – Affirmed.

The children had been in out-of-home care for over two years. The Department of Economic Security (DES) had made diligent efforts to provide services to the mother, and the mother’s failure to participate in the services DES offered did not foreclose termination of her parental rights. Although ADES is not required to provide every conceivable service or ensure a parent participates in each service offered, ADES still must provide the parent “time and opportunity” to participate in the services.

*JS-8287*, 171 Ariz. 113, 828 P.2d 1254 (Ariz. App.) – TPR – Affirmed.

The record supported the trial court’s conclusion that ADES made diligent efforts under §1912(d) because “rehabilitative programs repeatedly were offered...yet...[the mother] did not take advantage

of the programs.”

## **Aggravated Circumstances**

*Toni W. v Arizona Dept. of Economic Sec.*, 196 Ariz. 61, 993 P.2d 462 (Ct. App. Div. 1, 1999) – TPR – Affirmed.

Grounds of Abandonment. Neither federal, nor state statute required the state agency to make reasonable family reunification efforts before commencing proceeding for termination of parental rights where mother’s actions met statutory definition of abandonment. Six months of no contact with child are sufficient basis for finding of abandonment. Mother claimed not to have known about child (mental breakdown), but the court will look to conduct, not to mental state in making determination.

*Matter of Pima County Severance Action No, S-2397*, 161 Ariz. 574, 780 P.2d 407 (Ct. App. Div.2, 1989) – TPR – Affirmed.

No services offered because of mother’s mental illness, borderline personality disorder, intermittent explosive disorder, and mild retardation and court’s conclusion that she was unable to parent two of three children. The appellate court reversed the trial court regarding a younger sibling with regards to the trial court had not terminated parental rights noting that the plan devised by the trial court was unworkable. TPR for all three children.

*Matter of Yavapai County Juvenile Action No. J-9956*, 169 Ariz. 178, 818 P.2d 163 (Ct. App. Div.1 1991), redesignated as opinion and publication ordered, (May 23, 1991) – TPR – Affirmed.

The court held that the statute authorizing termination of parental rights of mentally ill parents, Ariz. Rev. Stat. Ann. § 8-533(B)(3), does not obligate the state to try to reunify a family if those efforts would be futile. The state sought termination under Ariz. Rev. Stat. Ann. § 8-533(B)(3), (6), which allowed termination where a child was in an out-of-home placement for more than two years, the supervising agency made a diligent effort to provide appropriate remedial services, and the parent was unable to remedy the circumstances that caused the placement and was unlikely to assume effective parental care and control in the near future. Although the statute required clear and convincing proof that the state had make diligent efforts to reunite the family, the court held that if efforts to reunite a family would be futile, they were not required.

*James H. v ADES*, 210 Ariz. 1, 106 P.3d 327 (Ariz. App. 2005) – TPR – Affirmed.

Father was incarcerated. Reasonable efforts were not required when father faced a long prison sentence. Such reunification efforts would be futile.

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“Arizona statute and court rule (ARS §8-829. A.3 and Rule 47.1.D) require the court to make a determine whether reasonable efforts were made to prevent removal etc. within 60 days of removal - in compliance with federal requirements. Findings regarding the appropriateness of the case plan and whether reasonable efforts are being made to effect the plan, are reviewed throughout the case, and a party may raise the question of whether they are receiving appropriate services at any time. Needless to say the agency attorney vigorously opposes any “no reasonable efforts” finding - for obvious reasons I am unaware of any appellate decision, published or memorandum,

which addresses the question of whether reasonable were made to prevent removal or whether reasonable efforts are now being made to effect return. As you know, the issue is usually raised when a termination has been filed- or indeed has been granted.”

Email from Judge Eileen Bond (ret.)

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## ARKANSAS

**STATUTES:** Ark. Code Ann. § 9-27-303(23); § 9-27-341(a)(3) & (b)(3)(B)(i)(a); § 9-27-303(43)(A)(iv); 9-27-328(b)(1),(2), & (c), 9-27-338(d) & 9-27-328(f), (Michie 2002) – The “agency shall exercise reasonable diligence and care to utilize all available services.” § 9-27-341(b)(2)(A) the state has an obligation to reasonably accommodate a disability when it supplies reunification services.

### CASE LAW:

*Johnson, II v Arkansas Department of Human Services*, 82 S.W. 3d 183 (Ark. App. 2002) – TPR – Affirmed.

Father (incarcerated) claimed no meaningful effort to rehabilitate the home and correct the conditions causing removal. Father had received a 10 year prison sentence and had not established paternity even though ordered to and avoided child support. The children were in out-of-home care for 12 months. Earlier in the case services included psychological examinations, therapy, in-home parenting classes, transportation and supervised visitation. The findings were by clear and convincing evidence. The court majority stated that the incarceration at the time of the TPR hearing was “not dispositive of the termination issue,” but affirmed the TPR. **DISSENT:** The failure of services to father during the 12 months after removal – does not meet state requirement of a “meaningful effort be made by DHS to rehabilitate the home and correct the conditions that caused removal.” No services were provided because court had ordered no services until he proved his paternity. Moreover, he was only appointed an attorney at the TPR hearing. Once the father was given services at TPR stage of the proceedings he cooperated. The actual execution of the plan by the agency must, of course, also be in good faith.

*Moore v Arkansas Department of Human Services*, 9 S.W. 3d 531; 69 Ark. 1 (Ark. App. 2000) – TPR – Affirmed.

The mother appealed on grounds of no reasonable services. She argued that DHS did not make reasonable efforts to prevent removal and no reasonable efforts to reunite the family. Boyfriend/father caused injuries. The mother took no steps to protect daughter when father returned. At adjudication and disposition court made reasonable efforts findings – not appealed so court has no jurisdiction to review findings. The record is replete with services and referrals provided by DHS in an effort to rehabilitate the family.

*Malone v Arkansas Dep’t of Human Serv.*, 71 Ark. App. 441 (Ark. App. 2000) – TPR – Affirmed. The mother was incarcerated through the reunification period. She did not participate successfully in

the services offered at the prison.

*Arkansas Dep't of Human Services v Clark*, 802 S.W.2d 461 (Ark. 1991) – The trial court ordered DHS to provide services for the mother – Affirmed.

After placing her two children for adoption, a mother changed her mind and sought the return of her children. The juvenile division ordered the return of the children, ordered that the Arkansas Department of Human Services (DHS) provide transportation assistance to the family, and ordered DHS to provide the remainder of the full entitlement of preventive funds to the mother. DHS claimed that the juvenile division erred when it specifically found that DHS did not provide transportation as ordered and when it ordered DHS to make cash disbursements in violation of administrative agency policy and in excess of allocated funding. The court affirmed, determining that DHS presented no justiciable issue regarding transportation because there was no finding that DHS did not provide reasonable efforts or that transportation was not made. The services ordered by the juvenile division were among those included in the definition of family services in Ark. Code Ann. § 9-27-303(17) (Supp. 1989), and the juvenile division was clearly permitted to make its order under Ark. Code Ann. § 9-27-328(a). The evidence was sufficient to support the juvenile division's order. "Reasonable accommodations pursuant to the Americans with Disabilities Act were bus tokens so family members could attend therapy sessions.

## **Mental Health Issues**

*Cassidy v. Arkansas Dept. of Human Services*, 76 Ark. App. 190, 61 S.W.3d 880 (2001) – TPR – Affirmed.

The trial court had rejected the mother's claim that she had not received sufficient rehabilitative services, determined that any delay in receiving treatment was her own fault, and terminated her parental rights just two months after she began treatment for her mental illness. One of the factors that influenced the trial court was the mother's lack of cooperation on other occasions, such as her repeated refusal to admit the possibility that her brother may have molested her daughter, which the court found meant that she would not take steps to protect her daughter from him in the future, and the mother's consistent refusal to recognize that her failure to supervise her children was a problem.

**DISSENT:** Three justices dissented stating that while the mother had a history of failure, lying, and denial when not on medication, she had responded very well to her treatment and in two months had turned her squalid living quarters into a clean home, attended all of her parenting classes, and complied with most of the DHS directives. The dissent maintained that while it was too early to know if the mother would continue to follow the rehabilitation program and become a successful parent, the law required the state to give her a reasonable amount of time to do so after she began medication.

*J.T. v Arkansas Dept. of Human Services*, 329 Ark. 243, 947 S.W. 2d 761 (1997) – TPR – Affirmed.

The mother suffered from a bipolar disorder, delusional thinking and alcoholism. She loved her daughter and participated in all the programs offered by the agency, but admitted that she could not take care of her child. The daughter showed signs of mental illness as a result of living with the mother and did not want to return to her mother. The court held that the Americans With Disabilities Act does not apply in a termination proceeding, but is a separate legal action. Under Arkansas Code Ann. § 9-27-341(b)(2)(A) the state has an obligation to reasonably accommodate a disability when it supplies reunification services.

## **Aggravated Circumstances**

*Zgleszewski v Zgleszewski*, 542 S.W. 2d 765; (Ark Supreme Court, 1976) – TPR – Affirmed.  
A parent’s imprisonment does not toll a parent’s responsibilities toward his or her children. The petition by the step-father to terminate the father’s parental rights was granted.

*Smith v Dep’t of Human Services*, 2013 WL 6665466 (Ark. Ct. App) – TPR – Affirmed.  
The children were removed because the parents were manufacturing methamphetamines in their home with the children present. The agency made no efforts to reunify the family and the court of appeals affirmed because of the lengthy term of incarceration.

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“At the 60 day R/E findings, the agency does not inform the court about prior contact with the family and they fail to provide the court as to why prior services did not prevent removal and whether those family services were reasonable based on family needs.

“Also our judges do not always make a “no reasonable efforts” finding when it is warranted for our children who are languishing in foster care without appropriate permanency plan.”

Email from Connie Hickman Tanner, Director of Juvenile Courts, Administrative Office of the Courts

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## **CALIFORNIA**

**STATUTES:** CAL. Welfare & Inst. Code §§ 306, 309(a), 319, 361, 361(d), 361.5, 362, 366.21(e), 366.21(f), 366.22(a) (West Supp. 1990) and CAL, Civil Code § 232(a)(7) (West Supp. 1990); Removal in an emergency situation: W & I §319; Must provide services even for incarcerated parent (§ 361.5(e)(1) – West, 1998). Requires R/E finding at every hearing from initial removal through TPR; Cal W & I Code § 16501.1(b)(2) (R/E shall be guided by child’s health and safety); Definition: W & I § 727.4(d)(5); R/E to achieve permanence = CRC 1461(b)(2); W & I §§ 727.3(a) (1) and 727.3(a)(3). Who is not entitled to reasonable services – W & I § 365(b)(1) – (15).  
California Rules of Court, Rule 5.678.

**CASE LAW:** (*Several cases appear more than once because the case involved more than one subject*).

### **REASONABLE EFFORTS TO PREVENT REMOVAL**

1. *In re Amy M.*, 232 Cal. App. 3d 849, 856 (1993) – The trial court removed the daughter from her home after sexual abuse by the father occurred. The son was permitted to return on condition of no contact with father. The mother permitted contact with the father and the son was removed. Held: Agency provided reasonable efforts to prevent removal of son.
2. *In re Cole C.*, 174 Cal.App.4<sup>th</sup> 900 (2009); The agency made reasonable efforts to prevent the need for Cole’s removal from father, Mark. The father had not accepted any voluntary



service referrals, and he did not participate in visits with Cole in a structured setting. The court found that Cole would not be safe in father's care until father acknowledged the inappropriate nature of his parenting techniques and disciplinary methods.

3. *In re Ashly F.*, 225 Cal. App. 4<sup>th</sup> 803 (2014) – Removal of children – Reversed. The mother seriously beat one of her children using an extension cord. Other incidents of physical abuse had occurred. The court removed the children at the detention hearing. The trial court found that “reasonable efforts have been made to prevent or eliminate need for[the children’s] removal from home.” The trial court did not identify or describe those “reasonable efforts” were, nor did the court inquire into the availability of services “that would prevent or eliminate the need to detain the child or that would permit the child to return home” as required by California Rules of Court, rule 5.678(c)(2). W & I §361(d) requires the court to make a determination whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home and that the court “shall state the facts on which the decision to remove is based.” The court did not do this, thus making the finding “merely a hollow formula designed to achieve the result the agency seeks.” “A finding of parental abuse is not sufficient by itself to justify removing the child from the home.”

## **REASONABLE EFFORTS TO REUNITE THE FAMILY**

### **1. Housing**

*In re G.S.R.*, (2008) 159 Cal. App. 4<sup>th</sup> 1202; Writ by father. Granted.

The agency should have crafted a plan to help the father obtain housing. The appellate court reasoned that “the only reason Gerardo did not obtain custody of the boys was his inability to obtain suitable housing for financial reasons. But poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction.” (at p. 1212)

*Hansen v Department of Social Services*, 193 Cal. App.3d 283, 238 Cal. Rptr. 232 (1987) – This was a class action on behalf of homeless families or imminently threatened by homelessness. The appellate court held “that DSS regulation which limits ‘emergency shelter care’ to children ‘who must be immediately removed from their homes,’ to be contrary to the plain meaning of the Welfare and Institutions Code...” (286). All reasonable efforts must be made to prevent the unnecessary separation of children from parents, including housing assistance. This is what congress intended ... “to prevent or eliminate the need for removal of the child from his home.” The agency’s obligation is to provide ‘emergency care to all homeless children, whether or not separated from their families. As a result the legislature passed W & I § 16501(a)(3) “As used in this chapter, “emergency shelter care” means emergency shelter provided to children who have been removed pursuant to Section 300 from their parent or parents or guardian.” W & I §16501, 5(c) – states that housing services were for children only, no mention of a non-offending mother.

### **2. Visitation**

Adequate visitation between the parents and child has been the focus of reasonable efforts rulings in a number of California appellate rulings. Parents complain that they did not have an opportunity to maintain a connection with their children because the agency did not adequately facilitate visitation.

*In re Alvin R.*, 124 Cal. Rptr.2d 210, 108 Cal. App. 4th 962 – TPR – Reversed.

Because of a failure of the department to provide counseling, visitation between father and child did not take place. (at p. 973.) “The longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship.” Reasonable efforts services can include arrangements for visitation – (at 217.) Visitation is important and should be allowed as much as possible. (at 217). If a child is reluctant to visit and family therapy is necessary to promote visitation, such therapy may be critical to reunification.” “Some effort must be made [by the agency] to overcome obstacles to the provision services....Here...reunification was not going to be accomplished without visitation....” (at 218). “We recognize that the mere fact that more services could have been provided does not render the Department’s efforts unreasonable.” (at 218).

*In re L.M.* (2009) 177 Cal.App.4th 645. The juvenile delinquency court has the power to order the probation department to pay for transportation for visitation if the parent is indigent.

*In re David D.*, (1994) 28 Cal.App.4th 941 – TPR – Reversed.

Adequate reunification services were not provided. Also, despite evidence of the minors’ bond with their mother, the juvenile court allowed only one visit between termination of reunification services and the termination hearing. The juvenile court thereby ensured the “regular visitation” needed to meet an exception to adoption (Welf. & Inst. Code, § 366.26, subd. (c)(1)(A)) could not be satisfied. The referee ignored the minors’ best interests by suspending visitation, ignoring an expert’s recommendations as to the minors’ bond with their mother, terminating reunification services, and limiting visitation after that termination. The appellate court held that the agency and trial court placed an unreasonable burden on mother thus preventing her from visiting.

*Kevin R. v Superior Court*, (2011) 191 Cal. App. 4th 676.

The court cannot order parent-child visitation when that would be contrary to father’s parole conditions.

*In re Brittany S.*, (1993) 17 Cal. App. 4th 1399 – TPR – Reversed.

An incarcerated mother did not receive adequate services even though her place of confinement was close to where her daughter was living. The social worker did not monitor mother’s progress while in custody thus guaranteeing a termination proceeding.

*In re Julie M.*, (1999) 69 Cal. App. 4th 41. Writ challenging termination of services at six month review hearing. The appellate court reversed as to the visitation order. Reasonable efforts were provided regarding visitation – the social worker encouraged the children to visit. But, it was unreasonable for the court to delegate the visitation decision to children. The court might rely upon an evaluation by the children’s treating therapist regarding their emotional conditions and evolving needs. The agency had an obligation to oversee the visitation process.

*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774; Writ filed by the mother challenging termination of reunification services. Writ granted.

The appellate court stated that visitation is a critical part of the reunification plan. Because the mother had been denied visitation after the 6 month review, the court ordered that services be continued. "Visitation and compliance with the reunification plan should be indicia of progress toward family preservation." (at 1790).

*Tracy J. v Superior Court*, 202 Cal. App. 4<sup>th</sup> 1415 – TPR – Reversed.

The appellate court held that the agency failed to make reasonable efforts in that visitation was inadequate given the safety concerns present in the case. The parents were of limited intellectual functioning, but had fully cooperated with services offered and visits had been reported as positive. Nevertheless, the agency only permitted one supervised visit a week and visits were not increased or unsupervised during the entire reunification period. The appellate court held that this was a denial of reasonable efforts and that the visitation should have been increased. The case was ordered back to the trial court with instructions to increase visitation.

*In re Precious J.* (1996) 42 Cal. App. 4th 1463 – TPR – Reversed.

The appellate court held that reasonable services for incarcerated parents includes visitation. There is no excuse for the agency to neglect this. The agency is responsible for in-custody visits.

*In re David D.* 28 Cal. App. 4th 941 (1994) – TPR – Reversed on the issue of terminating reunification services.

The mother put her children in foster care while she was escaping an abusive environment. When, on advice of counsel, she did not deliver hospital records of her attempted suicide to the court, visitation was suspended. Adequate reunification services thus were not provided. Moreover, despite evidence of the minors' bond with their mother, the court allowed only one visit between termination of reunification services and the termination hearing. Visitation was required pending the hearing absent a finding it would be detrimental per Welfare & Institutions Code, § 366.21, subd. (h)), but no such finding was made. The appellate court ordered six more months of reunification services.

*In re S.H.*, 111 Cal. App. 4th 310 – The children were removed because of sexual abuse. At disposition the court gave the children the power not to participate in visits with their mother. The appellate court reversed. Visitation is a necessary and integral component of any reunification plan. The power to decide whether visitation occurs lies with the court alone. It cannot be delegated to others. A child who refuses to visit cannot control the situation.

*In re Christina L.*, (1992) 3 Cal. App. 4th 404 – TPR – Affirmed.

The parent-child visitation demonstrated that mother had no interest in her relationship with her daughter. Reasonable efforts provided. Mother must show some interest and motivation.

*In re Monica C.*, 31 Cal. App. 4<sup>th</sup> 296 (1995) – TPR - Reversed – for lack of reasonable efforts.

The social worker did not provide an incarcerated mother with a plan for visits with her child. The social worker unreasonably delegated to mother the responsibility of sending the caseworker a list of available services in prison, knowing that such services were minimal or non-existent.

*In re L.M.*, 99 Cal. Rptr. 3d 350 (Ct. App. 2009) – Motion for funding for visitation – Denied. The trial court properly denied the juvenile’s request for payment of parents’ travel expenses for visitation because he failed to prove such an order would be appropriate; while the court has the power to order the agency to pay for travel under its broad authority to order services and ensure reasonable efforts are made in dependency and delinquency cases, the court may consider such factors as the parents’ ability to pay, the permanency goal, and the benefit of visitation. There was little documentation or testimony to support the motion presented at trial.

*Christopher D. v Superior Court*, 210 Cal.App.4<sup>th</sup> 60 (2012) – Termination of services – Writ filed. Granted.

The father petitioned the court of appeals regarding the trial court’s order regarding visits. The court concluded that substantial evidence supported the juvenile court’s finding the father was provided reasonable visitation while incarcerated, but that there was no substantial evidence that the father received reasonable visitation services during the three-month period he was confined in a residential drug rehabilitation facility

### **3. Provision of a case plan detailing services**

*In re Precious J.* 42 Cal.App.4<sup>th</sup> 1463 and *Mark N. v Superior Court*, 60 Cal.App.4<sup>th</sup> 1158 – In each case the parent was incarcerated. The appellate court noted that federal law requires a case plan to be created for each child receiving foster care payments, and that the plan include services to improve the conditions in the parents’ home and “facilitate return of the child to his own safe home.”<sup>536</sup> The case plan must include “a description of the services offered and provided to prevent removal of the child from the home and to reunify the family.”<sup>537</sup> The appellate court asked if the agency, in fact, provided the services specified in the service plan. The court held that the agency did not follow the court order to provide the incarcerated parent with visitation.

*In re Luke L.*, 57, (Cal. Ct. App. 1996) – Placement of dependent children out of state – Reversed. The appellate court held that out-of-state placement would hinder reunification services, particularly visitation. The agency was ordered to create a back-up plan. The state agencies must provide services “in spite of the difficulties of doing so or the prospects of success.”

*In re Dino E.*, 6 Cal. App. 4<sup>th</sup> 1768, 8 Cal. Rptr. 2d 416 (1992) – Services terminated. The father filed a writ which was granted. Held: reasonable services had not been offered to father – therefore services could be continued past the 18 month limit. The court is not required to terminate services at 18 months, but had the discretion to continue those services beyond that date since the agency had not provided reasonable efforts during the first 18 months.

### **4. Substance Abuse Services**

Many parents lose custody of their children because of their substance abuse problems. The question for the court is often whether the agency has provided adequate services for the parents in these cases.

*Angela S. v Superior Court of Mendocino County*, 36 Cal. App. 4<sup>th</sup> 758 (Cal. App. 1995) – The

mother filed an extraordinary writ after the juvenile court terminated her services. The Writ was denied. The appellate court noted that the services offered to the mother were reasonable, but that she continued to abuse drugs and live an unstable lifestyle.

*Jennifer R. v Superior Court of San Diego* (2012 Cal. App. LEXIS 5 - unpublished) – The trial court terminated services for the mother. The mother filed an extraordinary writ claiming that the court’s finding of reasonable efforts was unsupported by the evidence. The appellate court granted the writ, stating that the agency should have made an immediate assessment of mother’s substance abuse needs and provided services to her. This was a failure of reasonable efforts. “[T]he record does not support the finding that the Agency identified the problems leading to the loss of custody of the child, offered and provided services designed to remedy those problems, and made every reasonable effort to assist the parent in the areas where compliance proved difficult.”

## **5. Domestic Violence and Sexual Abuse**

*In re E.B.*, (2010) 184 Cal. App. 4th 568; Domestic violence frequently results in state intervention on behalf of children in the home. The legal issues that the court must decide include whether the agency provided reasonable services to prevent removal and, then, at subsequent hearings, whether the agency provided adequate services to permit the parents to reunify with their child. In this case the state provided services, but the mother kept returning to the abusive father.

*In re Amy M.*, 232 Cal. App. 3d 849 – TPR – Affirmed.

There were allegations of sexual abuse by the father. The daughter was removed and then after a trial return, the son was removed. The mother was unable or unwilling to protect either child from the father. The appellate court found that reasonable efforts had been offered.

## **6. Mental Health Services**

Some parents suffer from mental health problems so severe that the state attempts to remove the child from their care. At the outset of the case, the court must determine whether the agency could have prevented the removal and thereafter, whether the agency provided adequate services to assist the parents reunite with the child.

*In re Venita*, 191 Cal. App. 3d 1229, 236 Cal. Rptr. 859 (1987) – TPR – Reversed.

The parents of a 3 year old child lost custody because of substance abuse and mental health issues. The agency amended the service plan 5 times in little over a year. The court ordered Alcoholics anonymous for father, but this was not the reason for dependency. The mother had substantially complied with service plan, but that was ignored by the lower court which focused on father’s alcohol problems.

The court found that the original cause(s) necessitating dependency have been substantially alleviated, and that the juvenile court, in considering “new” problems, should determine first whether the so-called new problem is no more than another manifestation of the original basis for dependency. If not, the court should determine whether the new problem would sustain a jurisdictional finding.

*In re Alvin R.*, 108 Cal. App. 4th 962, 2003 – TPR - Reversed.

The department failed to make reasonable efforts to place the child in counseling and this prevented the father and child to participate in conjoint counseling. Reunification in this case was not going to be accomplished without visitation, and such was unlikely without conjoint therapy, which was not going to be accomplished unless some effort was made to get the child into individual therapy. The Department submitted no evidence of having made a good faith effort to arrange counseling sessions.

*In re T.M.*, (2009) 175 Cal. App. 4<sup>th</sup> 1166 – TPR – Reversed.

Mother was missing and dependency was declared. After 3 months, the social worker learned mother was in a psychiatric facility. An attorney was appointed. At the 6 month review, parental rights were ordered. The appellate court reversed finding no case plan had been developed and no reasonable efforts had been provided to the mother. TPR was not a legal option under the statute, only guardianship or long term foster care.

*In re Elizabeth R.*, (1995) 35 Cal. App. 4<sup>th</sup> 1774, 1790 – TPR – Reversed.

The mother suffered from bi-polar disorder and was hospitalized several times. The mother made significant strides in the last few months before the trial. The appellate court ruled that the trial court should have given her more time. The case plan should have addressed mother's mental health challenges. "If mental illness is the starting point, then the reunification plan, including the social services to be provide, must accommodate the family's unique hardship." The plan must be specifically tailored to fit the circumstances of each family, and must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding. Reasonable efforts not found.

*In re Misako R.*, 1 Cal. App. 4<sup>th</sup> 538, 3 Cal. Rptr.2d 217 (Cal. App. 1991) – The trial court terminated reunification services. A writ was filed by the mother to the appellate court – writ denied. The mother claimed she did not receive adequate services for her mental retardation. But court found that the services for her were reasonable including a psychological evaluation, counseling, case management, interpreter services (Mother was Korean speaking), and referral to the Regional Center and charities. The appellate court held these were reasonable efforts especially since the mother did not cooperate with the service providers.

*In re Victoria M.*, (1989) 207 Cal. App. 3d.1317. TPR – Reversed.

The appellate court held that a disabled parent is entitled to services to fit her needs (housing, parenting counseling, and referral to the Regional Center). The mother was mildly retarded (IQ58, then 72). The children were removed for lack of housing, but also lice and scabies and infected wound. Parental rights were terminated. In reversing the trial court the appellate court held that the agency did not tailor services to meet mother's specific needs. First the agency must provide reasonable efforts – then, if they are not enough, the court must decide if TPR is in the children's best interest.

*Katie V. v Superior Court*, 130 Cal. App. 4<sup>th</sup> 586 (2005) – TPR – Affirmed.

Reasonable Efforts found by the trial court and affirmed by appellate court. Mother had mental health issues. The agency provided a case plan, domestic violence program, parenting class, counseling and substance abuse counseling. The mother also lacked motivation and at times stopped taking her medications.

*In re Daniel G.*, 25 Cal. App. 4th 1205, 31 Cal. Rptr. 2d 75 (Cal. Ct. App. 1994) – TPR – Reversed. The appellate court delayed the permanent placement of a child who had been in state custody since he was four days old because the state agency could not show that it provided services to the child’s mother who suffered from a serious mental illness. At the final 18 month review, the trial court found that respondent had not provided reasonable reunification services to appellant and her son since the six-month review, but set a hearing on a permanent plan for appellant’s son. At that hearing the court ordered termination of appellant’s parental rights. The appellate court reversed, finding that the trial court had discretion, under Cal. Welf. & Inst. Code §366.22(a), to continue reunification services beyond the 18-month review hearing, and that its failure to exercise that discretion made its order reversible. The court found that in order to meet due process requirements at the termination stage, the trial court must be satisfied reasonable services have been offered during the reunification stage. However, the social worker testified that he had never spoken to the mother and never investigated services for her, did not know her living arrangements, and allowed the child’s foster mother to “graciously” arrange occasional visits consistent with her schedule. The trial court called the state’s efforts a “disgrace,” but terminated parental rights believing there was no time left for services.

*Angela S. v Superior Court of Mendocino County*, 36 Cal. App. 4th 758, 42 Cal. Rptr. 2d 755 (Cal. App. 1995) – Writ by mother after trial court terminated reunification services. Writ denied. The children were removed because of chronic neglect, substance abuse, and emotional stability. When the court terminated reunification services, the mother petitioned the appellate court stating that services did not address her psychological impairments – a personality disorder and an IQ of 72. The appellate court held that she had received a “plethora of services” including a psychological evaluation, parenting classes, family preservation services, counseling, and inpatient and outpatient substance abuse services. Nevertheless she continued to use drugs, irregular therapy sessions, frequent moves and exposure to domestic violence.

*In re Mario C.*, 226 Cal. App. 3d 599 (1990) – TPR – Affirmed. The mother had been receiving services for 17 years. The appellate court found that she had been provided reasonable efforts by clear and convincing evidence. The services included a psychological evaluation and many attempts at counseling. The mother resisted counseling and therapy stating she could handle her own problems, and continued to use drugs and be involved in criminality.

*In re Walter P.*, 228 C.A.3d 113 (1991) – TPR – Affirmed. In a proceeding to free a minor from custody and control of his parents pursuant to Civ. Code, §232, the trial court did not err in failing to ascertain whether services offered by the state through regional centers serving developmentally disabled persons might have enabled the parents to reunite with the minor. While the mother functioned on the borderline of normal mental ability and suffered from chronic mental problems, there was no indication that she qualified for services that could have been provided by a regional center. She did receive assistance from the minor’s foster parents, who were registered nurses, the public health nurse, a volunteer from the county department of public social services, a department family maintenance worker, and the minor’s social worker. The record reflected that the mother’s problem was less a function of lack of mental ability than a poor attitude and lack of motivation to parent a fragile child with special health needs. The evidence was sufficient to support the court’s finding that the department had offered the parents adequate reunification services.

*In re John B.*, 159 Cal. App. 3d 268 (1984) – Out of home placement without reunification services – Reversed.

The child was removed from the mentally ill mother, and services were not offered. Appellant mother had an extensive history of psychiatric problems and her other three children were declared dependents and permanently placed in non-maternal custody after reunification efforts failed due to appellant's deteriorating mental state. After the birth of the subject child, the trial court declared him dependent, referred him for permanent placement, and ordered monthly, supervised visitation. The appellate court reversed the decision because the trial court did not comply with the mandatory family reunification objective.

*In re Christina L.*, 3 Cal. App. 4th 404 (1992) – TPR – Affirmed.

Respondent department of social services filed a petition to terminate the parental rights of appellant mother pursuant to Cal. Civ. Code § 232(a)(2). The juvenile court received evidence that the mother suffered from a developmental disability as well as emotional problems, and lacked judgment and insight into her problems. The court determined that a parent under such circumstances was not excused from the statutory requirement of a reunification plan and that the juvenile court must ascertain whether the services offered were reasonable under the circumstances. Cal. Civ. Code § 232(a)(7). In affirming the judgment of the juvenile court terminating appellant's parental rights, the court found that the department made a good-faith effort to develop and implement a family reunification plan but that in order for appellant to obtain any value from the services, some motivation and participation on her part, to the extent of her ability, would have been required.

*Tracy J. v Superior Court*, 202 Cal. App. 4th 1415 (2012) – Writ by parents challenging the termination of reunification services by the trial court.

The writ was granted. The child was removed from the parents' custody on the ground that the parents were developmentally disabled and could not provide regular care to him. The parents received only limited and supervised visitation. They were not instructed on how to recognize the child's asthma symptoms. They fully cooperated with the agency and received positive reports from service professionals. The appellate court held that substantial evidence supported the trial court's detriment finding under Welf. & Inst. Code, §§ 366.21, subs. (e), (f); 366.22, subd. (a), based on the parents' lack of ability to recognize and respond to the child's asthma symptoms. However, substantial evidence did not support the finding that reasonable family reunification services had been offered or provided under § 366.21. Despite the availability of significant support services, the parents had been deprived of a reasonable opportunity to show that they were able to parent their child. They were entitled to that opportunity under Welf. & Inst. Code, §§ 300.2, 361.5, 16501, and 42 U.S.C. § 629a(a) (7). In view of the lack of reasonable reunification services and the absence of abuse, there was good cause to continue the review hearing so visitation could be continued and expanded in an effort to see whether they could visit safely.

*In re K.C.*, 212 Cal. App. 4th 323 (2012) – Termination of family reunification services – Writ granted.

Dependency was established because of the condition of the parent's home and the children's hygiene. The appellate court held that the record did not contain substantial evidence that reasonable reunification services were provided to the father, as required by Welf. & Inst. Code, §361.5, because



plaintiff county department of family and children's services did little to secure a psychotropic medication evaluation recommended for the father in a psychological evaluation and failed to demonstrate that it could not reasonably be expected to do more. The psychologist's report indicated that the father's less-than-full cooperativeness was itself a product of psychological conditions that might have been responsive to pharmacological treatment. The problems leading to the father's loss of custody all appeared to stem from mental health issues. The department quite properly undertook to identify those issues, but seemed to delegate the burden of finding and obtaining suitable services to the father himself, despite the high likelihood that the very issues necessitating treatment would interfere with his ability to obtain it.

*In re Anthony P.*, 84 Cal. App. 4<sup>th</sup> 1112, 101 Cal. Rptr. 2d 423 (4<sup>th</sup> Dist. 2000) – TPR – Affirmed. The gravely mentally ill mother claimed the Americans with Disabilities Act preempted state termination proceedings and precluded a termination of her parental rights. The appellate court rejected her claim, pointing out that termination proceedings are not “services, programs, or activities” within the meaning of the federal act. These proceedings are held for the child's benefit, not the parent's.

## **7. Effectiveness of Services (Meeting the Parent's needs)**

*In re Kristin W.* (1990) 271 Cal. Rptr. 629, 222 Cal. App. 3d 234, 254 – Reunification services for father and his 3 children were terminated. Father filed a writ. The writ was granted by the appellate court. The children were removed due to school attendance problems, poor hygiene, and dirty house. The mother's whereabouts were unknown. The children were placed with their grandmother. When she died, the children were placed with neighbor and father was given a new service plan. Father refused to sign plan and filed a writ. The appellate court granted the writ stating that it is unfair to give father a new service plan on issues that would not support a jurisdictional finding. Father's unemployment was not a proper reason to terminate services. The fact that children were happy in the foster home was not a relevant factor either. Dependency should not “drift” into prolonged attempts to resolve parental shortcomings that are not jurisdictional. On occasion the agency provides services that do not address the problems that brought the child to the attention of the juvenile court. This situation presents another reasonable efforts issue – did the agency provide services that met the parent's needs? Reunification services must be tailored to individual needs of the parent's circumstances. In this case the agency failed to provide father with services to address the problems that brought the children into care (school truancy, poor hygiene and housekeeping problems).

*In re G.S.R.*, 159 Cal. App. 4<sup>th</sup> 1202 (2008) - Did the services address the problems that brought the child and family to the attention of the child protection agency and the court system? The agency should have crafted a plan to help the father obtain housing instead of the services offered. The court stated: “Reunification services need not be perfect. But they should be tailored to the specific needs of the particular family. Services will be found reasonable if the Department “has identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult...”

*In re Alvin R.*, 108 Cal. App. 4<sup>th</sup> 962, (2003). “When it appears at the six-month review hearing that a

parent has not been afforded reasonable reunification services, the remedy is to extend the reunification period, and order continued services.”

*In re Dino E.* (1992) 8 Cal.Rptr.2d 416, 6 Cal.App.4<sup>th</sup> 1768, 1777. TPR – Reversed.

The appellate court required that the case plan be specifically tailored to fit the circumstances of each family and designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding. It was not done so in this case.

*In re Taylor J.*, (B248839 – Los Angeles Superior Court, 2014) – The trial court terminated reunification services for the mother. The appellate court reversed holding that while the mother did not aggressively follow the case plan, “the foremost blame...lies with DCFS because it, not the parent or the court, is charged by the Legislature with providing reasonable family reunification services.” “Family reunification services are not ‘reasonable’ if they consist of nothing more than handing the parent a list of counseling agencies when the list contained the name of only one domestic violence victim counseling agency in proximity to Mother’s home. Furthermore, although Mother was ordered to participate in individual counseling, the list did not contain the names of individual counseling agencies.” The mother participated in services that the agency did not approve of, yet the agency did not advise the mother of her error.

## **8. The quality of services provided**

*In re Dino E.*, 6 Cal. App.4<sup>th</sup> 1768 (1992) – TPR – Reversed.

The appellate court asked “were the services individualized to the child and family”? Held: They were not. This was a mechanical approach to a reunification plan and not what the legislature intended. The plan must be specifically tailored to fit the circumstances of each family, and must be designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding. “Nobody gave Mr. E. the map. He needed some direction. It wasn’t there.” (at 1777).

*In re G.S.R.*, 159 Cal.App.4<sup>th</sup> 1202 (2008) – Effectiveness of services – did they address the problems that brought the child and family to the attention of the child protection agency and the court system? The appellate court stated that the agency should have crafted a plan to help the father obtain housing.

*In re Daniel G.*, 25 Cal. App. 4th 1205 (1994) – TPR – Reversed.

The appellate court stated that the services provided were ‘a disgrace’ thus justifying extending services beyond 18 months.

*In re Precious J.*, 42 Cal. App. 4th 1463 (1996) – TPR – Reversed.

The appellate court criticized the department for the use of a boilerplate reunification plan. The parent cannot be faulted for not completing services unrelated to the problems that brought the child to the attention of the court.

*In re Kristen W.*, (1990) 271 Cal. Rptr.629, 222 Cal.App.3d 234, 254. – The agency must show a “good faith effort to develop and implement a family reunification plan.”

## 9. Oversight

*Amanda H. v. Superior Court*, 166 Cal.App.4<sup>th</sup> 1340 (Ca. Ct. App. 2008) – TPR – Reversed.  
Did the agency monitor the service delivery process so that problems were addressed when they occurred? The appellate court held that it did not. The social worker failed to tell mother she was in the wrong counseling program until the 11<sup>th</sup> hour. It was the duty of the DFCS worker “to maintain adequate contact with the service providers and accurately to inform [Mother] of the sufficiency of the enrolled programs to meet the case plan’s requirements.” (at 1347).

*In re Taylor J.*, (#B248839 (Cal. Ct. App. 2014) – Services Terminated – Writ Granted.  
The mother was ordered to participate in DCFS-approved counseling including a domestic violence support group. Over the course of the case the mother participated in services, but the agency concluded that they were not what the court ordered. The appellate court noted that “[f]amily reunification services are not ‘reasonable’ if they consist of nothing more than handing the parent a list of counseling agencies when the list contained the name of only one domestic violence victim counseling agency in proximity to Mother’s home.” DCFS did not investigate to determine whether the services mother enrolled in were appropriate. It was DCFS’s duty “to maintain adequate contact with the service providers and accurately to inform [Mother] of the sufficiency of the enrolled program to meet the case plan’s requirements.” The appellate court remanded the case for further services for the mother.

## 10. Timeliness of Services

*Amanda H. v Superior Court* (2008) 166 Cal. App. 4th 1340. TPR – Reversed.  
The timeliness of services – were they delivered in a timely fashion? Were there waiting lists for some/all of the services? In this case the mother was not informed by the social worker until the 11<sup>th</sup> hour that she was participating in the wrong services. This was a failure of reasonable efforts.

## 11. Family Engagement

*Robin V. v Superior Court*, 33 Cal.App.4<sup>th</sup> 1158 (Cal. Ct. App., 1995) – TPR – Reversed.  
The appellate court asked: Did the agency engage the family so that they would take advantage of the services? No - the social worker only provided stamped envelopes and failed to respond to father’s request for visits. The trial court’s reasonable efforts finding was reversed on appeal.

## 12. Provision of Services

*In re Riva M.*, 235 Cal. App.3d 403; 286 Cal. Rptr. 592, 599 (1991) – TPR – Affirmed.  
Did the agency provide the parents with what the service plan called for? Father appealed. “[T] he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult.”

*In re Jose F.*, 178 Cal. App. 3d 1116 (1986). Timeliness of Services: - The trial court removed the children from the mother. Reversed on appeal. The law had changed mandating reasonable efforts to

prevent removal. Reasonable services to prevent removal must be offered before children can be removed. The trial court stated: “I don’t know what the status of the case would be today if there had been certain kinds of services provided. And perhaps if there had been a different approach taken to the case by the Department of Public Social Services.” The appellate court discussed in detail how the agency did not make services accessible for the mother, including excuses offered by the social worker at trial that counseling “could not ‘realistically’ be considered due to Mrs. V’s work hours, the number of children she had and the limited availability of counseling programs for Spanish-speaking persons.”

*In re Dino E.*, 8 Cal. Rptr. 2d 416, 421 (2002) – A reunification plan must be developed on a case-by-case basis.

### **13. Services for Incarcerated Parent**

*Earl L. v Superior Court of Orange County* (2011) – TPR – Affirmed.

The agency did not provide reasonable services to an incarcerated father for some of the 18 months, but that was not a sufficient reason to extend services beyond 18 months because of father’s lack of effort.

*In re Brittany S.*, 17 Cal. App. 4<sup>th</sup> 1399, 22 Cal. Rptr. 2d 50 (1993) – The court terminated reunification services. A writ was taken by the mother. Writ granted.

The appellate court held that the agency failed to provide a tailored service plan for an incarcerated mother. The agency failed to monitor the mother’s progress in prison programs or to ask someone at the Department of Corrections about a community treatment program in which the mother sought to participate. Services for mother were unreasonable. No visitation was established even though the mother was incarcerated only 40 miles from where child lived.

*In re Maria S.* (2000), 82 Cal. App. 4<sup>th</sup> 1032 – TPR – Reversed.

The mother was incarcerated and then deported to Mexico upon release. The appellate court held that there was no evidence of services available in prison, and she was deported before she could show compliance with services. Incarcerated parents must be provided with reasonable services that take into account their individual situation. There was no evidence that the agency investigated to determine what services might be provided to the incarcerated mother (about to be deported). Mother was cooperative.

*In re Ronell A.* (1996) 44 Cal. App. 4<sup>th</sup> 1352 – TPR – Affirmed.

The appellate court held that the incarcerated mother received reasonable services. The visitation was limited because the foster parents lived a great distance from the prison (not the agency’s fault), mother canceled some visits, and she did not show great interest in reunification. She was also provided with parenting classes and drug rehabilitation and the agency made regular efforts to insure the incarcerated mother was attending classes.

*Mark N. v Superior Court of Los Angeles County* (1998) 60 Cal. App. 4<sup>th</sup> 996, 1011, 70 Cal. Rptr.2d 603 - Termination of services challenged on a writ. Writ granted.

The father was incarcerated and the agency did nothing to provide services stating that the father put

himself in jail through no fault of the agency. Termination of services finding reversed per appellate court on a writ from the father. “With respect to an incarcerated parent, there is a statutory requirement that reunification services be provided ‘unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor.’” The father was not required to complain about the lack of reunification services – it was the agency’s duty to provide them.

*In re Dino E.* (1992) 6 Cal. App. 4th 1768; – TPR – Reversed.

An incarcerated father received inadequate services and no reunification plan. Services should be extended past 18 month time limit since the father received inadequate services.

*In re Monica C.*, (1995) 31 Cal. App. 4th 296; – The appellate court held that the incarcerated mother did not receive adequate reunification services. There was no plan for visitation and the social worker required mother to identify services in prison.

*In re Precious J.*, (1996) 42 Cal. App. 4th 1463. – TPR – Reversed.

After the court ordered visitation between child and incarcerated mother, the agency did not arrange even one visit. Moreover, the service plan failed to address mother’s main issue – her pattern of engaging in petty thefts. The case plan should have included counseling, vocational training, and other services to overcome this problem. Failure to do these things was a failure of reasonable efforts.

*In re Dylan T.* (1998) 65 Cal. App. 4th 765; Visitation with an incarcerated parent cannot be denied without clear and convincing evidence that such visits would be detrimental to the child. The child’s young age alone is insufficient.

*In re Monica C.*, 31 Cal. App. 4th 296 (1995) – TPR – Reversed.

The appellate court held that the reunification plan did not provide for visits with the incarcerated mother. The trial court ruling of reasonable efforts was reversed. Moreover, the appellate court held that it is unreasonable to delegate to the parent the responsibility for determining what services were available in prison. The county has an affirmative obligation to provide services and the service plan should attempt to maintain the relationship between the parent and child.

*Robin V. v Superior Court*, 33 Cal. App. 4th 1158 (1995) – The trial court terminated reunification services. Writ by the father - granted by the appellate court for lack of reasonable services. The court held that the social worker had an obligation to review the service plan with the incarcerated father and to give him advice on what he should be doing to secure his parental rights. Also it was the obligation of the social worker to maintain reasonable contact with the father.

*In re Jonathan M.*, 53 Cal. App. 5th 1234 (1997) – Termination of services.

Writ by parents - granted by the appellate court. The parents were incarcerated 250 miles away from their child. The agency had a policy of no visits beyond 50 miles. The court of appeals reversed the trial court’s finding of reasonable efforts stating: “A detriment finding cannot be based on geography alone.” The appellate court informed the agency to be more creative.

*In re Sabrina N.*, 70 Cal. Rptr. 2d 603 (Cal. Ct. App. 1998) – TPR – Reversed.

The father was incarcerated for most of the reunification period. The agency failed to contact the

prison to determine the availability of services for him, concluding that there was no hope for services. Held: The incarcerated father did not receive reasonable efforts during the reunification period due to the agency's inaction.

*In re Regina V.*, 22 Cal. App. 4th 711 (1994) – TPR – Reversed.

While appellant father was incarcerated in a Texas prison, his parental rights were terminated. Appellant sought review of the termination decision, contending that he was denied the effective assistance of counsel during pre-termination proceedings. During the pendency of the appeal, the child's foster parents adopted her. The court reversed the termination order because appellant was denied the assistance of counsel at critical stages of the pre-termination proceedings in violation of Cal. Welf. & Inst. Code § 317(b), (d), and there was nothing in the record indicating that the trial court had good cause to relieve appellant's appointed counsel of his duties. The court also concluded that the trial court erred by determining by a preponderance of the evidence that appellee, the Los Angeles County Department of Children's Services, made reasonable efforts to reunite appellant and the child because Cal. Welf. & Inst. Code 366.21(g)(1) required such a finding to be made by clear and convincing evidence and appellee made only cursory efforts to locate appellant prior to termination.

#### **14. Did the Services Match the Problems that Brought the Child Into Care?**

*In re Kristin W.*, (1990) 222 Cal.App.3d 234 – Reunification services for father and his 3 children were terminated. Father filed a writ. Granted.

The children were removed due to school attendance problems, poor hygiene, and dirty house. Mother's whereabouts were unknown. The children were placed with their grandmother. When she died, the children were placed with neighbor and father was given a new service plan. Father refused to sign plan and filed a writ. The appellate court granted the writ stating that it is unfair to give father a new service plan on issues that would not support a jurisdictional finding. Father's unemployment was not a proper reason to terminate services. The fact that children were happy in the foster home was not a relevant factor either. Dependency should not "drift" into prolonged attempts to resolve parental shortcomings that are not jurisdictional.

*In re Venita L.*, 191 Cal. App. 2d 1229, 236 Cal. Rptr. 859 (1987) – Services Terminated – Writ filed and granted – The mother was confined to a mental hospital and the child was removed. The mother recovered, but services were terminated because the father was not involved in Alcoholics Anonymous. The appellate court granted the writ stating that father's issue was not the reason for the dependency action and would not have supported dependency by itself. The mother had completed her case plan.

#### **15. Parents Cannot be Located**

*In re T.G.*, (2010) 188 Cal. App. 4th 687 – Reasonable efforts are not required when a parent does not inform social worker of his whereabouts. The father was incarcerated after the dispositional hearing. He did not inform the social worker where he was and by the time he did, it was too late to develop a service plan.

#### **16. Parents Waited Too Long**

*Armando L. v Superior Court*, (1995) 36 Cal. App. 4th 549 – The appellate court held there was no failure of reasonable efforts where the father waited 13 months before engaging in services.

*In re V.C.* (2010) 188 Cal.App. 4th 521; There was no violation of reasonable efforts when father was incarcerated 14 out of 18 months during the reunification period and when, before incarceration, he did not engage in services.

### 17. ICWA

*In re H.E.*, 169 Cal.App.4<sup>th</sup> 710 (Cal. App.2009) – Reasonable Efforts can be offered by the tribe and that can satisfy the state agency’s legal obligation. The parents received support and assistance from tribal social worker including parenting classes, crisis counseling, and therapy with the children. The efforts by the tribe were credited to agency.”...[P]ossible lacuna of five weeks in three months of ongoing efforts to secure a psychological evaluation. Given the total efforts made to prevent removal of the children, a lacuna of that length does not render the overall finding of reasonable efforts unsupported.” The appellate court held that reasonable efforts were expended to prevent removal of the children.

*In re K.B.*, 173 Cal. App. 4th 1275, 93 Cal. Rptr. 3d 751 (4th Dist. 2009) TPR – Affirmed. The court did not place the child with the mother because she permitted the father to have contact with the child and he had molested her. Active efforts found. The appellate court held the following to be a useful guideline: “Passive efforts are where a plan is drawn and the client must develop his or her own resources towards bringing it to fruition. Active efforts... is where the state caseworker takes the client through the steps of the plan rather than requiring that the plan be performed on its own.”

*In re Michael G.*, 63 Cal. App. 4th 700, 74 Cal. Rptr. 2d 642 (4th Dist., 1998) - the court held that the active efforts requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) is essentially identical to reunification services under California law. Nevertheless, the court advised, two separate findings are required: (1) under state law, that reasonable reunification efforts were made; and (2) under § 1912(d), that active efforts involving Indian resources were made.

*Letitia V. v. Superior Court*, 81 Cal. App. 4th 1009, 97 Cal. Rptr. 2d 303 (4th Dist. 2000) – No reunification services ordered – Affirmed. Mother had a long history of substance abuse and had received services for another child. Held that the active efforts provision of § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) seemed to require only that timely and affirmative steps are taken to achieve the goal of preventing the breakup of an Indian family.

*In re Riva M.*, 235 C.A.3d 403 (1991) – TPR – Affirmed. The father was a non-Indian, the mother was Indian. The appeal alleged that the court did not follow the ICWA, that proof beyond a reasonable doubt was not produced and there was no expert Indian testimony. The appellate court ruled that all those issues were waived because no objections were made during the trial.

*In re A.A.*, 167 Cal. App. 4th 1292 (Cal. App.2008) – TPR –Affirmed.

The court also held that sufficient evidence supported a finding that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of an Indian family, despite a delay in placing the children with their relatives.

*In re K.B.*, 173 Cal. App. 4th 1275 (Cal. Ct. App. 2009) – TPR – Affirmed.

Active efforts were not required for the father since he was a sexual abuser. Active efforts were offered to the mother, but she refused to leave the father.

*Adoption of Hannah S.*, 142 Cal. App. 4th 988 (Cal. App. 2006) – TPR of Father’s parental rights denied at trial court. Reversed on appeal.

Because the trial court failed to apply the proper standard in determining whether the mother had complied with the requirement of 25 U.S.C. § 1912(d) to show active efforts and did not consider all the evidence when determining whether continued custody would damage the minor, reversal was required. The mother had not given up on the father, an alcoholic, until he relapsed twice and committed serious crimes against her. The mother could not be expected to be responsible for further attempts to alleviate the father’s alcohol abuse and violence or to foster a parent-child relationship between the minor and the father when the father, despite the mother’s prior support and understanding, perpetrated a vicious attack upon her which resulted in his incarceration and a lifetime restraining order. The father’s acts demonstrated his inability to provide a healthy parent-child relationship with the minor.

## **18. Counseling**

*In re Alvin R.*, 108 Cal.App.4<sup>th</sup> 962 (2003) – Appeal of finding that reasonable services had been provided. Reversed.

The appellate court stated that the key to the original reunification plan was that father and Alvin participate in conjoint counseling so that visitation could take place, but only after Alvin had received eight sessions of individual counseling. The Department did not arrange for those sessions. Thus the Department effectively abdicated its responsibility to effectuate timely individual counseling for Alvin, which precluded father from participating in conjoint counseling with Alvin. The juvenile court became aware of the delay and ordered that conjoint counseling proceed, when appropriate, even if Alvin had not completed eight individual counseling sessions. The Department again failed to take timely steps necessary to have father and Alvin begin conjoint counseling. The resulting delay effectively precluded any meaningful visitation between father and Alvin while the statutory time periods contemplated for completion of the reunification process were running. “The remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing.” (at975).

*In re Laura F.*, 33 Cal. 2d 826, 6622 P.2d 922, 191 Cal. Rptr. 464 (1983) – TPR – Affirmed.

The court found that the agency provided reasonable efforts by counseling the parent on the changes required to regain custody of the child.

## **19. Reunification Plan**

*In re Michael S.*, 188 Cal.App.3d 1448 (1987) – Appeal from an order terminating services and ordering no further services. Reversed.



The appellate court ruled that further reunification services were appropriate. Absent aggravated circumstances a reunification plan must be ordered by the court after a child is removed from parental custody.

## **20. Standard of Proof**

*In re Monica C.*, 31 Cal. App. 4<sup>th</sup> 296, 306 (1995) - Any finding that reasonable services have been offered must be supported by clear and convincing evidence.

## **21. Reasonable Efforts and Termination of Parental Rights**

*Armando L., Sr. v. Superior Court of Los Angeles County*, 36 Cal. App. 4<sup>th</sup> 549 (1995) - The state cannot initiate termination of parental rights unless the court finds reasonable services have been made or offered.

## **22. Good Faith Effort**

*In re John B.*, 159 Cal. App. 3d 268 (1984) – Services to prevent removal and provide reunification support were not offered. Reversed.

Appellant mother had an extensive history of psychiatric problems and her other three children were declared dependents and permanently placed in non-maternal custody after reunification efforts failed due to appellant's deteriorating mental state. After the birth of the subject child, the trial court declared him dependent, referred him for permanent placement, and ordered monthly, supervised visitation. The court reversed the decision because the trial court did not comply with the mandatory family reunification objective. A good faith effort to develop and implement a family reunification plan is required.

## **23. Aggravated Circumstances**

*In re Lana S.*, 207 Cal. App. 4<sup>th</sup> 94 (Cal. App. 2012) – TPR and bypass of reunification services appealed. Trial court findings affirmed.

The appellate court found that the fact that the mother had lost three older children to termination, that she had a lengthy history of drug abuse, denied having a drug problem, refused to voluntarily test, refused to enter a drug treatment program, drug paraphernalia was found near the children and her live-in boyfriend was a heroin addict sufficient grounds to deny her reunification services and terminate parental rights.

*In re T.M.*, (2009), 175 Cal. App.4<sup>th</sup> 1166 – TPR – Reversed.

The mother's were initially unknown. When she was located, no plan was developed because mother was in a psychiatric facility. The appellate court stated that the trial court neither offered services nor found statutory support for a waiver of services, the case was remanded and the trial court was limited to a permanent plan of guardianship or long term foster care.

*In re Rebecca H.*, 227 Cal.App.3d 825 (Cal. App. 1991) – Denial of Reunification Services – Reversed.

The agency petitioned the court to deny reunification services to the father because of his mental disability. Two doctors testified that father had a mental disability, but was motivated and needed

time (a year) to be able to care for his child. The appellate court reversed the trial court finding that the mental disability did not make the father incapable of using reunification services and that a year was a reasonable time.

## **C. REASONABLE EFFORTS TO FINALIZE A PERMANENCY PLAN**

### **1. Delays in the Adoption Process**

*In re Daniel G.*, 25 Cal. App. 4<sup>th</sup> 1205 (1994): If the department of children's services felt services should not have been provided, it should have brought the matter to the court's attention at disposition hearing. Otherwise, it had a duty to make good faith effort to provide services. (at 1216).

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"California courts regularly make appropriate reasonable efforts findings" Table 3.24 "Summary of Title IV-E Findings and Orders: Judicial Review & Technical Assistance Project Database 2002-2004," *California Juvenile Dependency Court Improvement Program Reassessment: Executive Summary*, California Administrative Office of the Courts, Center for Families, Children & the Courts, San Francisco, June, 2005, at p. 8.

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"I have been on the bench for 15 years and I think it has been raised less than ten times. I have never made a finding about a lack of reasonable efforts. If there was an issue all parties stipulated to continue services and set for further hearing." (email to author from a California juvenile court judge).

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"As for your question: Sadly, the attorneys seldom addressed reasonable efforts. I wish they would. My take is that Reasonable Efforts, like "Active Efforts" in the ICWA context, is relegated to meaningless verbiage for the judge to recite like an incantation primarily to preserve funding. I tried to make it my practice to bring it up on my own, especially as it is uniformly part of the report's recommended findings. I consider it the heart of the Court's continuing authority to interfere in family decisions. In my own simple minded way, I think the Title IV requirement deserves much more than the dismissive treatment it usually gets. Unless there is robust parent advocacy, it falls to the court alone to ask 1. Why is removal necessary?, 2. What was done to prevent removal? What will be done to make it possible to return the child to the parents?"

It seems to fall to the Court also to know what is available in terms of services in the community, and in assessment tools, to identify appropriate measures. I also struggle with the conclusory declaration of risk, e.g. "The child is at risk... due to mothers drug addiction." It is difficult to articulate specific risk of specific harm, and much more difficult to articulate how a specific service or intervention will address the specific risk.

At the initial hearing, counsel are seldom armed with informed parent clients, and agency staff may have only the barest of emergency response reports. When the Court makes pre-removal services important, it becomes easier to articulate whether there is a true risk of harm, that only removal can

relieve. There is no excuse for not addressing the same analysis at juris and surely at disposition, and every review thereafter.”

Email from Judge Juan Ulloa, Superior Court, Imperial County, California

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“When I was in (Lancaster) I made about 50 no reasonable efforts findings (4 in one week on the same worker). They were all during the reunification process. One was appealed and the court of appeal denied it with a lengthy 40 page opinion. One was done as a rehearing and granted, but it took 6 months to do the hearing. In Monterey Park (main L.A. courthouse) reasonable efforts are litigated at least 2-3 times/month. I find no reasonable efforts about 2-3 times during a 4-6 month period. I rarely make these findings at dispo. or detention. I think there will be more findings because as the lawyers become more familiar the social workers they will realize who the poor social workers are.”

Email to author from a Los Angeles County juvenile court judge.

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“I probably get a ‘no reasonable efforts’ argument once a week. Often with respect to services for incarcerated parents.”

(Email to author from a California juvenile court judge).

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“WIC 319 is instructive with respect to the initial hearing. WIC 319(d)(1) states: “The court shall also make a determination on the record, referencing the social worker’s report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home,.... and whether there are available services that would prevent or eliminate the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out of home respite care, teaching and demonstrating homemakers, parenting training, transportation, and other child welfare services authorized by the State Department of Social Services. The court shall also review whether the social worker has considered whether a referral to public assistance would have eliminated the need to take temporary custody of the child or would prevent the need for further detention.”

“In other words, are there any services that would allow the child to safely remain in the home? We must force DCFS to answer this question in each and every case. There are obviously many cases where the answer is clear and the child needs to be removed. However, there are a significant number where these questions need to be carefully considered and documented. It is up to our judicial officers, hopefully with some advocacy from the lawyers to make sure these questions are considered and answered in a meaningful way. If there are services that will allow the child to safely remain in the home, we must make sure they are offered. Hopefully, fewer children will be removed and the life of the case will be shorter or fewer cases will be filed. the bottom line here is that we must try to ensure good social work practice so that the dept maximizes its efforts to safely divert families from the system so that the court resources can be utilized in those cases of serious abuse and/or neglect

which clearly require court intervention and those cases where appropriate services have actually been provided or offered and have not been accepted or worked.

“Previous efforts have shown that this kind of consistent effort on the part of our courts have helped. I reference each of you to the NCJFCJ Benchcard (attached) and the power point which referenced its positive impact. What I am suggesting here will not fix everything. But it can help set the proper tone in our court’s which can push this system more in the direction of where it needs to go.”

Memo from Judge Michael Nash, Presiding Judge of the Los Angeles County Juvenile Court, to the bench officers in the Los Angeles Juvenile Dependency Court, May 29, 2013. A copy is available from the author.

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“Courts must oversee the quality and timeliness of the provision of services to prevent removal, maintain and reunify families, and finalize a permanent plan, and must enter appropriate ‘reasonable efforts’ findings. It is recommended that, to improve the quality of these services, the Judicial Council encourage courts to make informed findings regarding reasonable efforts.” *California Juvenile Dependency Court Improvement Program Reassessment: Executive Summary*, California Administrative Office of the Courts, Center for Families, Children & the Courts, San Francisco, June 2005, at p. 8.

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“They can argue reasonable efforts both at the initial detention hearing as well as at the dispositional hearing. Interestingly enough, in my first year here in dependency, I have not yet see one challenge to reasonable efforts at detention or disposition. But plenty of reasonable services challenges at the six and twelve month review hearings!”

Email to author from Judge L. Michael Clark, Superior Court, Santa Clara County. 11/13.

## **REASONABLE EFFORTS IN DEPENDENCY CASES.**

“Do you ask about them on your own or wait for the attorneys to ask?”

“I ask about what efforts were made to handle the case informally if it is a neglect petition (drugs, incarceration of parent, clear poverty related issues and mental health). For the shaken babies, battered babies and sex cases (less than 20 percent) I do not generally probe this way. I want to see that informal services were offered if there is no significant criminal or CPS history.”

“Do you ask about “reasonable efforts to prevent removal?”

“Yes - see above.”

“Do you have interim hearings to check to see that the service plan is working?”

“We have a 45 day interim hearing after we dispo the case to make sure that the SW has made all referrals and that the parent has been given full opportunity to engage. Sometimes the parent needs a bus pass or funding to get services so we problem solve at the 45 day review. We also inquire as to whether a 90 day review should be set in order to consider return. I also ask about concurrent

planning at the 45 day review if that was not intact at the dispo. That child should be in a concurrent home by the 45 day review if not sooner.”

“Will you adjust if it is not?”

“We adjust to meet the needs of the case. I will set more interim hearings as necessary. Sometimes the Department requests that I allow an oral report if it is a quick turn-around. I do.”

“How do you use the CCC benchcards?”

“I use the CCC Benchcard just like the Resource Guidelines, at each hearing to make sure that I am covering all of the areas that can assist in early resolution of the case with the least restrictive placements. The elimination of bias is the goal, as well as a thorough initial hearing that fully considers all possible alternatives to removal. I also recommend distributing the CCC Benchcard to all stakeholders so that they can be prepared to answer the court’s questions and can be on board with using a bias-free lens at all points of the case.”

“Yes. We often spoke about services. You have to recall we had the model court so we had to commit to three improvements per year. We were always talking about how to improve outcomes for our families.”

Two emails from Judge Katherine Lucero, Superior Court, Santa Clara County, California.

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“Lawyers often fail to raise reasonable efforts issues, even when courts may be predisposed to make such findings. The following reasons are the most common:

1) Return is not an option: For some lawyers, the concepts of return vs. lack of reasonable efforts are difficult to distinguish. And when a child cannot be returned, whether the reasons why are known to everyone or only the parent’s attorney, focusing upon the reasonable efforts finding can actually be counter-productive. Lawyers do not like to upset their judicial officer by raising issues that will have no practical impact on the result of a hearing, especially when calendars are crowded, and other critical issues need to be argued and decided at the hearing (such as visitation, particular service referrals, and relative assessments).

2) Federal funding: Some lawyers fear that the agency will lose federal funding if a lack of reasonable efforts finding is entered, especially at the initial detention hearing. While this is not necessarily the case (especially if the child is not eligible for IV-E reimbursement), lawyers - especially those representing children - often believe it’s better to allow the court to make this finding in order to ensure necessary funding will be available for their clients in the future. These myths are rarely dispelled by the agency (after all, they have a lack of incentive to do so), and training and technical assistance on this issue is rare throughout the country.

3) Lawyers don’t know what they don’t know, and they believe what they are told: There are no

baseline standards in this country that define reasonable efforts. This was a deliberate decision made at the federal level in order to allow judges in each community to define what is reasonable in his or her jurisdiction. In addition, unlike child welfare workers, lawyers receive no specialized training in how services impact risk and safety. Child welfare agencies are funded and charged with the responsibility of finding appropriate service providers and making reasonable efforts. When they report that they have offered what is available in the community and cite a lack of fiscal resources to do more, lawyers are rarely in a position to question those assertions. This is especially true at the hearings themselves, where the agency representative present is never the one with the decision-making authority over how agencies expend funds or contract with providers. And while courts and judicial officers are sometimes able to obtain answers to questions relating to fiscal expenditures and resource allocation, agency representatives have no incentive to share that information with an attorney for a parent or child. Finally, without statutory or appellate guidance regarding what actually constitutes a lack of reasonable efforts, lawyers are left to argue common sense notions based upon anecdotal experiences, which may or may not carry weight with a judicial decision-maker. For example, while some courts will order agencies to make in-home/unannounced visits to ensure proper supervision or danger-free homes, other courts believe such orders are outside the scope of their authority.”

Email to author from David Meyers and John Passalacqua, attorneys who specialize in the representation of parents in child protection cases - dated 12/6/13.

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“As minor’s counsel I usually don’t raise the reasonable efforts to prevent removal issue, although sometimes I have agreed with parent’s counsel who have raised it during detention. I seem to recall one case where the parents were very poor, and there might have been alternative housing available. I believe they are usually raised during “dirty home” cases, where the parents are impoverished, and finding alternative housing might be a possibility. It is, I think, a neglected provision which could be very effective if utilized in a contested detention proceeding.

“I have never seen a judge raise the reasonable efforts to prevent removal issue *sua sponte*, although I do remember Judge Harry Elias (County of San Diego, North County Regional Center), raising it on occasion.

“I have however, used and litigated the *reasonable services\reasonable efforts* issue related to reunification services. In fact we had a rather extensive trial on one where I actually litigated the fact that the minor had not received reasonable reunification services because of the delay in treatment. We fought it out and the court ultimately ruled that there had been an “appalling” breakdown in communication, but that the services were reasonable.”

Email from Kelly Ranasinghe, Minor’s counsel in Imperial County, California.

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## **COLORADO**

**STATUTES:** COLO. Rev. Stat. Ann. §19-1-103(89) = definition; § 19-3-702(3.5) (West 2002) 19-3-

604(1)(b)(I) (2010) – The state has the responsibility “to provide, purchase, or develop the supportive and rehabilitative services” required to prevent placement or achieve reunification. §19-3-100.5 (commitment to make ‘reasonable efforts’ to prevent the placement of abused and neglected children out of home and to reunify the family whenever appropriate. Use “diligence and care” Colorado Code of Regulations §7.304.21(D)(1)(d). Among the efforts required of the department are an assessment of the family and the development of a case plan for the provision of necessary services, which may include home-based counseling and referrals to public and private assistance resources. Section 19-3-208(2)(b), C.R.S. 2005.

## **CASE LAW:**

*People in Interest of E.C.*, 2010 Colo. App. LEXIS 1584, 259 P.3d 1272 (2010) – The trial court allocated parental responsibilities to the child’s aunt. Father appealed – Affirmed. Father did not follow through with his service plan. Father argued no reasonable efforts by the agency, but the appellate court held that issue was waived because father did not bring it up at trial.

*People ex rel. A.J.H.*, 134 P.3d 528 (Colo. App. 2006) – TPR – Affirmed. Father was incarcerated during part of the reunification period. He did some services, but went back to live with his mentally ill wife against court orders. He also did not complete a number of other services. Reasonable efforts finding affirmed by the appellate court.

*In the Interest of M.S.H.*, 656 P.2d 1294 (Colo. 1983) – TPR – Affirmed. The child was injured and then injured again. Removal and TPR affirmed. This was a case involving domestic violence in which the state offered 2 years of services before terminating parental rights.

*In the Interest of R.J.A.*, 994 P.2d 470 (Colo. App. 2000) – TPR – Affirmed. The children were removed because of mother’s substance abuse. The case plan included an in-patient program followed by a transitional living program. Mother continued to abuse drugs. The appellate court held that the services were reasonable, but that the mother squandered “the time available to her.”

*In the Interest of L.B.*, 254 P.3d (Colo. App. 2011) – Mother appeals the trial court decision to give sole legal custody to father and his parents based on ineffective assistance of counsel. Affirmed. This was a dependency action based on domestic violence between the mother and her boyfriend, physical abuse, and sexualized behavior by the child. Services were ordered for both parents. Father was given primary custody at the permanency hearing because he had a better support system including his parents. The appellate court held that ineffective assistance of counsel was not a proper ground for appeal since this was not a TPR case, only a custody issue between parents. Although the court made no reasonable efforts findings, the record reveals many efforts by the department to assist parents and child and many efforts were made to finalize the plan. Thus no reasonable efforts finding was necessary.

## **Mental Health Issues**

*People in Interest of M. H.*, 683 P.2d 807 (Colo. Ct. App. 1984) – TPR – Affirmed.

Despite the fact that the parent willingly complied with all of the provisions in her case plan, her mental illness (borderline intelligence and a long history of psychiatric hospitalizations) precluded her from ever safely parenting her child.

*People ex rel. J.M.*, 74 P.3d 475 (Colo. App. 2003) – TPR – Affirmed.

Reasonable efforts included eleven months of 44 hours of weekly in-home family preservation services. These included hands-on repetitive instruction about parenting skills, nutrition, budgeting, and basic life skills. Services were adjusted to address the mother's developmental disabilities. Mother resisted the services, insisting she was a good parent with appropriate skills.

*In re Interest of C.S.M.*, 805 P.2d 1129, 1131 (Colo. A. 1990) – TPR – Affirmed.

The evidence demonstrated that the mother (who suffered from a borderline personality disorder) could benefit from inpatient services but only outpatient services were available. All inpatient services rejected the mother because of her mental condition. Interpreting Colo. Rev. Stat. Ann. §19-3-604(1)(B)(I) 2010.

*People ex rel. C.T.S.*, 140 P.3d 332 (Colo. Ct. App. 2006) – TPR – Affirmed.

The father failed to complete treatment or to show up for a psychological evaluation. Reasonable efforts provided, although the agency delayed in scheduling the required psychological evaluation.

## **ICWA**

*People ex rel. A.V.*, 2012 COA 210, 297 P.3d 1019 (Colo. App. 2012), cert. denied, 2013 WL 425974 (Colo. 2013) – TPR – Affirmed.

An order terminating the father's parent-child legal relationship between him and his two children was proper because the Department of Human Services made adequate active efforts to prevent the breakup of the Indian family, despite a lack of visitation and the provision of fewer services after March of 2011. Because father's whereabouts were unknown, the Department was not required to provide active efforts to father during that time. Active efforts are required to provide remedial services and rehabilitative programs designed to prevent breakup of Indian family, pursuant to the Indian Child Welfare Act (ICWA), requires more than reasonable efforts to provide or offer a treatment plan in a non-ICWA case, yet active efforts does not mean persisting with futile efforts.

*People ex rel. A.R.*, 2012 COA 195, 310 P.3d 1007 (Colo. App. 2012) TPR – Affirmed in Part, Reversed in Part – TPR – Affirmed.

The guardianship was reversed because of a failure to follow the ICWA's placement preferences. Trial court said department used its "best efforts" to reunify the parent and child. This was incorrect as "active efforts" is the proper standard. Nevertheless, the department satisfied the ICWA "active efforts" requirement with its services. The court declined to equate "active efforts" with "reasonable efforts" as the court did in *People in Interest of K.D.*, 155 P.3d 634, 637 (Colo. App.2007). The court concluded that "active efforts" require greater effort on the part of the department than does the reasonable efforts requirement. Active efforts would require the worker to actively assist the client accomplish the goals of the reunification plan. In this case the department arranged and supervised visits both at the mother's apartment and the library, rescheduled visits to accommodate the mother's schedule, referred the mother to a substance abuse and neuropsychological evaluation, provided a



home-based therapist, gave mother vouchers and bus passes, provided resources for obtaining housing, and arranged for participation in the Nurturing Parent Program and attempted to obtain services from parents and teachers.

*People in Interest of T.E.R.*, 2013 COA 73, 305 P.3d 414 (Colo. App. 2013) – A motion to transfer case to a tribal court in Michigan. Denied – Affirmed on appeal – the case was at an advanced stage and the witnesses were in Colorado.

The Indian Child Welfare Act's (ICWA's) active efforts standard in termination of parental rights cases requires more than the "reasonable efforts" standard in non-ICWA cases; nonetheless, active efforts under the ICWA does not mean persisting with futile efforts.

*People ex rel. K.D.*, 155 P.3d 634 (Colo. App. 2007) – TPR – Affirmed.

The court held that the trial court did not err in finding that active efforts under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) were made because of the extensive services provide to the father by the county Department of Human Services during two previous dependency proceedings, declaring that while a state must make active efforts under § 1912(d), it need not persist in futile efforts if it is clear that past efforts have met with no success. In other words, the court explained, the court may terminate parental rights without offering additional services when a social services department has expended substantial, but unsuccessful, efforts over several years to prevent the breakup of the family and there is no reason to believe additional treatment would prevent the termination of parental rights. Active efforts may be excused by futility of making or continuing efforts.

### **Aggravated Circumstances**

*People In Interest of C.S.M.*, 805 P.2d 1129, (Colo. Ct. App. 1990) – TPR – Affirmed.

The appellate court held that parental rights can be terminated without requiring the state to implement a treatment plan. The court explained that Colo. Rev. Stat. § 19-3-604(1)(b) permits the termination of parental rights after an adjudication of dependence or neglect when the court makes a finding, by clear and convincing evidence, that no appropriate treatment plan can be devised to address the parent's unfitness. The statute defines an appropriate treatment plan as one that is reasonably calculated to render a particular parent fit to provide adequate parenting, that relates to the child's needs, within a reasonable time. The court observed that while in many other circumstances the state is required to develop such a rehabilitation plan for parents, Colo. Rev. Stat. § 19-3-604(1)(b) was enacted to avoid requiring the state to proceed with a treatment plan that is doomed to failure. Through this statute, the legislature gave the courts authority, in certain cases involving a parent's emotional or mental illness or deficiency, to decide that no appropriate treatment plan could be devised to treat the parent's problem and successfully reunite the family. In the instant case, the court held that where the mother's borderline personality disorder had not responded to out-patient treatment and there was no in-patient treatment for her condition, and where even if treatment were available her prognosis was guarded because insight disorders such as hers did not respond well to treatment, the trial court had the authority to bypass a treatment plan and terminate parental rights.

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**COMMENTS:**

“In my prior role as CIP Judge in Residence I visited each of Colorado’s 22 judicial districts. During those visits a primary focus was to answer just this question. My findings during my court observations were that there were no requests for no reasonable efforts findings. Judges often made reasonable efforts findings orally while in many jurisdictions the court merely orally adopted DHS recommendations that included the request for reasonable efforts findings. In my stakeholder interviews, almost universally, attorneys suggested that they rarely make requests for no reasonable efforts findings, mostly because they feel like it does little good as judges do not enter such findings. In my confidential recommendations in my reports from the site visits I always recommended that judges make findings orally and that they make litigants aware of the significance of the finding and the requirement of DHS to make reasonable efforts. I encouraged judges and magistrates to make detailed factual determinations of the efforts DHS had made and why these efforts were either reasonable or unreasonable. I also often referred them to your letter in the appendix of the Resource Guidelines regarding the “art” of making no reasonable efforts findings as an appropriate way of exercising our legal authority to move DHS along to enhance the efforts they are making to secure safety, permanency and well-being for all children and to provide procedural fairness for parents.”

Email to author from Judge Robert Lowenbach (retired)

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Jeanne Kaiser believes that the social service agency in Colorado takes reasonable efforts seriously and provides concrete services. [538](#)

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“The issue of reasonable efforts is rarely raised at the shelter hearing by Respondent Parent’s Counsel (RPC) but it is addressed by the court when making findings regarding removal. RPC will ask the court at review or Permanency hearings to find that reasonable efforts have not been made if services are deficient or delayed as well as raising it at TPR. Each DHS report does contain a section where they will detail reasonable efforts that have been made since the last court date. The judicial officers rely upon that and additional information provided at the hearing to make findings at each hearing, especially if the children are out of home. Having said all of that I know that we can still do a better job of ensuring that services are not “cookie cutter” but are designed to best meet the needs of each parent and child.”

Email to author from Judge Karen Ashby, Presiding Judge, Juvenile Court, Denver, Colorado. (now sitting on the Colorado Court of Appeal).

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## CONNECTICUT<sup>539</sup>

**STATUTES:** CONN. Gen. Stat. Ann. §17a-112(c), (j)(1) & (k). There is no definition of reasonable efforts in the statute. §17a-111(a). At a termination of parental rights, Connecticut statutes mandate proof of reasonable efforts. §17a-112(k)(1) states: “(k) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding: (1) The timeliness, nature, and extent of services offered, provided and made available to the parent and the child by an agency to facilitate the reunion of the child with the parent.” § 45-61f(d) (2) pertains to aggravated circumstances. Definition: CGSA §46b-129

### REASONABLE EFFORTS

Under § 17a-112 (j), in order to terminate an individual’s parental rights on the basis of failure to achieve personal rehabilitation, the department must demonstrate that it made reasonable efforts to reunify the child with the parent, or prove that the parent will not benefit from such reunification efforts. In order to terminate parental rights under § 17a-112 (j), the department is required to prove, by clear and convincing evidence, that it has made reasonable efforts... to reunify the child with the parent, unless the court finds... that the parent is unable or unwilling to benefit from reunification... [Section 17a-112] imposes on the department the duty, inter alia, to make reasonable efforts to reunite the child or children with the parents. The word reasonable is the linchpin on which the department’s efforts in a particular set of circumstances are to be adjudged, using the clear and convincing standard of proof. Neither the word reasonable nor the word efforts is, however, defined by our legislature or by the federal act from which the requirement was drawn... [R]easonable efforts means doing everything reasonable, not everything possible... The trial court’s determination of this issue will not be overturned on appeal unless, in light of all of the evidence in the record, it is clearly erroneous.... A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made.” (Internal citations and quotation marks omitted.) See, *In re Christopher L.*, 135 Conn. App. 232 (2012). “Reasonableness is an objective standard, and whether reasonable efforts have been made by Department of Children and Families to reunite the child with the parents depends on the careful consideration of the circumstances of each termination of parental rights case.” See, *In re Hector L.*, 53 Conn. App. 359 (1999). “The department must prove either that it has made reasonable efforts to reunify or, alternatively, that the parent is unwilling or unable to benefit from reunification efforts. Section 17a-112 (j) clearly provides that the department is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element.” (Emphasis in original.) (internal citations and quotations omitted.) See, *In re Christopher C.*, 134 Conn. App. 464 (2012) July 1, 2012 Child Protection Casebook 443.<sup>540</sup>

### CASE LAW

#### REASONABLE EFFORTS TO PREVENT REMOVAL

*In re Brianna C.*, 98 Conn. App. 797 (2006) – Child removed – Affirmed on appeal.

The trial court adjudicated the infant child neglected and committed her to DCF. The Appellate Court affirmed. The mother claimed that the trial court abused its discretion in finding that the DCF made reasonable efforts to prevent the child's removal from her home. The Appellate Court held that the evidence was sufficient for the trial court to have found that while DCF did not do everything it reasonably could have done to prevent removal, DCF did provide reasonable efforts. DCF referred the mother to domestic violence services, the child to a cognitive assessment, and the father to parenting classes. <http://www.jud.ct.gov/external/supapp/Cases/AROap/AP98/98ap73.pdf>.

*In re Lindsey P.*, 864 A.2d 888 (Conn. Super, 2004).

Did agency exercise R/E to prevent removal of child. Held: NO! Court reverses trial court finding of "reasonable efforts." The child was injured, but the cause of the injuries is unknown – possibly father hurt her, but police dropped case. An affidavit by the social worker to the court was inaccurate and misled the court to authorize removal. The appellate court characterized social worker's actions as "outrageous and insensitive conduct". The court reviewed the law pointing out that 42 U.S.C. § 620 *et.seq.* amends 42 U.S.C. 671(a)(15) – entitled "State plan for foster care and adoption assistance." "In order for a State to be eligible for payments under this part [42 U.S.C. § 670 *et.seq.*], it shall have a plan approved by the Secretary which...provides that... 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..." This policy is incorporated into the Code of Federal Regulations at 45 CFR 1356.21. Subsection (b): "The State must make reasonable efforts to maintain the family unit to prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family...."

The regulation calls for a judicial finding that reasonable efforts to prevent the removal were made by the state. 45 C.F.R. § 1356.21(b)

(1) – "Judicial determination of reasonable efforts to prevent a child's removal from the home.

(1) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent removal... must be made no later than 60 days from the date the child is removed from the home...."

The consequences for failure to make the finding are monetary.

45 C.F.R. § 1356.21(b)(1) – "If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

"Judicial oversight is the key to maintaining balance when the state steps into a family to remove a child from his/her home. The court must look for the steps that have been taken to keep the child in his home, and these steps must be reasonable." (at p. 13) The court found that the DCF's affidavit in support of its application for an *ex parte* order of temporary custody contained misleading and inaccurate information and omitted exculpatory information.

## **REASONABLE EFFORTS TO REUNIFY WITH PARENTS**

### **1. Therapy for Parents**

*In re Melody L.*, 290 Conn. 131 (2009) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts to

reunify, the mother failed to rehabilitate and a termination was in the best interest of the children. The mother claimed that the trial court erred in finding that DCF made reasonable efforts to reunify because DCF never provided the family with joint or family therapy. The Court held that DCF offered the mother numerous services and programs throughout the years and that the evidence demonstrated that DCF offered at least some family therapy when appropriate. The Court further concluded that even if additional family therapy were necessary, it would not have rendered the trial court's decision clearly erroneous, since "reasonable efforts means doing everything reasonable, not everything possible." Under § 17a-112 (j), in order to terminate an individual's parental rights on the basis of failure to achieve personal rehabilitation, the department must demonstrate that it made reasonable efforts to reunify the child with the parent, or prove that the parent will not benefit from such reunification efforts. In order to terminate parental rights under § 17a-112 (j), the department is required to prove, by clear and convincing evidence, that it has made reasonable efforts... to reunify the child with the parent, unless the court finds... that the parent is unable or unwilling to benefit from reunification... [Section 17a-112] imposes on the department the duty, inter alia, to make reasonable efforts to reunite the child or children with the parents. The word reasonable is the linchpin on which the department's efforts in a particular set of circumstances are to be adjudged, using the clear and convincing standard of proof. Neither the word reasonable nor the word efforts is, however, defined by our legislature or by the federal act from which the requirement was drawn... [R]easonable efforts means doing everything reasonable, not everything possible... The trial court's determination of this issue will not be overturned on appeal unless, in light of all of the evidence in the record, it is clearly erroneous... A finding is clearly erroneous when either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made." (Internal citations and quotation marks omitted.) See, *In re Christopher L.*, 135 Conn. App. 232 (2012). "Reasonableness is an objective standard, and whether reasonable efforts have been made by Department of Children and Families to reunite the child with the parents depends on the careful consideration of the circumstances of each termination of parental rights case." See, *In re Hector L.*, 53 Conn. App. 359 (1999). "The department must prove either that it has made reasonable efforts to reunify or, alternatively, that the parent is unwilling or unable to benefit from reunification efforts. Section 17a-112 (j) clearly provides that the department is not required to prove both circumstances. Rather, either showing is sufficient to satisfy this statutory element." (Emphasis in original.) (internal citations and quotations omitted.) See, *In re Christopher C.*, 134 Conn. App. 464 (2012)

*In re William R.*, 65 Conn. App. 538 (2001) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts, she failed to rehabilitate and that a termination was in the best interest of the children. The Appellate Court affirmed. The mother claimed that the reasonable efforts finding was erroneous because DCF never provided family counseling or individual counseling for the children, nor did DCF provide a residential placement for the mother where she could reside with the children. The Appellate Court held that the mother never asked for a residential placement where the children could be placed with her and the record amply demonstrated that DCF referred the mother to numerous programs, including counseling, evaluations and substance abuse treatment that were ineffective as a result of the mother's substance abuse relapses.

## **2. Substance Abuse**

*In re Christopher L.*, 135 Conn. App. 232 (2012) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts to reunify, and the mother failed to rehabilitate. The Appellate Court affirmed. The mother first claimed that she was denied notice of DCF's reasonable efforts claim because DCF failed to check the box on the TPR petition alleging it made reasonable efforts to reunify. The Appellate Court declined to review the mother's claim because the mother's claim was not adequately preserved. The mother never filed an objection to DCF's motion for technical correction and the issue was not raised at trial. The mother also claimed that DCF failed to provide reasonable efforts alleging that DCF failed to offer the mother services to address the significant losses in her life and their impact on her alcohol abuse. The Appellate Court held that even if the evidence showed the mother might have benefitted from additional services, the trial court's findings would not be clearly erroneous. The trial court's findings were amply supported by the record because DCF offered the mother a number of services to assist her with alcohol abuse problem and reunification with her child.

*In re Dorrell R.*, 64 Conn. App. 455 (2001) – TPR – Affirmed.

The trial court terminated the mother's parental rights on the grounds of failure to rehabilitate. The Appellate Court affirmed. On appeal, the mother claimed that the trial court improperly found that DCF made reasonable efforts to reunify her with her child because DCF failed to provide reasonable efforts after the mother agreed to consent and that reunification was no longer appropriate. The mother agreed to consent based on her belief that the maternal uncle would adopt the child, but the maternal uncle abandoned the child. The Appellate Court held that the trial court's judgment was correct because DCF provided the mother with reasonable efforts to reunify for 3 years before her agreement and then following the unsuccessful adoption attempt, the mother failed to comply with an additional substance abuse.

*In re Ryan R.*, 102 Conn. App. 608, cert. denied, 284 Conn. 924 (2007) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts to reunify, the mother failed to rehabilitate and a termination was in the best interest of the child. The mother and child both appealed. The Appellate Court affirmed. The mother claimed that the trial court improperly found that DCF provided reasonable efforts and that she was unable or unwilling to benefit from reunification services because DCF allegedly failed to offer her individual counseling, inpatient substance abuse treatment and transportation to outpatient treatment. The Appellate Court held that the trial court's decision was supported by clear and convincing evidence because the mother needed to complete the relapse prevention program before she could attend individual therapy, but the mother was discharged from the relapse program due to her failure to submit to drug screening. The record showed that DCF gave the mother a list of 62 inpatient substance abuse programs, but she did not contact any of them and that the mother's visitation with her child was inconsistent. The trial court also properly found she was unable or unwilling to benefit from reunification efforts because the evidence demonstrated that the mother never acknowledged the substance abuse issues, she continued to test positive for illegal substances and was incarcerated at the time of trial.

*In Re Vincent B.*, 73 Conn. App. 637, 809 A. 2d 1119, 1124-25 (2002) – TPR – Reversed.

The agency worked with the father for over 6 years. In spite of the father's reluctance to participate in services, he finally completed an in-patient substance abuse program and the agency failed to work

with him when he seemed ready for reunification. The burden is on the state child-protection agency to make “reasonable efforts to achieve reunification by engaging the [parent] and making available services aimed at instilling in him [or her] healthy parental skills,” to give the parent “a window of opportunity during which reasonable efforts at reunification should have been made,” to apprise the parent of the steps to be taken to achieve rehabilitation, and to give the parent feedback on his or her progress in reaching that goal. (cited with favor in Alabama case of *H.H. v Baldwin County*, 989 So. 2d 1094, 1105 (2008))

*In re Sarah S.*, 110 Conn. App. 576 (2008) – TPR – Affirmed.

The agency provided reasonable efforts. Services included testing, drug treatment, mental health counseling for mother, housing referrals, visitation and transportation services, but parents failed to participate in treatment, continued their drug use and father continued to commit crimes.

*In re Natalia G.*, 737 A.2d 506, 508 (Conn. App. Ct. 1999) – TPR – Affirmed.

Father failed to inform the department regarding his whereabouts, despite being ordered to by the trial court, failed to keep appointments dealing with his drug problem, failed to attend part of a court-ordered psychological exam. Father then tested positive “at the highest level for cocaine and heroin.” He was told to do an inpatient program. He failed to follow up, nor did he indicate an interest in visiting his daughter. He blamed the agency. The appellate court stated: “...it is not the [agency’s] responsibility forcibly to commit the [father] to an inpatient drug treatment program, nor does it have the ability or authority to do so, which appears to be what he is claiming the [agency] should have done.” DCF made reasonable efforts by referring him to psychological evaluations, substance abuse treatment and offering him visitation.

*In re Rafael S.*, 125 Conn. App. 605 (2010) – TPR – Affirmed.

Although the mother had a loving relationship with her children, her failure to rehabilitate (substance abuse, mental health and domestic violence) made it necessary to terminate parental rights.

### **3. Mental Health**

*In re Brendan C.*, 89 Conn. App. 511, cert. denied, 274 Conn. 917, 275 Conn. 910 (2005) – TPR – Affirmed.

The trial court terminated the parents’ parental rights finding that DCF made reasonable efforts, that there was no ongoing parent child relationship and that it was in the best interest of the child. The Appellate Court affirmed. The father claimed that the evidence was insufficient because DCF never coordinated services with the Department of Mental Retardation. The Appellate Court held that DCF provided a plethora of services and the trial court’s finding was not clearly erroneous. Although a social study stated that the father had a conservator and the psychological evaluation noted that the father was functioning in the mild mental retardation range, the record as a whole did not demonstrate that the father was mentally retarded. The father failed to show what services DMR could offer him. The Court distinguished *In re Devon B.* on the basis that DMR had never before provided services to the father.

*In re Jessica B.*, 50 Conn. App. 554 (1998) – TPR – Affirmed.

The trial court terminated the mentally retarded mother’s parental rights finding that DCF provided

reasonable efforts and she failed to rehabilitate. The Appellate Court affirmed. The mother claimed, in part, that there was insufficient evidence to find that DCF provided reasonable efforts. The Appellate Court held that the trial court's finding was not clearly erroneous. Although DCF declined to arrange for an interstate study after discovering the mother's husband was a convicted sex offender, DCF arranged visitation even though the mother moved out of state. DCF also referred the mother and her husband to agencies to help them provide the proper environment for the child. Expert testimony established that the mother was dependent on the men in her life and married a man who was dangerous and who refused to cooperate with DCF.

*In re Tabitha T.*, 51 Conn. App. 595 (1999) – TPR – Affirmed.

The trial court terminated the mother's parental rights on the grounds of acts of commission or omission, no ongoing parent child relationship, failure to rehabilitate and further found that a termination was in the best interest of the children. The Appellate Court affirmed. The mother claimed that the trial court failed to find reasonable efforts were offered. The Appellate Court held that based on the trial court's decision and articulation, the record demonstrated that the court properly found DCF made reasonable efforts to reunify by offering the mother psychiatric hospitalization, individual counseling, parenting classes, visitation and transportation as well as visitation.

*In re Steven N.*, 57 Conn. App. 629 (2000) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts to reunify. The Appellate Court affirmed. The mother claimed that the trial court improperly found that DCF did not prevent the mother from maintaining a relationship with the children when DCF terminated the mother's visits with her children and that DCF provided reasonable efforts. The Appellate Court held that the trial court properly found that the mother's lack of a relationship with the children was due to the mother's psychiatric issues and her inability to recognize and overcome her mental health issues, as well as her inability to learn how to parent the children safely. DCF terminated the visits because the mother was not in treatment for her mental health issues and the visitation was affecting the children negatively, given the mother's behaviors and the lack of parental bond. Further, the Appellate Court held that the evidence demonstrated that DCF provided reasonable efforts by offering the mother family preservation, counseling and parenting classes, visitation, and transportation assistance. The mother began, but never finished the programs.

*In re Valerie G.*, 132 Conn. App. 652 (2011) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that the mother failed to rehabilitate and denied the intervening grandmother's motion to transfer guardianship. The Appellate Court affirmed. The mother claimed, in part, that the trial court improperly found that DCF made reasonable efforts because DCF filed a termination too soon and given the mother's significant cognitive and psychological deficits, DCF was required to provide her actual assistance to obtain housing and employment, not merely provide her with access to services. The Appellate Court held that given the plethora of services offered to the mother both in New York and in Connecticut, the evidence supported the trial court's finding that DCF made reasonable efforts. The Appellate Court further concluded that DCF was not obligated to act as a conservator and that the trial court was permitted to draw an adverse inference from the mother's failure to comply with the specific step that she comply with mental health treatment.



*In re Christina M.*, 90 Conn. App. 565 (2005), aff'd, 280 Conn. 474 (2006) – TPR – Affirmed. The trial court terminated the parents' parental rights by finding that DCF made reasonable efforts to reunify, that the parents failed to rehabilitate and that it was in the best interest of the children. The Appellate Court affirmed. The parents claimed that DCF reunification efforts were inadequate because in light of their cognitive limitations, the DCF service providers failed to provide them with simple assistance like a calendar and the service providers were too critical of the parents' cluttered house. The Appellate Court held that the trial court's decision was supported by clear and convincing evidence and that the trial court was not required to find that the parents' disagreement with the DCF service providers justified their resistance to parenting services. Supreme Court:

*In re Gabrielle M.*, 118 Conn. App. 374 (2009) – TPR - Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts, she failed to rehabilitate and a termination was in the children's the best interests. The Appellate Court affirmed. The mother claimed that the reasonable efforts finding was erroneous because DCF unilaterally suspended her visitation with her children and it interfered with reunification. The Appellate Court held the record demonstrated otherwise because after suspending visitation because the mother failed to engage in mental health counseling, DCF again referred the mother to a supervised visitation program. The program required a letter from the mother's therapist, but the mother was not engaged in any counseling. Despite multiple psychiatric hospitalizations, the mother continued to deny that she was delusional or psychotic and needed treatment.

*In re Danuael D.*, 724 A. 2d 546 (Conn. 1999) – TPR – Affirmed.

Mother (mildly retarded) was unable to learn how to care for her special needs child even after services had been provided by the state.

*In re Devon W.*, 124 Conn. App. 631 (2010) – TPR - Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify, she failed to rehabilitate and a termination was in the best interest of the children. The mother and children both appealed. The Appellate Court affirmed. The mother claimed that the trial court improperly found that DCF made reasonable efforts to reunify. The Appellate Court held that the trial court's finding that DCF made reasonable efforts was supported by clear and convincing evidence because DCF offered a multitude of services to provide assistance for the mother's mental health and parenting issues. DCF also provided reunification services. Although the mother asserted a temporary lapse in one of the many services provided, the Court concluded that a "brief lapse in a single service does not render the department's services unreasonable."

*In re Trevon G.*, 109 Conn. App. 782 (2008) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify, the mother failed to rehabilitate and that a termination was in the best interest of his child. The Appellate Court affirmed. The mother claimed that DCF failed to provide her with necessary mental health treatment, including a mental health diagnosis, treatment goals or specific therapeutic recommendations. The Appellate Court held that the trial court's judgment finding that DCF reunification efforts were reasonable was amply supported by the evidence. DCF provided the family with a reunification program with unsupervised visitation and was working toward returning the

children when the mother was arrested for narcotic charges. Over a period of at least four years, the mother maintained neither stable housing, a continuous income, nor secure living conditions.

*In re Antony B.*, 54 Conn. App. 463 (1999) – TPR – Affirmed.

The trial court terminated the parents' parental rights finding that DCF made reasonable efforts and that it was in the best interest of the child. The Appellate Court affirmed. The mother claimed that because she suffered from a schizo-affective disorder, DCF was obligated to provide her with additional reunification services than those offered to parents not suffering from this disorder. The Appellate Court held that the record demonstrates that DCF made reasonable efforts to reunify because it considered her mental condition when offering reasonable reunification services. The mother refused to comply with most of the services that DCF offered to help the mother treat her mental condition. While DCF is legally required to make reasonable efforts, "[i]t is axiomatic that the law does not require a useless and futile act." The court also noted that the Americans with Disabilities Act does not apply in a termination of parental rights proceeding, but is a separate legal action.

*In re Amanda A.*, 58 Conn. App. 451, 755 A.2d 243 (2000) – TPR – Affirmed.

The court held that the Department did all it could to effectuate reunification for a mentally ill mother. The mother had been hostile towards the Department and refused to follow recommendations that she obtain psychological treatment saying she did not need it. The social workers visited mother's home two to three times a week, provided housing assistance, transportation, funding, clothing and food, and mental health services.

*In re Amelia W.*, 62 Conn. App. 500, 772 A.2d 629 (2001) – TPR – Affirmed.

The father refused all services. The appellate court said the failure to provide services was excused because of the father's personality disorders, criminal history and violent behavior.

*In re Albert M.*, 124 Conn. App. 561, 6 A.3d 815 (2010) – TPR – Affirmed.

The parents both suffered from mental health issues. Father could not end his relationship with mother who suffered from numerous impairments that interfered with her parenting. Father suffered from a mental condition related to his inability to think abstractly. The agency told father that his chances of reunification would be increased if he separated from mother. Even though it was not a part of the service plan, it was a critical barrier to father's effective parenting of the child.

*In re Alejandro L.*, 91 Conn. App. 248, 881 A.2d 450 (2005) – TPR – Affirmed.

Mother suffered from various mental health and substance abuse problems and was unable to untangle her relationship with an abusive man. The court found she had made some progress but she had been unsuccessful in completing treatment for mental health or substance abuse issues.

*In re Destiny D.*, 86 Conn. App. 77, 59 A.2d 973 (2004) – TPR – Affirmed.

The mother suffered from ongoing mental health problems. The agency made reasonable efforts to reunify her with her three children that included ongoing visitation and rehabilitation services.

*In re Brittany J.*, 100 Conn. App. 329 (2007) – TPR – Affirmed.

The mother suffered from mental health issues and needed psychotropic medications. the trial court's

found that the mother utterly refused to comply with the medication regimen and continued to have outbursts and behave problematically. The mother had ample time to use the support services provided by the department to rehabilitate herself, but was either unwilling or unable to benefit from them.

#### **4. Parental Failure to Participate in Services**

*In re Savanna M.*, 55 Conn. App. 807 (1999) – TPR – Affirmed.

Here, the court found that the respondent's incarceration, lack of personal initiative, mental condition and substance abuse rendered him unable to have visitation with the child or to benefit from reunification during the early years of her life. The department's efforts toward reunification for the first three years of the child's life were principally with the mother, with the knowledge and approval of the respondent. Even in recent years, the respondent did not offer himself as a resource for Savanna until well after the commencement of these proceedings. We agree with the trial court that there was clear and convincing evidence that the department did everything it reasonably could to reunify the respondent with his daughter, and that it was the conduct of the respondent that led to the failure of those efforts.

*In re Kezia M.*, 33 Conn. App. 12 (1993) – TPR - Affirmed.

The trial court terminated the father's parental rights by finding that the father abandoned the child, committed acts of commission or omission, that there was no ongoing parent child relationship and that a termination was in the best interest of the child. The Appellate Court affirmed. The father claimed that there was no clear and convincing evidence that DCF made reasonable efforts to reunify the child with the father. The Appellate Court held that the judgment was amply supported by the record and that the trial court could infer that reasonable efforts such as parenting classes would have been futile, given the father's inability and lack of desire to provide continuing day to day care for his child. DCF did offer the father visitation once and twice a week, but the father only visited the child ten times in eighteen months.

*In re Drew R.*, 47 Conn. App. 124 (1997) – TPR – Affirmed.

The trial court terminated the father's parental rights on the ground of abandonment. The Appellate Court affirmed. The out-of-state father claimed that the evidence was insufficient to prove DCF made reasonable efforts and that he abandoned the child. The Appellate Court held that the trial court properly found that DCF made reasonable efforts to reunify the father with his son, but the father's efforts to engage in reunification were inconsistent based on his own failure to notify DCF of his whereabouts. The Appellate Court further held that the trial court properly found that the father did not provide financial support and his contact with the child was sporadic. The father failed to write or call often. The father's minimum interest by requesting custody (but then changing his mind), submitting to interstate studies and phoning DCF did not preclude a finding of abandonment.

*In re Lauren R.*, 49 Conn. App. 763 (1998) – TPR – Affirmed.

he trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify, the mother failed to rehabilitate and the mother committed an act of commission or omission. The Appellate Court affirmed. The Court rejected the mother's claim that the trial court's decision violated her right to family integrity and due process. She claimed that the state prevented

reunification by ordering a full protective order and therefore was precluded from terminating her parental rights because the state created the conditions supporting the TPR. The Appellate Court held that the mother created the conditions requiring the protective order by failing to believe the child that her boyfriend sexually abused the child and by allowing the abusive boyfriend to have further contact with the child in violation of previous protective orders. She further threatened to punish the child if she told anyone. The mother also refused counseling services. The Court noted that “a state may not, consistent with due process of law, create the conditions that will strip an individual of an interest protected under the due process clause.” In this case, however, the record does not support the respondent’s contention.

*In re Amanda A.*, 58 Conn. App. 451 (2000) – TPR – Affirmed.

The trial court terminated the mother’s parental rights finding that DCF made reasonable efforts to reunify. The Appellate Court affirmed. The mother claimed that DCF did not present clear and convincing evidence that it provided reasonable efforts and that DCF’s conduct was cruel and outrageous to allow her to have custody of her children for many years and then periodically remove the children without offering her any mental health services to assist with her psychotic episodes with hallucinations. The Appellate Court held that the record amply supported the trial court’s findings that DCF provided reasonable efforts because DCF provided numerous in home reunification services and assisted the mother in building a support team to address both her mental health and drug issues. DCF also provided therapeutic visitation with the children, but the mother failed to attend any visitation for ten months.

*In re Antonio M.*, 56 Conn. App. 534 (2000) – TPR – Affirmed.

The trial court terminated the mother’s parental rights finding that DCF made reasonable efforts to reunify and that the mother committed an act of commission or omission. The Appellate Court affirmed. The Court rejected the mother’s claim that the trial court violated her due process rights because she did not receive adequate notice of what she needed to do to reunify with her child. Sidestepping the due process analysis, the Court ruled that the evidence showed that the mother did not fully comply with DCF offered services. The trial court’s conclusion that DCF made reasonable efforts was not clearly erroneous.

*In re Mariah S.*, 61 Conn. App. 248 (2000), cert. denied, 255 Conn. 934 (2001) – TPR – Affirmed.

The trial court terminated the teenage mother’s parental rights finding that DCF made reasonable efforts to reunify and that she failed to rehabilitate. The mother claimed that the reasonable efforts finding was improper. The Appellate Court held that the court’s reasonable efforts finding was supported by the evidence because the record showed that DCF offered the mother transportation to visit the child in the foster home, individual therapy, psychological evaluations, and a teen mentor program. Despite the mother’s contention that the expectations were more suited to an adult mother, the Court held that the trial court properly found that the teen parent’s failure to take advantage of the opportunities to help her develop parenting skills and to bond with her child were the result of the teen mother’s oppositionality. While the mother asserted that as a child herself she should have been placed with her child in the same foster home, the court found that the mother demonstrated poor judgment and caretaking skills during the few months when she did have custody of her child.

*In re Amber B.*, 56 Conn. App. 776 (2000) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF made reasonable efforts to reunify, the father failed to rehabilitate and a termination was in the child's best interest. The Appellate Court affirmed. The father claimed, in part, that the trial court improperly shifted the burden of proof to him when it allowed DCF to show that it provided reunification services to the family in general and not to the father individually. The Appellate Court held that the trial court did not improperly shift the burden of proof to him because although the father was not the primary caretaker of the children, he was not denied access to the services offered to the family as a whole and DCF offered numerous services to him individually. The father further claimed that DCF did not provide reasonable efforts to reunify him, but only to the mother. The Appellate Court held that DCF did everything it reasonably could to reunify the father with his child it was the father's conduct that led to the failure of those efforts. The father had no intention or ability to be the child's full-time caretaker and yet DCF offered him parenting classes, visitation, and substance abuse and mental health counseling.

*In re Amneris P.*, 66 Conn. App. 377 (2001) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify the children with her and that the mother failed to rehabilitate. The Appellate Court affirmed. The Appellate Court held that the trial court properly concluded that DCF provided reasonable efforts to reunify by offering services related to domestic violence, parenting, substance abuse, and visitation. Further, DCF's efforts were hampered by the mother's passivity and cognitive limitations and her delay in making progress towards rehabilitation.

*In re Amelia W.*, 62 Conn. App. 500 (2001) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF made reasonable efforts and there was no ongoing parent child relationship. The Appellate Court affirmed. The father claimed, in part, that the trial court improperly found that DCF made reasonable efforts. The Appellate Court dismissed this claim as moot because the father did not also challenge the trial court's finding that he was unwilling or unable to benefit from reunification services. The statute requires DCF to prove that it made reasonable efforts unless the court finds that parent is unable or unwilling. Thus, even if the father were to prevail in his reasonable efforts claim, the unchallenged "unable or unwilling" finding met the statutory requirement.

*In re Jaiden S.*, 120 Conn. App. 795, cert. denied, 297 Conn. 923 (2010) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF made reasonable efforts to reunify and he failed to rehabilitate. The Appellate Court affirmed. The father claimed DCF failed to provide reasonable efforts for a period of six months and that the trial court erroneously found that the father was unable or unwilling to benefit from services. The Appellate Court held that the evidence supported both findings because during that six month period, the father was living in another state contesting his paternity of the child. Nonetheless, DCF provided reunification efforts, including referrals for case management services, substance abuse evaluation, parenting education, referral to a DOVE program for domestic violence issues and individual counseling. Moreover, the fact that the father failed to report to DCF that he was a registered sex offender and was later arrested for failing to register as a sex offender was sufficient to support the trial court's finding that the father was unable or unwilling to benefit from further reunification efforts.

*In re Christopher C.*, 134 Conn. App. 464 (2012) – TPR – Affirmed.

The trial court terminated the pro se father's parental rights finding that DCF made reasonable efforts and the father failed to rehabilitate. The Appellate Court affirmed. The father claimed that the evidence did not support the trial court's finding that DCF made reasonable efforts. However, the trial court also found that the father was unable or unwilling to benefit from reunification efforts. Because the statute requires DCF to prove either it made reasonable efforts or the father was unable or unwilling, the Appellate Court declined to review the father's moot claim due to the father's failure to challenge the court's finding that he was unable to benefit from reunification efforts. Reviewing the father's reasonable effort claim would be improper because the Appellate Court cannot afford the father any practical relief.

*In re Krystal J.*, 88 Conn. App. 311 (2005) – Commitment – appeal – Affirmed.

The trial court denied the mother's motion to revoke commitment. The Appellate Court affirmed. The mother claimed that the trial court improperly determined (1) that cause for commitment still existed and (2) that DCF provided reasonable efforts to reunify. The Appellate Court held that the evidence supported the trial court's determination that DCF provided reasonable efforts to reunify and that reunification efforts were no longer appropriate given the mother's "rock-like determination to refuse services." The mother refused to engage in individual therapy, a psychiatric examination, visitation services that allowed visitation to take place in the community or in her home and an interstate study that would allow an assessment of her out-of-state-home.

*In re Samantha C.*, 268 Conn. 614 (2004) – TPR – Reversed.

The trial court terminated the parents' rights finding that DCF made reasonable efforts to reunify and the parents failed to rehabilitate. The parents appealed claiming, in part, that the trial court improperly drew an adverse inference against them for not testifying. On transfer, the Supreme Court reversed. The Supreme Court held that P.B. § 34-1 allowed the trial court to draw an adverse inference from the parents' failure to testify during the TPR trial. However, the Supreme Court held that DCF did make reasonable efforts to reunify over the years that the child was committed to DCF. DCF offered the parents reunification services, family counseling, parenting classes, psychological evaluations, home visits and supervised visitation, and case management services. Moreover, DCF made two reunification attempts and despite the court's characterization that the second attempt was "prematurely aborted" by DCF, in light of the plethora of services tailored to the parents, DCF's efforts were reasonable.

*In re Coby C.*, 107 Conn. App. 395 (2008) – TPR – Affirmed.

Although the mother made some progress in the rehabilitative period, the trial court found that the mother was unable to take part effectively in her son's life due to mental health issues, gross parenting defects, poor judgment, residential instability, and failure to benefit from counseling. Among other things, the mother failed to cooperate with home visits, to submit to substance abuse assessment, and to secure and maintain adequate housing and legal income.

*In re Justice V.*, 959 A. 2d 1063 (Conn.App.2008): TPR– Affirmed.

The trial court need not find reasonable efforts were made where parent failed/refused to participate in services. The termination was based on abandonment ground where the mother did not contact nor inquire about the child for over a year. She also refused to participate in any planning with the agency.

*In re Kyara H.*, 2014 Conn. App. LEXIS 21 – TPR – Affirmed.

The evidence supported the findings that the Department of Children and Families (DCF) had made reasonable efforts to reunify the father with his children because the law did not require a continuation of reasonable efforts by DCF when such efforts would be futile; Sufficient evidence supported the trial court's finding that DCF made reasonable efforts to reunify the father with his children because the father refused to cooperate with DCF, refused to engage in any services, and did not wish to provide for the children; thus, DCF's efforts were futile.

*In re Jaiden S.*, 120 Conn. App. 795 (2010) – TPR – Affirmed.

The father argued that he had not received reasonable efforts. However, he resided out of state during much of the case, and did not participate in services. Further, father did not inform the social worker or the court that he was a registered sexual offender.

*In re Jason M.* 140 Conn. App. 708, 59 A. 3d 902 (2013) – TPR – Affirmed.

The mother had unresolved mental health issues. She was offered services, but did not improve her ability to be a safe parent. The children had been in foster care for years and had established bonds in their foster families.

## **INCARCERATED PARENT**

*In re Kamal R.*, 2013 WL 1338809 (Conn. App. Ct. 2013) – TPR – Affirmed.

The trial court properly found reasonable efforts to reunify child with the incarcerated father. The father received inadequate services, but he had specific steps to complete when he was released and he did not even maintain visitation with the child.

*In re Luciano B.*, 129 Conn. App. 449 (2011) – TPR – Affirmed.

The trial court terminated the parents' parental rights finding that DCF made reasonable efforts to reunify, they failed to rehabilitate and a termination was in the child's best interest. The Appellate Court affirmed. In this consolidated appeal, the father claimed that DCF's efforts were unreasonable for numerous reasons, including that DCF failed to offer increased visitation, failed to communicate with the father while he was incarcerated, and failed to provide adequate case management services while he was incarcerated. The Appellate Court held that once a month visitation while the father was incarcerated was reasonable and that DCF effectively communicated to the father the need to complete domestic violence services, but the father failed to do so. Further, DCF offered what services it could while the father was incarcerated. Although visitation was the main service offered the incarcerated father, DCF also communicated with prison counselors. Prison counselors informed DCF that the father's inability to participate in counseling services while incarcerated was the direct result of an altercation he had with another inmate. The mother claimed that the trial court erred in finding that DCF made reasonable efforts to reunify because the trial court erroneously found that the mother was involuntarily discharged from her inpatient substance abuse program when she actually left voluntarily. She also claimed DCF did not offer her parenting classes. The Appellate Court held that given the mother's lengthy and serious substance abuse problem and her quitting various treatment programs, whether the mother was discharged or voluntarily left the program had no bearing on the issue of whether DCF made reasonable efforts. The Court also held that the evidence

supported the finding that DCF provided the mother parenting classes.

*In re Savanna M.*, 55 Conn. App. 807 (1999) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF provided reasonable efforts, he failed to rehabilitate and there was no ongoing parent child relationship. The Appellate Court affirmed. The father claimed that the trial court reasonable efforts finding was erroneous. The Appellate Court held the finding was supported by the record because the father approved of the reunification of the child with the mother during the first three years and the father did not offer himself as a resource until after the termination proceedings. Moreover, the father's incarceration, lack of personal initiative, mental condition and substance abuse rendered him unable to have visitation with the child or to benefit from reunification.

*In re Terrance C.*, 58 Conn. App. 389 (2000) – TPR – Affirmed.

The trial court terminated the incarcerated father's parental rights on the ground of abandonment. The Appellate Court affirmed. The father claimed that the trial court improperly determined that DCF made reasonable efforts. The Appellate Court held that even though DCF did not need to prove it made reasonable efforts because the trial court found in a prior proceeding that continuing efforts to reunify were no longer appropriate, the trial court properly found that DCF nonetheless made reasonable efforts. The Court concluded that considering the father's lack of interest in his child, DCF made reasonable reunification efforts because DCF contacted the father about his child to no avail and also contacted the prison about the father's paternity options. Here, the father never acknowledged paternity until 3 years after the child was born, only asked to visit his child once since his birth and while he sent him some cards, he failed to show overall concern for the child. While the father's incarceration impacts his ability to provide all the general obligations of parenthood, incarceration is not an excuse not to take advantages of available resources to demonstrate concern for one's child.

*In re Katia M.*, 124 Conn. App. 650, cert. denied, 299 Conn. 920 (2010) – TPR – Affirmed

The trial court terminated the father's parental rights finding that the father was unable or unwilling to benefit from reunification efforts, DCF provided reasonable efforts, and the father failed to rehabilitate. The Appellate Court affirmed. The father claimed that the trial court improperly determined (1) that he was unwilling or unable to reunify solely because of his incarceration and (2) that DCF provided reasonable efforts. The father was incarcerated for the child's entire life (four years), and had not seen the child since she was an infant, as he was incarcerated out of state. The Appellate Court held that the trial court's findings were supported by the record because while incarcerated the father failed to comply with the specific steps by failing to keep DCF aware of his whereabouts and frequent out-of-state prison transfers. Further, although the father participated in substance abuse treatment and parenting classes, he did so three years into his incarceration and right before trial. Thus, the findings were not predicated solely on the basis of his incarceration. "Although we agree that incarceration alone is not a sufficient basis to terminate parental rights; incarceration nonetheless may prove an obstacle to reunification due to the parent's unavailability, which is the case here." The trial court also properly found that DCF's efforts were reasonable in light of its limitation to provide services to an incarcerated father. DCF provided visitation to the father while he was incarcerated in Connecticut and made efforts to contact him by phone and in writing. DCF also investigated relatives as possible resources.



*In re Sole S.*, 119 Conn. App. 187 (2010) – TPR – Affirmed

The trial court terminated the father's parental rights finding that DCF provided reasonable efforts, the father failed to rehabilitate and a termination was in the child's best interest. The Appellate Court affirmed. The father claimed that a prior order finding reunification efforts were no longer available was erroneous. The Appellate Court held the issue was whether DCF provided reasonable efforts and the record supports the find that DCF did make such efforts. The father was previously reunified with his child, but then the father was re-incarcerated. DCF continued to offer the father parenting classes, anger management classes, substance abuse counseling, supervised visitation, and assistance securing housing.

*In re Anvahnay S.*, 128 Conn. App. 186 (2011) – TPR – Affirmed

The trial court terminated the father's parental rights finding that DCF provided reasonable efforts and he failed to rehabilitate. The Appellate Court affirmed. The incarcerated father claimed that DCF did not provide him services while he was incarcerated so that he could rehabilitate, failed to communicate with him and failed to provide visits. The Appellate Court held that DCF's efforts were reasonable although DCF did not contact the incarcerated father directly until six months after having learned of his re-incarceration. While the father was on escape status, incarcerated or in a half-way house, he failed to contact DCF. "We cannot fault the department for not being able to deliver services to the [father] when he failed to inform [DCF] of his whereabouts...." DCF further informed the father to take advantage of services while in prison. Moreover, the trial court properly found that DCF reasonably relied on the grandparents to provide visitation to the father based on their willingness to do so. The father did not identify how the period "without direct contact was unreasonable where the inevitable restraint imposed by his incarceration restricted the [DCF's] ability to do little more than provide visits with [the child]."

*In re Jermaine S.*, 86 Conn. App. 819, cert. denied, 273 Conn. 938 (2005) TPR – Affirmed.

The Appellate Court held that the trial court's judgment granting the TPR petition was not clearly erroneous. The trial court properly found that DCF made reasonable efforts to reunify the father with his child despite the father's claim that DCF did not contact him in prison until seven months after the child was placed in DCF custody. The record is clear that the DCF provided the father visits at the prison and communicated regularly with his mother. Moreover, after the father's release, DCF offered substance abuse evaluations and parenting classes, but he did not attend.

*In re Roshawn R.*, 51 Conn App. 44 (1998): TPR – Affirmed.

Court affirmed trial court finding of reasonable efforts provided to the incarcerated father. The agency brought the child for visits with the father to maintain relationship. That was enough.

*In re Hector L.*, 730 A.2d 106, 114, 53 Conn. App. 359 ((Conn. App. Ct., 1999). TPR – Affirmed. An in-custody father appealed a TPR. Reasonable efforts included visits, but father did not take advantage of services while incarcerated. The appellate court complimented agency on working with children and incarcerated father for visitation. The father claimed, in part, that DCF failed to provide reasonable efforts to reunify him while he was incarcerated because it could have done more. The Appellate Court held that DCF provided reasonable efforts because it provided him visitation and the father failed to identify what additional services DCF could have provided. Moreover, the father

failed to participate in the services offered by the Department of Correction.

## **5. Delay in Parental Participation in Services**

*In re Amneris P.*, 784 A.2d 457, 463 (Conn. App. Ct. 2001) – TPR – Affirmed.

A young, mother voluntarily placed her children in care. Over the following years, she was unable to rehabilitate herself in spite of the availability of services. Reasonable efforts must be proven by a clear and convincing standard of proof. The court noted the “extended period of time that had elapsed from the time of the child’s placement until the [mother’s] decision to begin work toward rehabilitation.”

*In re Nicole J.*, 2002 WL 1610216 (Conn. Super. Ct. June 22, 2002) – TPR – Reversed.

“Reasonable efforts are decided on a case-by-case basis and depend on the facts of each case. The trial court found the primary obstacle to the mother’s reunification with her daughter was the mother’s “longstanding lack of insight or sense of responsibility for her daughter’s past. The court stated that the agency had an obligation to offer services that would address that very problem. The therapist had asked the department what problems the mother needed to work on, but the agency refused to release that information – get your lawyer to do it. Court held the agency passed the burden of obtaining services to another. Court found no reasonable efforts. The mother was “unwilling or unable to benefit from reunification services or undertake the work necessary for her to become a suitable parent (20). [The mother] hung up twice on [the] Social Worker Supervisor...rather than resolve a visitation schedule... Once she did have visits...[she] made extremely limited progress in establishing a parent-child relationship, additional proof that she was unable to benefit from even reunification services.”

## **6. Housing**

*In re Sarah O.*, 128 Conn. App. 323, cert. denied, 301 Conn. 928 (2011) – TPR - Affirmed.

The trial court terminated the mother’s parental rights by finding that DCF made reasonable efforts to reunify, the mother failed to rehabilitate and that it was in the best interest of the child. The Appellate Court affirmed. The mother claimed that DCF failed to provide her with housing assistance and individual counseling services. The Appellate Court held that the trial court’s findings were supported by the record because the mother continued to reside with her father, whose house everyone agreed was inappropriate, and used her money to try and fix it up instead of obtaining separate housing. Moreover, the evidence demonstrated that while the mother self-referred to individual therapy, her failure to continue in treatment was not the fault of DCF.

*In re Anthony H.*, 104 Conn. App. 744 (2007) – TPR – Affirmed.

The mother was unable to provide housing for the children. The agency provided reasonable efforts. The mother failed to obtain housing before a voucher from the Department of Housing and Urban Development expired, and her application for a family program was placed on inactive status when she became unemployed.

*In re Ebony H.*, 789 A.2d 1158 (Conn. App. Ct. 2002) – TPR – Affirmed.

Reasonable efforts services can include drug treatment, and housing assistance. It is important that the agency arrange visitation with the parent and child. Reasonable efforts found even though agency

failed to adequately respond to mother's requests for housing help. Agency's efforts to help mother find housing were inadequate (one phone call). Trial court: "shameful and far beneath any acceptable level of professional conduct," but reasonable efforts finding upheld on appeal because the agency provided substance abuse treatment services.

## **7. Domestic Violence**

*In re A.*, 55 Conn. App. 293 (1999) – TPR – Affirmed.

Mother was a victim of domestic violence, but lied about it to the social worker. On appeal, she claimed the social worker should have known about the battered woman syndrome. The appellate court upheld the reasonable efforts finding. The court specifically found that "counseling services, individually and group, were offered, homemaker services were offered but declined, visitation was offered and foster care was provided by [the department]." The court also found "that the parents actively sought to deceive the service providers by failing to disclose the dysfunction, abuse and violence within the household. The [respondent's] claim of rehabilitation is not clinically supported and, to the extent she has made some personal rehabilitation, it is fragile and not sufficient to overcome the risk of harm to the children."

*In re Emerald C.*, 108 Conn. App. 839, cert. denied, 289 Conn. 923 (2008) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF provided reasonable efforts and that the father failed to rehabilitate. The Appellate Court affirmed. The father claimed that the trial court improperly found that DCF made reasonable efforts to reunify and that he failed to rehabilitate. The Appellate Court held that DCF made reasonable efforts based on DCF's extensive services offered to the father and its actual attempt to reunify by placing the child with the father until her subsequent removal following a domestic violence episode in her presence. DCF offered ongoing visitation despite reports that visitation was detrimental to the child. Rejecting his claim that DCF failed to offer him domestic violence services as a victim, the Court concluded from the record that he was a perpetrator not a victim. The child's attorney's assertion that the "[t]he department worked with [the respondent] for nineteen months, well beyond the suggested time frame spelled out in the Adoption and Safe Families Act" underscored the Court's holding. Dissent: McLachlan, J.

*In re Anthony A.*, 112 Conn. App. 643 (2009) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify and the mother failed to rehabilitate. The trial court also denied the motion to transfer guardianship to the intervening grandmother. The Appellate Court affirmed. The pro se mother and grandmother appealed. The Appellate Court summarily held the DCF provided reasonable efforts. The mother continued to engage in domestic violence with the father of the child despite DCF providing the mother with numerous services including, domestic violence counseling, parenting aid services, parenting classes, psychological evaluations, anger management, educational and vocational assistance. Nevertheless, the mother failed to attend or complete the programs and services and failed to obtain stable housing and employment.

*In re Albert M.*, 124 Conn. App. 561, 299 Conn. 920 (2010) – TPR – Affirmed

The trial court terminated the father's parental rights finding that DCF provided reasonable efforts, the father failed to rehabilitate and a termination was in the child's best interest. The Appellate Court

affirmed. The father claimed that the trial court improperly found DCF made reasonable efforts and he failed to rehabilitate because DCF never informed the father that he would lose his parental rights if he did not separate from the mother. The mother had a myriad of mental health issues that clearly interfered with her ability to parent. The Appellate Court held that the evidence supported both findings because the father had actual knowledge of the requirement that he separate from the mother despite DCF's failure to put that requirement in concrete terms. The Appellate Court found it significant that the father did not testify that he did not know that separation from the mother would help him reunify with his son. Rather, the father testified that the social worker told him he would have a better chance of regaining custody if he left the mother. The parents had a "highly conflicted codependent relationship" and the father was "unable to separate from her."

*In re Charles A.*, 738 A.2d 222, 224 (Conn. App. Ct. 1999) – TPR – Affirmed.

Reasonable efforts services can include homemaker services and counseling. The agency was mistaken "in failing to treat [the mother] as a victim of domestic violence." (224). Even though the agency failed to recognize the domestic violence, it did offer counseling, homemaking classes and visitation. That was enough for the reasonable efforts finding. Agency treated mother as a perpetrator and did not work separately with her from her husband. Agency should have had social worker communicate that her continued relationship with her husband "placed her children in jeopardy and her reunification with her children in jeopardy." (at 223). The agency violated its own policies and failed on at least 3 occasions to pick up clear signals that she was a battered woman. The court failed to provide her with separate counsel. Since the parents did not reveal the issue to the agency, the reasonable efforts finding was upheld on appeal. The court's conclusion was amply supported by its findings that the mother was unable to protect her children, that she refused offered counseling and in home services.

*In re Dylan C.*, 126 Conn. App. 71 (2011) – TPR – Affirmed.

Mother living in a violent home and was the victim of domestic violence. She did not respond to services and reasonable efforts were found by the appellate court. She refused to break off the relationship with the father, had unstable housing, and did not take the steps necessary to provide a safe home for the child.

*In re Zowie N.*, 135 Conn. App. 470 (2012) – TPR - Affirmed.

The trial court terminated the pro se father's parental rights finding that DCF provided reasonable efforts to reunify and the father failed to rehabilitate. The Appellate Court affirmed. The father claimed that DCF did not offer the father any specific services to help the father understand the detrimental nature of his relationship with the mother and was not provided sufficient notice that ending his relationship with the mother was a condition precedent to reunification with his child. The Appellate Court held that DCF provided reasonable effort to reunify the father with his child, but that the father was unable to benefit from these efforts. Specifically, DCF offered the father mental health and parenting counseling, substance abuse education to understand the mother's addiction, and domestic violence counseling. Moreover, the father continued to miss visits with his child and unilaterally stopped visiting the child for six months.

*In re Jocquyce C.*, 124 Conn. App. 619 (2010) – TPR – Affirmed.

Mother was unable to accept domestic violence counseling as a victim and could not handle the

multiple tasks of parenthood. Reasonable efforts offered.

*In re Zion R.*, 116 Conn. App. 723 (2009) – TPR – Affirmed.

The mother had a host of problems including housing, substance abuse, involved in a violent relationship, and mental health issues. She lost several children to TPR on previous occasions. Reasonable efforts were offered, but were ineffective.

*In re Joseph L. et al.*, 105 Conn App. 515 (2008) – TPR – Affirmed.

The parents had lost several children to the state. In this case the trial court found that the mother continued to have a substantial substance abuse problem and continued to be under the father's control. It further found that neither parent complied fully with all of the requirements set out in the specific steps issued by the trial court.

*In re Jordan R.*, 293 Conn. 539 (2009) – TPR – Reversed.

Appellate court reversed and trial court affirmed by the Supreme Court. The trial court terminated the mother's parental rights finding that DCF made reasonable efforts, the mother was 'unwilling or unable' to reunify, she committed an act of commission or omission and that a termination was in the best interest of the child. The Appellate Court reversed the trial court. The Supreme Court reversed the Appellate Court and vacated the Appellate Court's judgment. At the Appellate Court, the mother only appealed the trial court's finding that the mother was 'unable or unwilling' to benefit from reunification efforts, and did not also appeal the trial court's finding that DCF made reasonable efforts to reunify. First, the Supreme Court held that the statute, Conn. Gen. Stat. § 17a-112(j)(1), is clear and unambiguous; DCF is required to prove either that it had made reasonable efforts to reunify or, alternatively, that a parent was 'unwilling or unable to benefit' from reunification efforts, and in a termination proceeding, DCF is not required to prove both circumstances. Thus, to the extent that the Appellate Court's decision holds that DCF must make reasonable efforts to reunify before a trial court can find that a parent is 'unwilling or unable', the Appellate Court is mistaken. Secondly, the Supreme Court held that the Appellate Court erred in holding that the trial court's finding that the mother was 'unwilling or unable' was clearly erroneous. To the contrary, the trial court's findings were amply supported by the record. The five week old infant suffered life threatening injuries stemming from abuse and the evidence indicated that the father caused the injuries. The evidence also demonstrated that the father abused the mother, the mother observed the father treat the infant poorly, and the father abused cocaine. Yet, after the infant nearly died, the mother exhibited poor judgment by secretly maintaining a relationship with the man she believed had nearly killed her baby and who continued to abuse her demonstrating the mother's inability to benefit from reunification services.

## **8. Reasonable Efforts**

*In re Eden F.*, 250 Conn. 674 (1999), rehrg. denied, 251 Conn. 924 (1999) – TPR - Reversed.

The trial court terminated the mother's parental rights finding that she failed to rehabilitate and terminating her parental rights was in the best interest of the children. The Appellate Court reversed. The Supreme Court, reversing the Appellate Court, held that under the statutory scheme, DCF did not have to prove that DCF made reasonable efforts to reunify as a predicate to terminating the mother's parental rights. The Supreme Court held that based on the legislature's intent in enacting the statutory amendment imposing the requirement of reasonable reunification efforts, the statutory amendment did

not apply retroactively. The Supreme Court further ruled that the Adoption Assistance and Child Welfare Act had no bearing on the Court's holding because it is an appropriations act that establishes guidelines for states to receive federal funding for foster care and does not apply to individual actions or judicial findings. **DISSENT: MacDonald, Berdon, JJ.** Note: Conn Gen. Stat. § 17a-112 now requires DCF to prove by clear and convincing evidence that it made reasonable efforts to reunify prior to terminating parental rights.

*In re Sarah S.*, 110 Conn. App. 576 (2008) – TPR – Affirmed.

The trial court terminated the parents' parental rights finding that DCF made reasonable efforts to reunify, the parents failed to rehabilitate and that a termination was in the child's best interest. The Appellate Court affirmed. The mother claimed that DCF failed to provide reasonable reunification efforts because it failed to refer the mother to sexual abuse victim services. The Appellate Court held that the trial court's finding was not clearly erroneous because despite DCF's failure, DCF referred the parents to many programs and the parents failed to attend substance abuse and mental health treatment regularly.

*In re Destiny D.*, 86 Conn. App. 77, cert. denied, 272 Conn. 911 (2004) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding, in part, that DCF made reasonable efforts to reunify. The mother claimed that the trial court improperly found that DCF made reasonable efforts. The Appellate Court held that there was sufficient evidence to support the trial court's determination because DCF provided visitation, substance abuse and mental health treatment, as well as evaluations and counseling for the children.

*In re Victoria B.*, 79 Conn. App. 245 (2003 – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify, the mother failed to rehabilitate and a termination was in the child's best interest. The Appellate Court affirmed. The mother claimed that the trial court did not find that DCF made reasonable efforts. The Appellate Court, explaining the difference between the "reasonable efforts" finding in Conn. Gen. Stat. §17a-112(j) in the adjudicatory phase and the "reasonable efforts" factor in Conn. Gen. Stat. § 17a-112(k) in the best interest phase, held that the trial court properly found DCF made reasonable efforts. The Appellate Court ruled that the trial court properly concluded that the finding that "DCF made reasonable efforts and continuing efforts were no longer appropriate" was made in a prior proceeding and the trial court was not required to make another finding. The Appellate Court further noted that the prior finding made during an extension of commitment hearing was an immediately appealable final judgment, and the issue of reunification therefore cannot be raised as a collateral attack on a judgment terminating parental rights.

*In re Vincent B.*, 73 Conn. App. 637 (2002) – TPR – Reversed.

The trial court terminated the father's parental rights and found that DCF made reasonable efforts to reunify. The Appellate Court reversed. The Appellate Court held that the evidence did not support the trial court's finding that DCF made reasonable efforts to reunify because DCF conceded that it only offered the father visitation with the child because any other reasonable efforts were "exhausted" due to the father's prior involvement with DCF services that resulted in his parental rights being terminated regarding two of his other children. The Appellate Court concluded that DCF's efforts were not reasonable because at the time the child was removed, the father was in an inpatient

substance abuse treatment facility for his alcoholism. Reasonable efforts were warranted because the father subsequently successfully completed the program, voluntarily completed programs for depression and anger management and regularly visited the child and demonstrated appropriate interactions with him. Thus, the father's history of not availing himself of services and his prior termination of parental rights, together with DCF filing of this petition to terminate his parental rights did not relieve the DCF of its continuing duty to make reasonable efforts. At minimum, DCF should have engaged the father, apprised him of what steps he had to take to achieve rehabilitation and given him feedback on his progress in reaching that goal. For many of the same reasons, the Appellate Court also held that the evidence does not support the trial court's finding that the father was either unable or unwilling to benefit from reunification efforts. The fact that the father's alleged plan was to reunite with the mother of the child whose rights had been terminated did not obviate the need for DCF to provide reasonable efforts. DCF's reasonable efforts should have helped the father devise an appropriate plan.

*In re Gary B.*, 66 Conn. App. 286 (2001) – TPR – Affirmed.

The trial court terminated the father's parental rights finding that DCF made reasonable efforts to reunify the children with him and that the father failed to rehabilitate. The Appellate Court affirmed. The father claimed that the trial court erred by not requiring DCF to prove it made reasonable efforts based on a prior finding that continuing reunification efforts were no longer appropriate. The Appellate Court held that based on Conn. Gen. Stat. § 17a-110 and caselaw, the trial court did not err in relying on the prior finding.

*In re Sheila J.*, 62 Conn. App. 470 (2001) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts and she failed to rehabilitate. The Appellate Court affirmed. The mother claimed that the trial court improperly found DCF provided reasonable efforts. The Appellate Court held that the trial court's finding was legally correct and factually supported because DCF offered the mother numerous reasonable efforts to reunify, including, visitation, domestic violence counseling, parenting classes and substance abuse treatment.

*In re Javon R.*, 85 Conn. App. 765 (2004) – TPR – Affirmed.

The trial court terminated the mother's parental rights. The Appellate Court affirmed. On appeal, the mother claimed that the trial court improperly found DCF provided reasonable efforts. In a prior permanency plan hearing, previous to the filing of the termination petition, the trial court found that continuing efforts to reunify were no longer appropriate. The Appellate Court held that the trial court did not err because the permanency plan finding was an immediately appealable final judgment. The mother failed to appeal the finding at the time and thus could not raise the claim to collaterally attack the termination judgment. Furthermore, although the trial court did not have to make the reasonable efforts finding again, the trial court nonetheless stated in its decision that it found by clear and convincing evidence that DCF provided reasonable efforts.

*In re Jonathan C.*, 86 Conn. App. 169 (2004) – TPR - Affirmed.

The trial court terminated the mother's parental rights finding that she was unable or unwilling to benefit from reunification efforts and that DCF made reasonable efforts. The Appellate Court affirmed. The mother claimed that the trial court erred in finding that she was 'unable or unwilling'

and that DCF made reasonable efforts. The Appellate Court held that the trial court's determinations were amply supported by the record. The evidence demonstrated that the mother repeatedly failed to comply with and participate in the numerous services that DCF referred her to. Additionally, DCF scheduled monthly meetings with all service providers involved regarding how best to address the family's needs, but the mother approached the meetings with apathy and a lack of cooperation. Moreover, the mother consistently lacked housing. DCF also offered the mother therapy and visitation.

*In re Kachainy C.*, 67 Conn App. 401 (2001) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that she failed to rehabilitate. In finding that DCF made reasonable efforts to reunify, the trial court relied on a prior finding that reasonable efforts were no longer appropriate that was rendered at the extension of commitment hearing. The Appellate Court affirmed. The mother claimed, in part, that the trial court erred in concluding that the trial court, in a termination proceeding, may rely on a previous finding that reasonable efforts to reunify were no longer appropriate that was made at an extension of commitment hearing. DCF claimed this issue was moot. The Appellate Court concluded the issue was not moot because if the mother prevailed on her claim, the Court could offer her practical relief by reversing the trial court judgment. The Appellate Court nonetheless held that the mother's claim lacked merit because the statute clearly permitted a court to find that DCF made reasonable efforts to reunify by relying on a previous finding that continuing efforts were no longer appropriate. The mother further claimed that the previous determination made at the extension hearing was improper because it was not supported by clear and convincing evidence. The Appellate Court declined to address this claim because it was an improperly collateral attack on an immediately appealable final judgment. An extension of commitment decision was a final judgment and the mother never appealed the previous determination.

*In re Stephen M.*, 109 Conn. App. 644 (2008), Trial Court denied TPR – Reversed.

The trial court denied DCF's termination of parental rights petition against the mother and father. DCF appealed and the Appellate Court reversed. In denying the termination petitions, the trial court found that DCF failed to prove that it made reasonable efforts. First, DCF claimed that in the termination proceeding, the trial court improperly relitigated the previous underlying finding made by another trial court that continuing efforts to reunify the children with their father was inappropriate. The Appellate Court held that the trial court erred in reconsidering whether DCF made reasonable efforts to reunify the child with the father because this finding was already made pursuant to Conn. Gen. Stat. § 17a-112(j) in a previous permanency plan hearing. Secondly, DCF claimed that the trial court improperly determined that it failed to provide reasonable efforts to the mother. The Appellate Court held that the trial court's improper conclusion that re-litigated the basis for the previous neglect adjudication, namely, "the alleged sexual abuse by the father appears to have been a pretext to remove the children" served as a basis for the rest of its determinations regarding the termination petition. Regarding its reasonable efforts finding, the Appellate Court held that the trial court improperly concluded that DCF did not make reasonable efforts because it failed to assess DCF's efforts in the context of the basis for the prior neglect adjudication, that is that the father sexually abused his son and the mother's need for services because she failed to believe it happened.

*In re Keyashia C.*, 120 Conn. App. 452, cert. denied, 297 Conn. 909 (2010) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to



reunify and she failed to rehabilitate. The Appellate Court affirmed. The mother claimed that DCF's efforts were neither timely nor appropriate. The Appellate Court held the evidence supported the trial court's findings because DCF offered the mother numerous services, including supervised visitation in her home, group parenting education, one-on-one parenting education, substance abuse screening, anger management counseling, psychological evaluations, individual therapy, couples therapy, domestic violence counseling, and supportive housing assistance. The record did not reveal any significant delays or inadequacies in the reunification services offered to the mother.

*In re G.S.*, 117 Conn. App. 710, cert. denied, 294 Conn. 919 (2009)

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts and she failed to rehabilitate. The Appellate Court affirmed. The mother claimed that the trial court erroneously found DCF made reasonable efforts and that the trial court applied an incorrect standard of proof. The Appellate Court held that the record was replete with evidence that DCF met its burden. The mother conceded that DCF offered the mother an array of services, including substance abuse treatment, therapy, both individual and group, drug testing, visitation, both supervised and unsupervised, parenting education, a psychological evaluation, in-home reunification services, housing assistance and transportation. This concession belied her claim. The Appellate Court further held that the trial court correctly applied the 'clear and convincing' evidence standard of proof because it was the only standard stated in the memorandum of July 1, decision and it was referred to repeatedly. If the mother claimed that the standard of proof was ambiguous, then she was required to file a motion for articulation.

*In re Christopher B.*, 117 Conn. App. 773 (2009) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts and the mother failed to rehabilitate. The Appellate Court affirmed. The mother made two claims. (1) The mother claimed that the trial court erroneously relied on evidence of DCF's reunification efforts pertaining to a prior case involving the child's siblings three years earlier, rather than assessing DCF's efforts arising from the present action. She asserted that the prior information may be informative, but should not be dispositive of either the reasonable efforts finding or the failure to rehabilitate finding. The Appellate Court disagreed and held that the trial court did not abuse its discretion in considering evidence of DCF's involvement with the mother and child before the most recent petition. The trial court did consider present DCF efforts, including a referral to individual counseling. The Court concluded that the trial court should consider all potentially relevant evidence, no matter the time to which it relates and because the parent-child relationship is at issue, all relevant facts and family history should be considered to obtain a historical perspective of the mother's child caring and parenting abilities. (2) The mother also claimed that the court improperly determined DCF made reasonable efforts. The Appellate Court held that the record supported the trial court's determination because it found DCF provided the mother with numerous services over an eight year period, including custom designed parenting service, counseling, psychological evaluation, visitation and other personal efforts.

*In re Chevol G.*, 125 Conn. App. 618 (2010) – TPR – Affirmed.

The trial court terminated the mother's parental rights finding that DCF provided reasonable efforts, the mother failed to rehabilitate and a termination was in the children's best interests. The Appellate Court affirmed. The mother claimed trial court erred in finding that DCF made reasonable efforts. The

Appellate Court held that the trial court's decision was amply supported by the evidence because DCF offered case management services, transportation, including medical cabs, supervised visitation, substance abuse evaluation, individual counseling referrals, domestic violence and anger management counseling referrals, as well as services for the children.

*In re Tyscheicka H.*, 61 Conn. App. 19 (2000) – TPR – Affirmed.

The baby was born with serious medical problems. The young mother was unable to provide safe care. The trial court concluded that the mother did not achieve a degree of personal rehabilitation. She failed to take full advantage of parenting, counseling, educational, and substance abuse programs offered to her by petitioner. Further, termination of parental rights was in the best interest of the child. While respondent had made progress in many areas, she was still unable to offer a permanent and stable environment to her child.

*In Re Dominico M. et. al.*, 141 Conn. App. 576, 61 A. 3d 612, 2013 Conn. App. LEXIS 149 – TPR – Affirmed.

The trial court did not err in terminating the parental rights of the respondent father, its finding that the department of children and families had made reasonable efforts to reunify the father with his children and that the father was unable or unwilling to benefit from reunification services having been sufficiently supported by the evidence in the record; the specific steps for reunification that the father signed required that he participate in counseling, undergo mental health and substance abuse evaluations, follow recommendations for treatment, undergo a domestic violence evaluation and cooperate with service providers, and the record showed that the father failed to comply with those specific steps.

## **NOTICE**

*In re Baby Girl B.*, 224 Conn. 263 (1992) – TPR – Affirmed.

Affirming the trial court's granting of the mother's untimely motion to open the TPR judgment, the Supreme Court noted that DCF's efforts to locate the mother prior to filing the TPR were minimal and do not demonstrate reasonable efforts. The Court further noted that notice by publication is not the preferred method for ensuring a parent's participation in a constitutionally protected TPR proceeding. Dissent: Borden, Norcott, JJ.

*In re Shaiesha O.*, 93 Conn. App. 42 (2006) – TPR – Reversed.

The trial court terminated the father's parental rights, finding in part, that DCF made reasonable efforts to reunify. The Appellate Court reversed. The father claimed that the trial court erred in finding that DCF made reasonable efforts to reunify him with his child. The Appellate Court held that there was inadequate support for the trial court's finding that DCF made reasonable efforts or that the father was unwilling or unable to benefit from such efforts. Prior to the filing of the termination petition, the DCF social worker contacted the father three months after the mother named him as the possible biological father. Three months later, the father was determined to be the biological father via a paternity test. DCF, however, filed a TPR one week before learning he was the child's biological father. The Appellate Court concluded that DCF failed completely, in its responsibility, to make any efforts, let alone reasonable efforts, because it did nothing on behalf of the father to foster a relationship between the father and the child prior to filing a termination petition because his

paternity was not established.

## **PARENTING PROGRAMS**

*In re Jason R.*, 129 Conn. App. 746 (2011), cert. pending – TPR – Affirmed on appeal to Supreme Court, 51 A. 334, 2012 Conn. LEXIS 335.

The trial court terminated the mother’s parental rights finding that she failed to rehabilitate, DCF made reasonable efforts to reunify and that a termination was in the best interest of the children. The Appellate Court affirmed. The mother claimed, in part, that the trial court improperly found that DCF provided reasonable efforts to reunify. The Appellate Court held that DCF’s failure to provide the mother with a specific type of recommended parenting program and an ADHD evaluation in a timely matter after being recommended by the court-ordered psychologist does not mean that the court’s finding was clearly erroneous. The record revealed that DCF provided the mother with an alternative parenting program when the one recommended had a long waiting list. Furthermore, the mother’s “clumsy” relationship with DCF and lack of engagement in the rehabilitation process contributed to the delay in performing the evaluation. The Court further held that the trial court did not improperly shift the burden of proof from DCF to the mother in its decision and did not improperly change the basis of its memorandum of decision nor substitute its original decision in its articulation. **Dissent:** Robinson, J.

### **9. Parenting Skills**

*In re Summer S.*, 124 Conn. App. 540 (2010) – TPR – Affirmed.

The trial court terminated the father’s parental rights finding that DCF provided reasonable efforts, the father failed to rehabilitate and a termination was in the child’s best interest. The Appellate Court affirmed. The father claimed that the trial court improperly determined that DCF provided reasonable efforts because it failed to teach him the skills necessary to parent his child. The Appellate Court held that the trial court’s decision was supported by ample evidence. The evidence demonstrated that the father was unable to separate from the mother and, although the father attempted to comply with some of the reunification efforts, he declined services that would have increased his ability “to forge his own individual relationship with [the child].”

### **10. Visitation**

*In re Anna Lee M.*, 104 Conn. App. 121 (2007), cert. denied, 284 Conn. 939 (2007) TPR - Affirmed.

The trial court terminated the mother’s parental rights finding that DCF made reasonable efforts to reunify, the mother failed to rehabilitate and that the termination was in the best interest of the children. The Appellate Court affirmed. The mother claimed that DCF failed to provide reasonable efforts to reunify by failing to provide an alternative supervised visitation setting after the visitation provider discontinued the visits. The visitation program terminated her visits because they could not keep the children safe from the mother’s verbally aggressive behavior and her failure to follow the visitation rules. The record demonstrated that at DCF’s request, the visitation center resumed visitation once a month, but the mother’s inappropriate conduct continued and the visits were again terminated. Further, there was no alternative supervised visitation center that could provide a higher level of supervision and care.

*In re Alexander T.*, 81 Conn. App. 668 (2004), cert. denied, 268 Conn. 924 (2004) – TPR –

Affirmed.

The trial court terminated the mother's parental rights finding that DCF made reasonable efforts to reunify, the mother was unable or unwilling to benefit from services and that the mother failed to rehabilitate. The Appellate Court affirmed. The mother asserted three claims. (1) The mother claimed that the trial court improperly determined that DCF made reasonable efforts to reunify because it failed to provide the mother with a recommended psychiatric evaluation. The Appellate Court held that in light of the entire record, including DCF's efforts and the mother's conduct, DCF's lapse in providing a psychiatric evaluation to the mother did not render DCF's reunification efforts unreasonable. (2) The mother further claimed that the trial court erred in finding that the mother was unable or unwilling to benefit from reunification services without the benefit of expert testimony. The Appellate Court held that the expert testimony was not required to evaluate the mother's history of noncompliance with DCF and her failure to rehabilitate over a five year period. (3) The mother claimed that DCF's cessation of visits precluded a finding that it made reasonable efforts. The Appellate Court held that DCF's decision was not unreasonable in light of the relevant circumstances, including the mother's failure to visit the children for nine months, failure to sign releases and failure to comply with the specific steps.

## **AGGRAVATED CIRCUMSTANCES**

*In re Juvenile Appeal* (84-AB), 192 Conn. 254 (1984) – TPR – Affirmed.

In this coterminous action, the trial court adjudicated the child neglected and terminated the parents' rights finding that they committed an act of commission or omission. The infant child suffered ten unexplained bone fractures, among other injuries. The Supreme Court affirmed. They claimed that the court failed to require DCF to provide 'supportive services' to reunite the family. The Supreme Court held that DCF was not required to provide the services because the child could not be safely returned to his parents.

*In re Daniel C.*, 63 Conn. App. 339 (2001) – TPR – Affirmed.

In a coterminous petition, the trial court adjudicated the children neglected and terminated the parents' parental rights finding that DCF made reasonable efforts, the parents failed to rehabilitate and terminating their parental rights was in the best interest of the children. The Appellate Court affirmed. The parents made two claims. First, the parents claim that DCF failed to provide reasonable efforts to reunify after the final removal of the children from their care. The Appellate Court held that while DCF decided not to pursue reunification after providing over a decade of referrals and services to the family, the record demonstrated that DCF nonetheless provided reasonable efforts. "[T]he disinclination of the department to pursue reunification does not eradicate all of the department's prior efforts to keep the respondents' family intact." Secondly, the parents claimed that the trial court improperly shifted the burden of proof to them. The Court held that the court did not improperly shift the burden to reunify the family to the parents even though the court stated that "it was the parents' duty to rehabilitate so that reunion could occur." Finding that DCF made reasonable efforts to reunify, DCF's disinclination to offer more services after the children's third removal was not improper.

*In re S.D.*, 115 Conn. App. 111 (2009) – TPR – Affirmed.

The Appellate Court, affirming the trial court's decision to terminate the father's parental rights, held that the trial court did not have to find that DCF made reasonable efforts to locate the father or reunify

him with child prior to finding an adjudicatory ground of the TPR. Interpreting the language of Conn. Gen. Stat. § 17a-112(j), the Court held that the statute permits the trial court to determine at the TPR trial that such reasonable efforts are not required. Based in part on the father's clear abandonment of the child and his incarceration for sexually abusing the child's half-sister, the trial court properly found at trial that such efforts were not required.

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“Judges and staff have had training on the issue as well at various times.

“As you can see from the decisions, most times this issue is raised following the granting of a termination of parental rights. In TPR cases a judge is required to make written findings including RE findings.

“If the issue is raised before the TPR is granted it is within the context of a challenge to the permanency plan.

“In CT, while we do not have statutory time frames for adjudication most often the adjudication and disposition are handled in a non-bifurcated hearing. In most instances the adjudication/disposition is held within 180 days of the removal or finding of a petition of neglect.

“CIP funded a case law update that is now maintained by the Office of the Public Defender. Here is a link to the update on cases on point.

[http://www.ct.gov/ocpd/lib/ocpd/child\\_protection/child\\_protection\\_casebook\\_-\\_updated\\_feb\\_2013.pdf](http://www.ct.gov/ocpd/lib/ocpd/child_protection/child_protection_casebook_-_updated_feb_2013.pdf)

“A bit of commentary on my part, I often wonder why attorneys for parents do not challenge RE at an earlier stage in a case. Sometimes, I don't think they do enough to challenge the PP/RE findings.

“We do a lot of R/E litigation – I'm not certain why we don't have more cases from the shelter care hearing.”

Email from Marilou Giovannucci, Manager, Court Services Officer Programs, Connecticut. A copy is available from the author.

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“Courts in Connecticut and Minnesota have been more proactive in guiding those states' implementation of reasonable efforts.” Crossley, *op.cit.*, footnote 3 at p. 298.

“Connecticut statutes make it clear that the state's CPS agency must make reasonable efforts and that reviewing courts must then assess whether the state has in fact made reasonable efforts...

“Connecticut's appellate courts have defined reasonable efforts in a manner that exceeds minimal federal requirements. For reasonable efforts determinations to pass muster with Connecticut's higher courts, the determinations must provide detail regarding the nature of services and the specific party (parent, child, or other person) receiving those services.” (Crossley, *op.cit.*, footnote 3 at p. 302.

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## DELAWARE

**STATUTES:** 13 Del. Code. § 1103; 29 Del. C. § 9003(3) (a) & (b), (13). What are Reasonable Efforts? Annot. Code Tit. 29, § 9003

### CASE LAW:

*In the Matter of Derek W. Burns*, 519 A.2d 638 (Del. 1986) – TPR - Reversed.

A 19 year-old was looking for housing and asked the agency to care for her child temporarily. When the mother came back to get the child, the agency refused and child went into foster care. The service plan included securing housing, but the mother was unsuccessful. She received no housing assistance. The federal requirement of R/E (§ 671(a)(15)(B) is enforceable in state proceedings to terminate parental rights. “Nothing was done by DCPS to provide Judy and Derek with the housing so that they could continue living together and maintain the close family relationship that existed.” (at 642) “...the State and its agents failed in their clearly mandated duties to prevent the separation, or to reunify Judy and Derek.” (at 649). The court concluded that “it is clear that some affirmative services must be provided if the State and the Department are to qualify for federal funds.” (at 648).

*Division of Family Services v Miller*, 922 A.2d 1185 (Fam. Ct. Delaware, 2005) – Child removed from parents for suspicious problems (shaken baby?), but months later no tests had been completed. The trial court found no reasonable efforts by agency towards child. Agency says it has no duty except towards parents. But federal law speaks of “the child’s health and safety shall be the paramount concern.” 42 U.S. C. §671(a)(15)(D). It used to be that the court would only review reasonable efforts at the time a TPR was heard. But Delaware CIP recommended regular review. Citing the NCJFCJ’s Resource Guidelines!! “The juvenile court has the responsibility to hold the entire system accountable.”

*Rhineway, Sr. v Department of Services for Children, Youth and their Families*, 882 A.2d 762 (Del. 2005) – TPR – Affirmed.

Agency provided reasonable efforts and 2 doctors gave evidence that the father was not amenable to treatment. Court did not grant the first termination petition because of a lack of reasonable efforts. Subsequently a case plan was set up – the children refused to see their father. There had been sexual abuse of daughter & 1 son.

*In re Rasheta D.*, No. 98-08-07-TN, 2000 WL 1693157 at 20 (Del. Fam. Ct. March 2, 2003).

ASFA’s “departure in philosophical focus from [AACWA] in that the safety of the child and the child’s need for permanency are [ASFA’s] foremost concerns, as opposed to the inherent rights of the biological parents.”

*Div. of Family Serv. v. L.X.*, 801 A.2d 12, 20 (Del. Fam. Ct. 2002) – TPR – Affirmed.

The appellate court stated that the petitioner’s Case Plan was reasonable, its goals appropriate. The goals as stated on the first Case Plan included visiting regularly with K during which time Mother was to demonstrate good, age appropriate interaction; continue counseling to address the stress that Mother encounters in her relationship with maternal Grandmother; meet with the parent aid to learn better parenting skills; and make DFS aware of any changes in her living situation. To these, the Case

Plan of September 20, 2000, added obtaining employment and fulfilling her job responsibilities in order to meet the financial needs of her daughter. Even Mother concedes that she has not met these goals. The failure of Mother to meet these goals is not the result of the failure of the state to provide a meaningful process and reasonable efforts to reunify the family, but the result of the refusal of this young Mother to accept the responsibilities of parenthood. The evidence in this regard is overwhelming. AACWA focused on parental rights whereas ASFA “emphasizes the importance of promoting the safety of the child and the child’s needs for permanency.”

*Div. of Family Services v N.X.*, 802 A.2d 325, 337 (Del. Fam. Ct. 2002) – TPR – the Family Court denied the petition.

The trial court held that the agency failed to make reasonable efforts. Mother’s drug addiction was known early in the case and trial court found “no meaningful case plan” given the circumstances. “When Mother was discharged for non-compliance with the treatment plan by Brandywine Counseling, Inc. on April 10, 2000, specific instructions were given that Mother not be readmitted until she had completed an in-patient drug treatment program. Notwithstanding this recommendation by [the agency’s] own drug treatment professionals, [the agency] continued to provide Mother with Case Plans requiring Mother to demonstrate her ability to stay clean of drugs, yet offering Mother nothing beyond referrals for out-patient treatment already deemed to be ineffective in treating Mother’s needs.” The state failed to prove by clear and convincing evidence that reasonable efforts had been offered.

*Hughes v Division of Family Services*, 836 A.2d 498 (Del. 2003) – TPR – Affirmed.

The mother’s admitted inability at the time of the permanency hearing to be in a position to care for the child for several months or longer was not compatible with the statutory mandate of ASFA. The 12 month limit of time in foster care set out in the state statutory framework is valid – the parents do not have an unlimited time for reunification.

*Division of Family Services v B.W.*, 2004 W.L. 1146570 (Del. Fam. Ct. 2004) – TPR – Affirmed.

The court found by clear and convincing evidence that the state provided reasonable efforts to reunify the child with the parents.

*Winston v Children and Youth Services of Delaware County*, 948 F.2d 1380 (3d. Cir. 1991) – In an action by parents whose children had been removed to establish specific rights to visitation, the federal court concluded that because of the vague language in the federal statute, the agency need not provide any particular amount of visitation or even no visitation at all if other services were provided. (at 1389-1390).

## **Mental Health Issues**

*In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989) TPR of mentally ill parent. Affirmed.

The trial court found that the state had provided sufficient reunification services for mother who had been involuntarily hospitalized for psychiatric illness by providing visitation and instructing mother to attend counseling and take medication. The appellate court affirmed. “When termination of parental rights is based primarily on the ground that a parent was unable to plan adequately for a child’s needs ‘the trial court is required to make appropriate findings of fact and conclusions of law as to the

State's *bona fide* efforts to meet its own obligations." Citing *In the Matter of Derek W. Burns* (above).

### **Aggravated Circumstances:**

*Division of Family Services v Smith*, 896 A.2d 179 (Del. Fam. Ct. 2005) – TPR – Affirmed. Where aggravated circumstances have been established, the department has the sole discretion to provide reunification services. The mother had lost 2 children to involuntary terminations, had abandoned a child and had committed a felony on a child.

Judge Kenneth Millman of the Delaware Family Court reports that by local rule #215 dependency cases are reviewed every 90 days. This review addresses compliance with the case plan and services provided by the agency. This review addresses issues that might otherwise come up at a termination of parental rights hearing. Judge Millman also reports that the shelter care hearing normally takes an hour to hear, that the parents are represented by counsel at these hearings, and that all issues are thoroughly discussed. Delaware is revising some of its rules and the "reasonable efforts to prevent removal" will likely be added to the local rules.

"Under our proposed Rules, our Review Hearing Rule will be under rule #217 not #215. I do not know how soon you will be issuing your article, but you are correct, our Review Hearings are currently covered under Rule 215, but under the new Rules it will be Rule 217. You are also correct in that we review our cases every 90 days and address compliance with the case plan and services provided by the agency as well as compliance by the parents to the case plan.

"We do go into some depth at the Review Hearings because our Supreme Court in *Powell v. Department of Services for Children, Youth, and their Families*, 963 A.2d 724, permits us to take our Opinions generated from the dependency proceedings and place them in the record for the Termination of Parental Rights Hearing. In doing so, our Termination Hearing covers only the time from the Permanency Hearing to the Termination Hearing and does not cover from the day the child came into care to the Termination Hearing. The time from coming into care to the Permanency Hearing is covered in our written Opinions. This has reduced the time spent at the Termination Hearing. Consequently, we spend more time on our Review Hearings so that we have an adequate record for the Termination Hearing.

"Lastly, we do intend to require that our Orders reflect within 60 days of the child being removed from his or her home whether or not the Division used reasonable efforts to prevent removal of the child from his or her home prior to the child coming into care."

Telephone call and follow-up email between Judge Millman and the author, November 4, 2013.

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### **DISTRICT OF COLUMBIA**

**STATUTES:** D.C. Code § 16-2312(d)(3)(A)(d)(3); § 4-1301.09a; §§ 16-2320, 2323, & 2353(b)(5).

**CASE LAW:** An attorney's memorandum (below) states that the reasonable efforts issue is discussed



in court.

*LaShawn A. v Dixon S.P.*, 762 F.Supp. 959 (D.D.C. 1991), *affirmed in LaShawn v Kelly*, 990 F.2d 1319 (D.C. Circ. 1993) – The federal court held that the foster children of the District were being denied their “constitutionally protected liberty interests.” The federal judge found that the child welfare system in the District was a dismal failure and that the juvenile court was not making any meaningful inquiry into services provided by the District’s social service agency.

*In re T.G.*, 684 A.2d 786; 1996 D.C. App. LEXIS 238 – Removal and placement in foster care – Reversed.

The parents’ four children were taken into protective custody on the same day that their ailing grandmother died and that their living quarters were first observed. They were taken into protective custody because they were dirty and their living quarters were dirty. A year later, the trial court found that the children were neglected within the meaning of D.C. Code Ann. §16-2301(9)(B), (F) (1989 & 1996 Supp.). The trial court ordered the children committed to the Department for placement in foster homes. On appeal, the court reversed and concluded that the evidence supporting the finding that the children were neglected was insufficient as a matter of law. The court noted that the parents were not found to be unfit and that the trial court did not find neglect on physical or mental disability grounds. The court held that the Department failed to meet its burden of proof that any neglect was not due to the parents’ lack of financial needs. “Although it may have been the parents’ failings that brought DHS into the matter in the first place, DHS should not have been satisfied to document that the parents were imperfect. Instead, DHS should have taken an active role in spurring repair of the family by, for example, calling the parents immediately – and repeatedly, if necessary – to develop a strategy for reunification.” **DISSENT:** The social worker should not be faulted – the mother did receive some financial assistance.

*In re L.L.*, 653 A. 2d 873 (1995) – TPR petition was denied at trial court – Reversed.

The father had contested the TPR at the trial court. The mother, a serious drug addict, did not. No services offered. The trial court denied the petition, but the appellate court found that the mother’s addiction and the fact she was living with the father plus the father’s criminal record weighed heavily for termination of parental rights. Early reunification with father is highly unlikely and would be an unwarranted gamble. The court held that the child needed permanency now and that the “wait and see” philosophy was rejected by federal legislation.

*In re Ta.L, A.H. & T.L.*, 75 A.3d 122 (2013) – Contested Adoption – The foster parents prevailed – Reversed on appeal.

The child lived with foster parents who petitioned to adopt. The natural parents preferred that an aunt adopt. The appellate court held that the parents’ choice “must be given weighty consideration” and that the aunt was a preferred caregiver. One appellant argued that the agency failed to pursue a family placement with her. The court ruled that it has repeatedly held that a “child cannot be punished for the alleged wrongs of the bureaucracy.” “[T]he overriding consideration is the best interest of the child... regardless of the defaults of public agencies in seeking reunification of the family.”

*In re A.C.*, 597 A.2d 920 (D.C. 1991) – TPR – Affirmed.

The biological father appealed claiming he was not given an opportunity to reunify with his child.

The appellate court ruled that “[T]he over-riding consideration is the best interest of the child... regardless of the defaults of public agencies in seeking reunification of the family.” The court held that while the agency’s efforts to reunify the family was a relevant factor in the decision-making process, under D.C. Code Ann. § 16-2353, the agency’s failure to do so did not preclude termination if in the child’s best interest.

*In re L.W.*, 613 A.2d 350 (D.C. 1992) – TPR – Affirmed.

The special needs child was left at the hospital by her parents. Foster parents had cared for her for years. The father visited, but a sexual molest took place while he was visiting. The father claimed that the agency did not offer him sufficient visitation to develop a better relationship with her. The court responded: “...even if, as [the judge] suggested in her order denying the TPR, the social workers might have been more cooperative,...the remedy cannot be to prohibit an adoption which is demonstrably in [the child’s] best interest; *the child cannot be punished for the alleged wrongs of the bureaucracy.*”

*In the Matter of A.S.*, N-1281-93, Superior Court of the District of Columbia, Family Court, 2003, D.C. Super, LEXIS 41, September 17, 2003. – The trial court held that it need not make a reasonable efforts finding at a dispositional hearing.

### **Aggravated Circumstances/Mental Illness**

*In re J.M.C.*, 741 A.2d 418 (D.C. 1999) – TPR – Affirmed.

The appellate court held that the state need not provide reasonable efforts towards reunification when the mother’s mental illness made it unlikely that she could be rehabilitated even with significant intervention. The social worker had not provided a case plan because of the mother’s mental illness.

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**Memorandum** from Despina Belle-Isle, Attorney Advisor, Family Court, Child Abuse and Neglect; Wednesday, June 29, 2011

**“How (when, by whom) does the issue of reasonable efforts get raised in (initial and other) hearings for cases in which children have been removed from home?”**

“District of Columbia statutes require that the government make reasonable efforts to prevent a child’s removal from the home. <sup>541</sup> The burden to show that such reasonable efforts were made is on the government. The form orders developed by the Court, in collaboration with the other agencies involved, contain a section for the detailed documentation, consistent with federal statutes and regulations, of the Court’s reasonable efforts findings and the factual basis for that finding. <sup>542</sup> As part of the ASFA compliance and quality assurance process, Court orders are reviewed by Attorney Advisors to ensure that statutory requirements concerning reasonable efforts, contrary to the welfare and other required findings, are met. Deficiencies in the orders are identified and requests for amended orders are made to the responsible judicial officer. In addressing any incomplete or non-compliant order, judges work with the assistant attorney general assigned to the case to enter an order with correct or complete reasonable efforts support and findings.

“How reasonable efforts are addressed in the Courtroom varies slightly based upon the preference of the judicial officer. Some judges choose to raise the issue and others wait for the AAG to ask the judge to make findings. However, the underlying factual basis for the Court’s finding is discussed and the judge makes a reasonable efforts finding in open court. That finding is documented in the order and following the hearing, the judicial officer signs the order.”

“Although there is no federal requirement, District of Columbia law requires that the Court make a reasonable efforts determination as to the agency’s efforts to return the child to the home at the disposition hearing which follows the adjudication of neglect. <sup>543</sup> The process is the same at this stage of the case as described above.

“At each permanency hearing, reasonable efforts to achieve permanency are discussed and documented in the Court’s order in the same detailed fashion as described. The Court is required to make those findings at the first permanency hearing and subsequently at six-month intervals under D.C. law. <sup>544</sup>

**Whether anyone (parents, GALs, agency) disputes reasonable efforts findings and what appellate cases or other opinions we have, if any, that discuss this?**

“Reasonable efforts findings have not been the subject of any appellate opinions in the District of Columbia Court of Appeals.

“One trial court memorandum is available on Lexis/Nexis. That opinion deals solely with the issue of whether a reasonable efforts finding relating to return home is required to be made at a disposition hearing held several years after the original case disposition was made. In that case the child was in a private placement status placed with a relative and a new disposition hearing was held so that the child could be committed and sent to a therapeutic residential placement. There was no indication at any time during the child’s several-year placement with the relative, that the mother, from whom the child was removed, was capable of providing care for the child. The government argued that the court should make a finding that the government had made reasonable efforts to return the child home. The Court declined to make that finding because the plain language of District law did not include a scenario that was so far removed in time from the child’s neglect adjudication and removal from home. <sup>545</sup>

“A review of a sample of motions filed in Family Court over the most recent several months does not show any requests for action concerning reasonable efforts findings. A broader or more in-depth review might show such motions.”

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## **FLORIDA**

**STATUTES:** FLA. STAT. ANN. § 39.521(1)(9)(f)(1) (West Supp. 2002): “reasonable effort means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated by the case plan.” §§ 39.402(2)(a) & (8)(h)5 (West, 1988).

F.S.A. §§ 39.001(2)(a, b), 39.002(1)(a-h), 39.407(4), 39.453(7)(g), (8)(c), 39.47(4); F.S.A. § 39.810 & 39.402, § 39.41(5)(b) “The exercise of reasonable diligence and care by the department to provide the services delineated in the case plan.” Incarceration “may support a finding of abandonment” (FLA. Stat. ch. 39.01(1) (2003). Aggravated circumstances: section 39.806(2)

## **CASE LAW:**

### **Reasonable Efforts to Effect the Safe Reunification of the Child and Family**

*C.F. & A.F. v Department of Children and Families* 822 So. 2d 571 (2002): Placement Issue: The trial court placed the child with a relative. On appeal the appellate court reversed, finding that the case plan was not followed and reasonable efforts were not provided to the mother.

*Williams v Dept. of Health & Rehabilitative Serv.*, 648 So.2d 841 (Fla. Ct. App. 1995) – TPR – Affirmed.

The child was removed because of mother’s substance abuse. Recognizing the need for long term intervention, she was offered 4 years of services.

### **Mental Health Issues**

*I.R. v Department of Children and Family Services*, 904 So.2d 583 (Fl. 2005) – TPR – Reversed. The trial court found that the mother failed to benefit from services and failed to comply with case plan. The appellate court held that this conclusion was not supported by evidence. The mother had a mental health diagnosis of paranoid schizophrenia, but the appellate court found that was not supported by the evidence. At trial an expert testified that with proper psychotherapy, mother would have the tools to manage her disorder. The court held that the department did not make reasonable efforts to reunify mother and child or provide mother with appropriate services. On remand the trial court was ordered to consider a less intrusive plan.

*Hroncich v. Department of Health and Rehabilitative Services*, 667 So. 2d 804 (Fla. Dist. Ct. App.5th Dist. 1995), as amended on denial of reh’g, (Feb. 9, 1996) – TPR – Reversed.

The appellate court reversed the termination of parental rights of a paranoid schizophrenic mother who dramatically improved after she began a program of treatment and medication that had been delayed because the state never advised her it had been recommended by the psychologist who first evaluated her. It found that the mother’s mental illness had prevented her from improving, but as soon as a knowledgeable caseworker became involved the mother made great strides, and the only expert witness testified that with proper therapy and support, it was very possible that she would become highly functioning as a worker and mother.

*P.A. v Dep’t of Health & Rehabilitative Servs.*, 685 So.2d 92, 93 (Fla. Dist. Ct. App. 1997) – TPR – Reversed.

Child protection agency did not monitor mentally ill mother’s progress, but simply referred her to a mental health agency.

*S.Q. v Dept. of Health and Rehab Serv.*, 687 So.2d 319 (Fla. Dist. App. 1997) – TPR – Reversed. The mother’s reunification plan included a psychological evaluation. She refused to sign a release

and the trial court terminated her parental rights. The appellate court reversed and ordered that additional proceedings take place to address the evaluation.

**Aggravated Circumstances**

*Guardian ad litem Program v. T.R.*, 987 So. 2d 1269 (Fla. Dist. Ct. App. 1<sup>st</sup> Dist. 2008) – The Department of Children and Families (DCF) was not required to offer a case plan with a goal of reunification before petitioning to terminate the parental rights of a mother to her children where the parents committed egregious conduct by causing three broken ribs to a child and failing to get medical attention.

*P.I. v. Department of Children and Families*, 14 So. 3d 1173 (Fla. Dist. Ct. App. 3d Dist. 2009) – reasonable efforts to preserve the family were not required before termination of parental rights. Mother waited a month after one child’s brain injury to take the child to the hospital and then only when the child began vomiting and not speaking for days.

**Reasonable Efforts to Finalize a Permanent Plan**

*In Interest of L.W.*, 615 So.2d 834, 838 (Fl. 1993) – Does the court have the obligation to oversee a child’s case after a TPR until permanency is reached. The trial court ruled that it did. The appellate court affirmed stating that purpose of judicial review is to assure that the Department is complying with reasonable efforts to assure the protection of the child. The agency resisted a court ordered placement. The appellate court held that the trial court has obligation to review reasonable efforts by the department in order to protect and find permanent home (adoption) for child. The trial court determined that there was no progress towards adoption. Agency refused to place child in a therapeutic setting. HELD: After TPR the court has jurisdiction to review the status of the child including periodic hearings. The purpose is to assure the Department is complying with R/E to assure the protection of this child.

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“I don’t think I’ve ever heard the words used by attorneys in my court.”

“The only person who raises the issue is the judge. I think it is a training issue. The problem is mostly in DV cases where they give the victim a brochure, period. When I find no reasonable efforts, it is rarely challenged.”

Emails from Judge Cindy Lederman, Judge, 11th Judicial Circuit, Florida.

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“Judge, yes, most of the Florida case law is going to be TPR-related.

“The department should be alleging in its shelter petition to the court what services (if any) were provided to the family prior to removal of the child. In essence, the court should probably be making findings in its order at the shelter hearing either that the department has made reasonable efforts to prevent removal or that there aren’t any services that can keep the child safely in the home. Sections 39.402(8)(h) & 39.402(10), Florida Statutes (among others) set out requirements for the shelter order.

The precise phrasing of the statute dictates the court's findings. You can see all of 39.402 here: <http://www.flsenate.gov/Laws/Statutes/2013/39.402>.

“The predisposition study (PDS) submitted to the court must contain a list of the prevention and reunification services to prevent removal from the home (or to reunify after removal), including the availability of family preservation services and an explanation of: 1) if the services were/were not provided; 2) if the services were provided, the outcome of the services; 3) if the services were not provided, why they were not provided; and 4) if the services are currently being provided and if they need to be continued. This is a requirement of section 39.521(2)(n), Florida Statutes. The PDS is also required to include a listing of other prevention and reunification services that were available but determined to be inappropriate and why. The requirements of the PDS are listed in 39.521 (<http://www.flsenate.gov/Laws/Statutes/2013/39.521>) but be warned, it's a lengthy and convoluted statute.

“There might be other occasions when such information might be brought to the court's attention but the above is what came to mind immediately.

“I have seen the information brought to the court's attention to varying degrees. I can't say I'm surprised that it might not happen in every court when it should. Unfortunately, I don't have any statistics. But this raises some interesting questions for me. If RE is only being brought up at the TPR stage, who is bringing it up? Is it the department to prove their case that they made RE and offered services before resorting to TPR or is the parent to claim that insufficient services were offered and the department never made RE to keep the children in the home? TPR is way too late for this to be raised for the first time. If parents aren't being offered services and the department isn't making RE to keep the family together, the parents' lawyers need to raise the issue as early and as often as they can.”

Email to the author from Avron Bernstein, Florida Office of the State Courts Administrator-Office of Court Improvement

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“I agree that the case law in Florida concerning “reasonable efforts” is all (so far as I know) from TPR appeals, and therefore litigated in retrospect—i.e., as an issue of whether the agency applied reasonable efforts to reunify.

“I have had some hearings about reasonable efforts to prevent removal, but I don't think any appeal has ever resulted. Most often the litigation occurs not at the initial shelter hearing, which is held within 24 hours from the time the agency removes the child, but at a followup hearing within a few days. The primary reason for this is that the parents typically do not have lawyers until appointment at the initial shelter hearing, so that the lawyer is not yet prepared to make the argument. Once in a while the lawyer has had a chance to talk with the parent(s) before the hearing, and can suggest some remedy to avoid continued shelter, such as moving a grandparent into the home. Even then, we run into delays because if the protective measure involves some third party like a family member or neighbor, the agency wants time to do a background check. Our statute requires the court to inquire at the shelter hearing whether any measures could be taken to prevent the removal. I'll confess my inquiries vary considerably according to the allegations which brought the case in, but I do make

them.

“One resource you might want to obtain for Florida is our dependency benchbook, which you should be able to obtain from the Office of Court Administration in Tallahassee. Among other things, it contains a bench card for use in the courtroom. The card for shelter hearings is an excellent teaching tool, though I objected at the time that the card is far too extensive to be used on a daily basis on the bench. It runs six pages, and no judge I know is going to go through all those questions in most shelter hearings. (Bill Gladstone used to say a truly adequate shelter hearing should take at least two hours. In the real world here, we allot a half-hour for all the shelter hearings in a single day. Sometimes they run past the allotted time, but you get the picture.)

“Reasonable efforts to eliminate the need for removal, at least in my county, is therefore litigated most often a few days after the shelter hearing, when a parent’s lawyer has gathered some information and makes a pitch to the court to return the child based on either an argument that the removal wasn’t needed to begin with, or that some change in circumstances has occurred, or that some protective measure is available to allow the child to return home safely. Frequently that issue is dealt with by agreement with the agency. And, I’m glad to say, with some frequency the change in circumstances or protective measure has been engineered by the agency itself.”

Email from Edwards P. Nickinson, III, Circuit Judge, Escambia County, Florida.

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## GEORGIA

**STATUTES:** Geo. Code Ann. §§ 15-11-58(a)(1)-(3), (5); § 15-11-48(a)(1-2)(a-b); §15-11-48-(h); §15-11-58(4)(a-c) (Michie 2003); § 24A02701(c) (Supp.2003);

### CASE LAW:

*In the Interest of S.L.E.*, 633 S.E. 2d 454 (Ga. App. 2006) – TPR – Reversed.

Father’s physical abuse of the child led to removal. A case plan was set. The father was given criminal probation for the abuse. The state brought a motion to terminate reunification services. The appellate court reversed the trial court’s reasonable efforts finding, holding that there was no evidence presented that reasonable efforts would be detrimental to the children. The father had followed through with plan. He did not cooperate with psychiatric evaluation, but did get a psychological evaluation.

*In re D.L.*, 601 S.E.2d 714 (Ga. App. 2004) – TPR - Affirmed.

A case plan was established for the father. Father disappeared and the state made a motion to end services. Father was indicted for murder of his wife. Father claims he should have been given reasonable efforts citing *Interest of M.R.*, but the appellate court overruled his objection.

*In the Interest of B.D.G.*, 586 S.E.2d. 736 (Ga. App. 2003) – TPR – Affirmed.

The child was removed because of a lack of a stable and safe living environment which included parental substance abuse and mental health issues. Mother had previous plan for reunification, but

failed that. The court gave mother 3 more months to comply with new plan and permission for department to move to TPR immediately if mother did not. She did not do all, but only some of plan. No additional services to be provided. 3 months to clean her house and make it safe, but she was unable to complete that plan.

*In re M.H.*, 554 S.E. 2d 616 (Ga. App. 2001) – TPR – Reversed.

The trial court ended reunification efforts. The mother had fully cooperated with the case plan. The doctor said return the child to the mother to see if that plan would succeed. Even though there had been 2 prior attempts, evidence overcame presumption and the court ordered more services.

*In re C.P.*, 662 S.E. 2d 802 (Ga. Ct. App. 2008) – Before terminating family reunification services, a juvenile court must find by clear and convincing evidence that reasonable efforts to reunify a child with his or her family will be detrimental to the child.

*In the Interest of J.P.V.*, 582 S.E. 2d 170 (Ga. Ct. App. 2003) – Termination of services. Affirmed. Mother appeals a determination that no further reunification services be provided to her. Her child was removed because of mother's frequent intoxication. The court returned the child. A year later mother was arrested and child removed. Again mother complied with plan and child was returned. 10 months later, mother was arrested for driving under the influence and was under the influence of cocaine. The court said no more reunification efforts after 3 years of services and relapses.

*In the Interest of T.W.*, 566 S.E.2d 405 (Ga. Ct. App. 2002) – TPR – Affirmed.

The child was removed because of physical abuse. During reunification the mother admitted to a serious drug problem. A new case plan was developed. Mother was arrested, but tried to participate in services until her release when she dropped out, admitting she was struggling with her drug addiction. 2 years of services were "reasonable."

*In the Interest of A.M.N.*, 506 S.E.2d 693, 696 (Ga. Ct. App. 1998) – TPR – Affirmed.

"Although imprisonment alone does not lead to termination, where, as in this case an incarcerated parent has a criminal history of criminal offenses or parole violations, this constitutes an additional factor which may be considered in determining whether the child presently is without the proper parental care and control of the offending parent, and that is likely to continue."

*In the Interest of M.N.L.* 470 S.E. 2d 753, 755 (Ga. Ct. App. 1996) – TPR – Affirmed.

While the Department is "obligated to pursue alternatives to termination, which it did in this case,...it is not obligated to gamble the [children's] prospects for a good life on the possibility that the mother will emerge from prison in two [or more] years reformed to the point that she can take care of [the children] and provide [them] with a stable home."

*In the Interest of B.M.*, 556 S.E. 2d 883 (Ga. Ct. App. 2001) – TPR – Affirmed.

The child was removed when it was discovered that father was sexually abusing her. A reunification plan for mother failed when she permitted father to visit and he fondled the child again. TPR was based on father's sexual abuse and mother's failure to protect.

*In the Interest of U.B.*, 540 S.E. 2d 278 (Ga. Ct. App. 2000) – TPR – Affirmed.



Mother was severely beaten by father, on occasion in front of the children. Mother mentally and emotionally abused the children. Father used excessive force in spanking the children. Services were not offered. Reasonable efforts were offered in the form of visitation with the mother and a referral to a battered women's shelter.

*In the Interest of R.A.R.*, 577 S.E. 2d 872 (Ga. Ct. App. 2003) – TPR – Affirmed.

Mother's four children were removed to foster care. All four flourished in foster care and mother did not complete all of the requirements of the reunification plan. Court found it would be detrimental to remove the children from a home where they were bonded and send them to a home they did not know.

*In re M.L.G.*, 317 S.E.2d 881 (Ga. Ct. App. 1984) – TPR – Affirmed.

A child was born with severe medical problems. The father was an alcoholic and the mother could not manage the medical needs of the child. After seven years of services which the mother did not complete, the court terminated parental rights.

*J/J. v Ledbetter*, Civil Action CV180-84, U.S. District Court for the Southern District of Georgia, Augusta Division, (1984) – This was a class action brought by parents of children removed by the Department of Human Resources. A settlement was reached on many issues including reasonable rights of visitation, the Department was to prepare a case plan for reunification, and agreed to the right of parents to due process when their children are removed, consistent with the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

## **Mental Health Issues**

*In re C.K.*, 242 Ga. App. 269, 529 S.E.2d 395 (2000) – TPR – Affirmed.

The parental rights of a mentally retarded, severely mentally ill mother who also abused drugs were terminated when she failed to take advantage of the service plan offered by her social worker. The mother could not make progress.

*In the Interest of A.M.*, 702 S.E. 2d 686 (Ga. App. 2010): Services discontinued – Reversed.

Would continued reasonable efforts be detrimental to the children? Mother's mental deficiency was not shown to have any impact on her parenting abilities. Reunification services were ordered to be continued, but children are to remain in department custody. Additionally, there was no Spanish speaking interpreter provided. Held: There is no right to such an interpreter.

*In re A.M.L.*, 242 Ga. App. 121, 527 S.E.2d 614 (2000) – TPR – Affirmed.

The mentally ill mother made progress in her reunification plan, but it was too little, too late and the appellate court held that seven years and 15 different placements was too much for the child.

*In re L. H.*, 511 S.E.2d 253 (Ga. Ct. App. 1999) – TPR – Affirmed.

A mental disability that renders a parent incapable of caring for the child is a valid legal basis for termination.

*In the Interest of A.L.E.*, 546 S.E.2d 319 (Ga. Ct. App. 2001) – TPR – Affirmed.

Mother's mental health issues resulted in 8 hospitalizations. Mental evaluations concluded

termination would be in the child's best interests as mother was unable to care for the child.

*In re C.D.A.*, 238 Ga. App. 400, 519 S.E.2d 31 (1999) – TPR – Affirmed.

The mother with an IQ of 61 and who was actively psychotic at the time of the psychological examination argued she could be successful in rehabilitation with more time. Her conduct during the rehabilitative period demonstrated continued substance abuse problems, living in an unsafe home, and failing to address the case plan resulted in a court decision not to give her more time.

### **Aggravated Circumstances**

*In the Interest of A.B.*, 589 S.E.2d 264 (Ga. Ct. App. 2003) – Court ordered no reunification services. The appellate court reversed on appeal.

The mother had 3 children. Her boyfriend murdered one and is incarcerated. Mother charged with child cruelty. Mother had another child with another man. The court ordered no reunification services, but the appellate court said the Department provided insufficient evidence to support their decision to bypass reunification services.

*In the Interest of D.L.W.*, 590 S.E.2d 183 (Ga. Ct. App. 2003) – Mother appeals denial of reunification plan. Affirmed.

Mother lost an older child who was placed with a relative because of mother's mental condition. 4 years later this child was born and removed because of mental health issues. A psychological evaluation concluded her mental condition could be a danger to the child.

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“But to your larger question, I have watched many court hearings in GA and I feel pretty confident that the attorneys and judges in our state in the deprivation/dependency cases are well aware of RE arguments to prevent removal, to support reunification and to provide permanency. I have been in courts where those issues were tried. Judge Hammond and Judge Key can speak to what they have witnessed as both as practicing attorneys and a juvenile court judges.

“Just last week, I watched a parent attorney argue that current deprivation didn't exist during a probable cause hearing, and if the court finds that deprivation does exist, that more reasonable efforts should have been done anyway to prevent removal. She won and the child went home with the mother that day (that is rare though...I was just remarking I hadn't seen a case like that in many years). The agency attorney was woefully unprepared for the hearing which was perhaps the bigger problem that day.

“Our office and others have been training on the subject of RE ever since CIP got its initial funding. Judge Key has traveled the state on this subject.

“However, our case law may not reflect that knowledge and there are still places and people who go thru the motions on this issue without making these findings meaningful.

Email to author from Michelle Barclay, CIP coordinator for the State of Georgia.

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“Making ‘reasonable efforts’ is doing for the families and children we serve that which we would want others to do for us and our families if we found ourselves in a like circumstance.”

Judge Michael Key’s definition of “reasonable efforts.” (Contained in Judge Key’s PowerPoint presentation delivered at the NCJFCJ in Reno, Nevada, June 21, 2011. Judge Key presides in Troup County, Georgia.

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## **HAWAII**

**STATUTES:** HRS §§ 587-1, 17, 26, 34, 71, (2006) Agency must use “[e]very reasonable opportunity” for reunification. HRS §§ 587A-2, 587A-4, 587A-17, & 587A-28. (Supp. 2012). §571(63) – requirements for termination of parental rights.

### **CASE LAW:**

*In the Interest of T.M.*, SCWC-12-0000521 (2014) – TPR – Reversed.

As a matter of constitutional law, “courts must appoint counsel for indigent parents once DHS files a petition to assert foster custody of a child.”

*In the Interest of Doe*, 2001 Haw.App. LEXIS 182 – TPR – Affirmed.

A petition was filed after the mother gave birth to her fifth child who was born with crystal meth in its blood stream. The mother was offered substance abuse treatment, individual, marital and/or family counseling, anger management/domestic violence programming, and parenting services. Despite the removal of the older four children and the new baby, the parents were unable/unwilling to comply with the case plan and the termination was affirmed.

*In the Interest of Doe Children*, 2002 Haw. Lexis 33 – TPR – Affirmed.

Where the mother had failed to consistently comply with several service plans, had failed to demonstrate an ability to maintain sobriety, had used methamphetamines during pregnancy, and had caused her children to suffer from her poor parenting, her rights were terminated to pursue other permanency options.

*In the Interest of Doe*, 2002 Haw. App. Lexis 67 – TPR – Affirmed.

Substantial evidence demonstrated that the parents lacked the skills necessary to care for four children 24 hours a day. Despite a comprehensive service plan the parents were still smoking in the house, failing to attend medical and dental care of the children, not getting the children to school, taking illegal drugs, participating in domestic violence, and possibly perpetrating sexual abuse on John Doe 1. The parents were unable to remedy these conditions despite DHS involvement.

*In the Interest of Doe*, 2003 Haw. Lexis 198 – TPR – Affirmed.

The state met the reasonable efforts burden where DHS offered mother a service plan targeted at her substance abuse issues before it would deal with her mental health issues. Mother was generally uncooperative by refusing sobriety checks and not complying with the service plan. The court held that the mother was not able to provide a safe family home in the foreseeable future.

*In the Interest of Doe*, 2004 Haw. App. Lexis 19 – TPR – Affirmed.

father was offered domestic violence classes which he attended but thwarted all attempts to lessen his anger. He refused to discuss sexual abuse with his court-appointed therapists and refused two sexual abuse treatment programs. Mother was unable to provide a safe home even after receiving parenting classes, couples therapy, and domestic violence counseling.

*In the Interest of Doe*, 2002 Haw. App. Lexis 151 – TPR – Affirmed.

Mother failed to break away from an abusive, substance abusing father, did not follow through with individual therapy, minimized the safety risks of domestic violence with respect to her children, and was diagnosed with severe psychological problems. Mother's inability to provide her children with a safe environment led to termination.

*In the Interest of Doe*, 2003 Haw. App. Lexis 305 – TPR – Affirmed.

The child was born with severe medical, psychological and educational needs. Placed in foster care because of parental drug abuse and made great strides in care. Parental visitation was harmful. The parents failed to succeed in substance abuse treatment, missed doctor's appointments and demonstrated an inability to meet his special needs.

*Woodruff v Keale*, 637 P. 2d 760 (1981) – TPR – Reversed.

The parents had placed their child with a 3rd party guaranteeing they would send support to that person. They did not. The Family Court terminated parental rights, but the Supreme Court reversed, stating "Before a court may terminate the rights of natural parents in their children without the parents' consent, it must make two separate findings. First the court must be satisfied that at least one of the situations enumerated in HRS § 571-6(b) exists. If it finds to, the court must then evaluate the evidence and determine that termination of parental rights would be "necessary for the protection and preservation of the best interests of the child concerned...." HRS § 571-63.

## **Mental Health Issues**

*In the Interest of Jane Doe*, 60 P.3d 285 (2002): TPR - Affirmed.

Mother suffered mental problems and was unable to provide safe home. Father was incarcerated. Reasonable efforts found for father. Incarceration does not per se result in a forfeiture of parental rights but it is a factor in whether the parent will be able to provide a safe family home in the foreseeable future.

Substantial prejudice did not result from lack of reasonable efforts for mother. Agency only provided mother with list of counselors and their telephone numbers and did not follow up with her. This was probably denial of reasonable efforts, however the mother did not follow up with parenting classes or drug testing or services offered at hospital at birth. Father only had access to the services offered in the correctional system.

**DISSENT:** DHS must provide "every reasonable opportunity" to a parent to succeed in reuniting a family. Separate appeals for mother and father. There were mental health problems for mother including multiple suicide attempts. Father was incarcerated and services were not available to him. The plan must include those steps "necessary to facilitate the return of the child to a safe family home." (at p. 289) – "[I]ncarceration does not *per se* result in the forfeiture of parental

rights... [F]or instance, an imprisoned parent may have other family members who would be able to care for the child during the confined parent's absence." It is "not reasonable to expect [the agency] to provide services beyond what [is] available within the corrections system." (at p. 295) – The health and safety of a child will almost always require that any reunification be within the foreseeable future and within a reasonable time. "[I]f the sole caretaker of a child is confined for a long period of time, the lack of permanence or guidance in the child's life may be a factor in considering whether the parent may be able to provide a safe family home within a reasonable period of time." (at p.295). 3 months of R/E may be enough when the mother refuses to participate in services. Or attend hearings. (294).

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"I polled the judges and the consensus is that the withholding of a reasonable efforts finding is rarely if ever done. We were going to withhold the finding for late reports but with fines etc we have fixed that problem. The Dept. is now compliant as to timely reports. We sometimes reserve a finding when services have not been provided in a timely manner with a short fuse review hearing."

Excerpt from an email to author from Judge Robert Mark Browning, First Circuit Judge and Presiding Judge of the Family Court, Oahu, Hawai'i.

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"Doug McNish, the family court judge on Maui, and I used to make "no reasonable efforts findings" occasionally. Usually the threat of such a finding was sufficient to get things moving though. My partner in Hilo, Terry Yoshioka, did as well on occasion. I don't know what the family court judges are doing now."

Email from Judge Ben Gaddis (ret.), who served for many years in the Hilo, Hawai'i Family Court.

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"So...all I can offer is history and nothing current. I did make "no reasonable efforts" findings in CPS cases. At the outset I made a checklist for myself to make sure reports in the record evidenced the efforts and then I would follow up with questions of social worker at the hearing to fill in the gaps. Then I would make a record of specific findings on reasonable efforts. This became burdensome plus I quickly learned that threatening a no-reasonable-efforts finding and setting return to show compliance was really more effective. It seemed line workers and even supervisors were not clear on risks of these findings made occasionally and generally over estimated them.

"In doing the reassessment report it was clear to me that judges were not putting things on the record. It was pretty much Deputy AG asking judge to make the finding and the judge saying "So Ordered." I didn't find anyone using the findings to speed getting permanent placement of kids where parental rights terminated, which to me was a really good tool.

"The reasonable efforts provision has always been interesting to me. I don't know of any other situation in which Feds mandate a state court to oversee performance of state agency's case by case activity. I guess risk of loss of IV-E money to risky to challenge this. I always cited this provision as

best example of why CPS cases are very different from any other work a judge does.”

“I don’t think anybody in Hawaii thought of this as subject for contested hearing. I suspect I was the most diligent and obtained a copy of all the services Hawaii listed in its IV-E plan it said it had contracted for or provided and then I used that to question if they had provided ones that looked appropriate. Somewhere I remember there was some case law, I think Hawai’i, that said I couldn’t order provision of services that DHS didn’t have available. When I first started with this Hawaii had in its plan that it contracted for a limited number of 24hour in home service slots. When I called them on that in a case it became apparent that they had not contracted for that service, and it was left out of the next year IV-E state plan, but I got some leverage out of it for awhile.”

Partial emails from Judge Douglas McNish (ret.), formerly Judge in the Family Court of the Second Circuit. (Mau’i, Hawai’i)

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## **IDAHO**

**STATUTES:** Idaho Code § 16-102; 16-1601-1637, 16-1605(b)(9), 16-1619(6), 16-1621(1), (3) (West, 2011)

### **CASE LAW:**

*In the Matter of Termination of the Parental Rights of Jane Doe* (2009-19) – (Supreme Court) TPR - Affirmed.

The baby had a positive toxicology screen at birth. Homeless methamphetamine addicted mother. The child was removed and the reunification case plan included in-patient treatment. At 6 months, court found that reasonable efforts had been provided, but they were unsuccessful. 3 months later at another case plan review the mother was absent. The court made another reasonable efforts finding. Permanency plan set as TPR. One issue on appeal: Were there reasonable efforts regarding visitation. The case plan set 1 hour every 7 days. It was increased to 2 times a week, but this was decreased back to one as the mother was late for visits.

*Idaho Dep’t of Health & Welfare v Hays*, 46 P.3d 519 (Idaho 2002) – Permanency is emphasized by ASFA. “By adopting ASFA, Congress intended, among other things, to minimize delay in juvenile dependency proceedings, to reduce the length of time that dependent children stay in temporary placement, and to increase the number of adoptions. Prior federal law had required States...to take all reasonable steps to enable the parents to continue to fulfill their childrearing obligation. Although ASFA does not abandon the reasonable efforts criteria, it provides financial incentives for states to implement procedures designed to expedite the permanent placement of children who are in foster care. Under ASFA, the child’s health and safety is the paramount concern.” (at p. 533).

### **Mental Health Issues**

*Doe v State, Department of Health and Welfare*, 123 Idaho 502, 849 P.2d 963 (Ct.App. 1993) – TPR – Affirmed.

The mentally limited, schizophrenic, alcoholic mother was found to be incapable of caring for her children in spite of the numerous parenting services offered to her.

“My anecdotal experience is that defense counsel is using reasonable efforts as a sword/defense at TPR. And, that prior findings of our meeting reasonable efforts is being re-tried at tpr. My personal opinion is that RE is not a defense to tpr and that it should not be relitigated.”

Email from Robert Luce, Administrator for Child Welfare in the State of Idaho.

“You are correct, our experience has been the reasonable efforts issue is generally brought at the point of TPR Hearing. In working in the largest county in our state for nearly 10 years I can only recollect two cases where the issue arose and finding was made earlier in the case...at the Six Month Review or Permanency Hearing. That being said, more and more attorneys and judges are talking about reasonable efforts outside the court room. It will be interesting to see whether the issue comes up more frequently in the courtroom.” Email from Miren Unsworth, Child Welfare Program Manager, Idaho Department of Health and Welfare.

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## ILLINOIS

**STATUTES:** Ill. Comp. Stat. Ann. § 20 505/5(1) (2003); Parents obligation: 750 Ill. Comp. Stat. Ann. § 50/1(D)(m) (2003); Reasonable efforts not required: 705 Ill. Comp. Stat. Ann. § 405/2-13.1(1) (a-b)(2003); §§ 325 ILCS 5/5 & 20/12 (2014)

## CASE LAW:

*In re Ashley K.*, 571 N.E. 2d 905 (Ill. App. Ct. 1991) – An appeal from a visitation order in a dependency case resulted in a full examination of the Cook County dependency system. The appellate court found the entire system to be failing. Thousands of children were awaiting permanency planning years after those hearings should have been scheduled by law. The appellate court stated that the juvenile court failed to engage in any meaningful examination of the services provided to families whose children had been removed.

*Norman and Patterson v Gordon Johnson*, 739 F. Supp. 1182, 1990; A class of impoverished parents filed for injunctive relief against the state agency. Issue: Should the state provide housing as a part of federal reasonable efforts requirement, pursuant to 42 U.S.C.S. § 671(a)(15). The federal court granted relief and also found that the parents had standing pursuant to 42 U.S.C.S. § 620 *et. seq.* and 42 U.S.C.S. § 1983. There are enforceable rights under the AACWA of 1980.

*In re Patricia S.*, 584 N.E.2d 270, 274-5 (Ill. App. Ct. 1991) – Removal – Improper, but affirmed. The court determined that the key issue in the matter was whether the minors were deprived of due process by the trial judge’s declining to hold the reasonable efforts hearing was rendered moot by the minors’ agreement that the state agency’s custody of them was in their best interest because the issue was of great public concern and was capable of repetition, yet could evade review. The court found that para. 802-10(2) mandated that the trial judge conduct the reasonable efforts hearing and determine if probable cause that the minors were neglected existed, if removal was immediately and

urgently necessary for the minors' welfare, and if reasonable efforts were made to prevent or eliminate the need for removal. The failure to conduct this hearing was error, was not harmless, and constituted a deprivation of the minors' due process rights. However, the court determined that, because the reasonable efforts hearing was time specific as to the time of the ruling on custody, it was pointless to remand for such a hearing after the appeal, when it would have had no effect on the minors given that they agreed to custody disposition..

*In re Shanna W.*, 799 N.E.2d 843, 852 (Ill. App. Ct. 2003) – TPR – Affirmed.

The court discussed mother's efforts at rehabilitation: [The mother] has shown no evidence that she is rehabilitated; that can only be shown by a parent who leaves prison and maintains a lifestyle suitable for parenting children safely. Here, [the mother] could not show this because the felonies which gave rise to the initial depravity presumption caused her to be incarcerated for a lengthy time period. This was [the mother's] fault. [Her] incarceration prevented her from having visits with [her daughter] and receiving the necessary services aimed at helping [her daughter's] caregiver attend to her special needs.

*In re M.P.*, 928 N.E.2d 1287 (Ill. App. Ct. 2010) – in a hearing to determine the placement of a child, while a trial court may not order a specific placement, it was not improper to find that the current placement did not meet reasonable efforts requirements.

*In re A.M.*, 2010 WL 2675226 (Ill. App.3<sup>rd</sup> Dist., 2010) – TPR – Affirmed.

An incarcerated father appealed the termination. The appellate court held that the father could have contacted his attorney, caseworkers, or the court, but he voluntarily chose not to do so. Moreover, the father had actual notice of the proceedings, and his counsel was readily available to assist the father at any time.

*In re J.P. and T.P.*, 770 N.E.2d 1160 (Ill. Ct. App. 2002) – TPR – Affirmed.

This was a case involving domestic violence in which the state offered 10 years of services before terminating parental rights. The first child was removed because of injurious environment. Parental visiting was irregular. A second child was born and removed. The father threatened to kill everyone involved in the case- he could not control anger at home or elsewhere.

*In re Adoption of Syck*, 562 N.E.2d 174 (Ill. Supreme Court – 1990) – TPR – Affirmed.

The court determined that the parent did not show a reasonable concern for the child, evidenced by not visiting.

*In re Sheltanya S.*, 723 N.E.2d 744 (Ill. Ct. App. 1999) – TPR – Affirmed.

For a parent to make reasonable progress toward the return of a child, he or she must make 'a minimum measurable or demonstrable movement toward that goal.'”

*In re D.F. et. al.*, 777 N.E.2d 930 (Ill. 2002) – TPR – Affirmed.

The children were removed from mother because of neglect plus a sex offender was living in the house. The court placed the children with father. Mother received services asking her to: maintain adequate environment, get rid of the cats, follow doctor's recommendations regarding the infant, obtain routine medical care, employment, refrain from making negative comments about the father and



step-mother. Mother failed to make progress.

*In re J.P. and H.N.*, 633 N.E. 2d 27 (Ill. Ct. App. 1994) – TPR – Affirmed.

Children removed because of violence in the home, environmental neglect, inadequate supervision and clothing and lack of cooperation by mother. Psychological evaluation revealed mother suffered from a psychotic disorder and many other diagnoses. Services provided for 2 ½ years. Some progress, but not enough to be able to safely care for the children.

*In re C.M., B.M., and E.M.*, 744 N.E.2d 916 (Ill. Ct. App. 2001) – TPR – Affirmed.

children removed for physical and sexual abuse. Parents completed parenting classes and mother a psychological evaluation and father did a substance abuse program. However, mother did not get to counseling and did not leave the abusive relationship with father. The court found that the best interests for the children was a termination of parental rights. The parents neglected to make reasonable efforts towards reunification and children were happier with the foster parents.

*In re Brianna B.*, 778 N.E.2d 724 (Ill. Ct. App. 2002) – TPR – Reversed.

The child was born with serious medical problem including cerebral palsy, brain atrophy, asthma, allergies, and quadriplegia. The child was removed because of injurious environment (not specified). The parents visited and participated actively in therapy. Father asked questions of staff and was impatient. Ct. Appeals said “the parents maintained interest and concern,” and their parental rights should not be terminated.

## **Mental Health Issues**

*In re A.J.*, 646 N.E.2d 1239 (Ill. 1994) – TPR – Affirmed.

Mother mentally ill and never had care of the child. The Department of Children and Family Services (DCFS) developed and pursued a plan to reunite respondent and the minors for several years prior to the decision to provide long-term foster care for the minors and subsequently to terminate respondent’s parental rights. Respondent neither suggests otherwise nor disputes these facts. Instead respondent challenges the State’s failure to compel her to receive a particular treatment recommended by one psychiatrist in 1988. In order to find a parent unfit on the grounds of mental impairment: (1) it must be shown by competent evidence that the parent suffers from a mental disability that prevents the parent from discharging a parental responsibility; and (2) there must be sufficient justification to conclude that inability will extend beyond a reasonable period of time.

*In re William H.*, 945 N.E.2d 81 (Ill. App., 2010); the court’s disposition placing the child with foster parents was appealed - Affirmed. The father in was in prison. The non-custodial mother (mental health problems) wanted custody. A doctor testified that mother was not safe with children as she was bi-polar and was refusing to take medications. Were there reasonable efforts towards reunification was the issue on appeal. The appellate court held that reasonable efforts were provided through services from therapists, psychologists, and counseling.

*In re E.O.*, 311 Ill. App. 3d 720, 724 N.E.2d 1053 (2d Dist. 2000) – TPR – Affirmed.

The mentally ill (paranoid schizophrenia) mother improved by taking her medication, but did not show an interest in her children. She dropped out of counseling and said she didn’t really need to take

her medication in order to function as a parent. Adequate services provided to her.

*In Interest of E.J.F.*, 161 Ill. App. 3d 325, 112 Ill. Dec. 881, 514 N.E.2d 544, (4th Dist. 1987) – TPR – Affirmed.

The appellate court cited the mentally ill mother's history of noncooperation with authorities when it affirmed the trial court's refusal to consider the circumstances that caused her to be absent from her children for a prolonged period of time. The mother had been committed to both jail and a mental health facility, and argued that the trial court should not include this amount of time in the statutory period for determining if a parent had made reasonable progress toward reunification. Noting that the mother had not cooperated with child welfare authorities both before and after her incarceration and hospitalization, the appellate court held that under these circumstances the trial court had properly included the period the mother was jailed and hospitalized in its calculations and appropriately terminated parental rights because the mother had not progressed toward the goal of family reunification.

### **ICWA Cases**

*In re Cari B.*, 327 Ill. App. 3d 743, 261 Ill. Dec. 668, 763 N.E.2d 917 (2d Dist. 2002) – TPR – Affirmed.

Held that the incarceration of the Indian child's father in the present case affected, but did not eliminate, the active efforts requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)). The father argued that the trial court erred when it terminated his parental rights because the State failed to establish that it had made active efforts to prevent the breakup of an Indian family. The appellate court held that the communications and attempts to monitor the father's services of the state by the family advocate established by a preponderance of the evidence the active efforts required by the Indian Child Welfare Act of 1978. The court noted that the family advocate mailed the father copies of the case plans, the father sent correspondence to the family advocate, the family advocate responded to some of the father's correspondence, and the father had completed an anger management course and a substance abuse course. In addition, the appellate court noted that the family advocate's efforts to monitor the father's case were hampered by the father's refusal to provide the appropriate releases. Thus, there was no error.

*In re M.H.*, 2011 IL App (1st) 110196, 956 N.E.2d 510 (Ill. App. Ct. 1st Dist. 2011) – TPR – Affirmed.

The appellate court held that the state met its burden, in termination of parental rights proceeding, of establishing by a preponderance of the evidence active efforts to provide remedial services and rehabilitative programs, as required by the Indian Child Welfare Act of 1978; social services agency offered a number of services to both parents, including service assessments, drug treatment, psychiatric evaluations, individual therapy, random urinalysis, parenting classes and visitation with child, and agency also tried to provide the parents with bus passes to attend scheduled court dates, kept in regular contact with child's grandmothers and attempted to contact the parents on numerous occasions, but agency's efforts were frustrated because the parents' whereabouts was unknown during most of the case, and when parents were finally located, they did not make themselves available for an assessment and failed to take advantage of the services offered by agency. Indian Child Welfare Act of 1978, § 102(d), 25 U.S.C.A. § 1912(d).

*In re D.D.*, 385 Ill. App. 3d 1053, 897 N.E.2d 917 (Ill. App. 2008) – TPR – Affirmed.

The record supported the circuit court's determination that the State met its burden under §1912(d) of establishing by a preponderance of the evidence that active efforts were made to prevent the breakup of the family. Although the Department of Children and Family Services offered a number of services to the parents, including extensive homemaking services, mental health counseling, and classes in parenting, anger management, and domestic violence, they failed to learn from the programs.

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“Reasonable efforts is at issue at the shelter care hearing or as we call it: the “temporary custody hearing.” The Department must show reasonable efforts were made to avoid bringing the case into court. A finding of no reasonable efforts does not void the court of jurisdiction, but an initial finding of no reasonable efforts would prevent the Department from receiving federal Title IV E dollars throughout the life of the case. Accordingly, the State, the Department and the Judges are careful to make sure that the department has made reasonable efforts or be able to show that for good cause, reasonable efforts could not be made. No one is anxious to cut off a funding stream for services.

“Almost half the kids in care in Illinois are in Cook County. I am not surprised that there would be few, if any, appellate cases involving reasonable efforts arising out of temporary custody hearings. The burden of proof at temporary custody is “probable cause” so few are appealed. Further, our statistics show that per capita, we do a very good job of keeping kids out of care. Our problem is getting families out of the system in a timely manner once they enter. Our judges here in Cook County do a good job of ensuring services and visitation are promptly put in place. “The next step of the proceedings is the trial where the child is adjudicated either abused, neglected, or dependent. The trial is to go forward within 90 days of the “completion of service.” At temporary custody, the standard for notice to the parents is merely reasonable attempts. Often the father is not custodial or unknown. This is an area of delay for us as we often do not get to trial within 90 days due to the need for diligent efforts to locate fathers. Last known addresses have to be explored by mail and visits by the worker, and the State has to attempt personal service on a confirmed address. We often have to publish to a putative or unknown father. Once service is complete, the clock on the 90 days starts ticking. We have identified this as an area of delay. The parties can agree to waive the 90 day requirement and we rarely get to trial in 90 days.

“Once trial is complete and the child is adjudged abused, neglected or dependent, the disposition hearing is the next opportunity for a Reasonable Efforts finding. Adjudication and Disposition are not appealable until Disposition is complete. My experience is that appeals at this juncture usually focus on the findings of abuse/neglect at trial and findings at disposition that the parent is either unable, unwilling, or unfit. Reasonable efforts at family reunification are not typically at issue because services typically have not had time to have an impact despite being promptly put in place.

“Under our statute, Permanency Planning Hearings must be conducted every 6 months and a reasonable efforts finding must be made. However, permanency planning orders are not considered “final orders” and therefore not appealable as a matter of right. Accordingly, you wouldn't see many if any appeals of these findings - until they are challenged as part of the appeal of a termination

proceeding.”

Email from Judge Maxwell Griffin, Jr. Child Protection Division, Cook County Juvenile Court.

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“The issue does get raised with some frequency, but rarely litigated in a way leading to treatment of the issue on appeal. In my experience, which I think is fairly typical, it does not often come up at shelter care hearings, as it gets folded into the issue that is the primary focus of litigated disputes at a first hearing (whether there is urgent and immediate necessity to remove the child). Judges who are concerned about reasonable efforts have a disincentive to make a finding of NRE, as it is much safer to find no UIN.

“In later stages of court proceedings, where I have a concern about reasonable efforts, it is usually enough to threaten to bring a motion. In those cases where I do have to bring a motion, it is often enough just to file it, and the DCFS attorneys will light a fire under the agency before the court makes a finding that ends up costing the agency money. In those few instances where courts have found no reasonable efforts, the DCFS attorneys are usually so embarrassed that they have a good sense not to bother filing appeals.”

Email from Prof. Bruce A. Boyer, Director, Civitas ChildLaw Clinic, Loyola Chicago School of Law  
A copy of this email is available from the author.

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## **INDIANA**

**STATUTES:** Indiana Code Ann. §§ 31-34-21-5.5; 31-34-21-5.6 (aggravated circumstances); § 31-35-2-4(b)(2)(B)(i), §31-6-5-4 (Burns, 2014)

### **CASE LAW:**

*In the Matter of Myers*, 417 N.E. 2d 926, 931 (Ind. App. 1981) – TPR – Affirmed.

The court found that there was sufficient evidence to show that the department rendered reasonable services, that termination was in the best interests of the children, and that the department had a plan for their care. Thus, the evidence was sufficient to support a judgment terminating the mother’s parental rights under § 31-6-5-4. R/E cannot be defined definitively, but must be answered on the basis of any factual situation.

*In the Matter of Gregory Fries*, 416 N.E.2d 908 (Ind. App. 1981) – TPR – Affirmed.

The parents’ refusal to participate in services excuses the agency from its duty to make diligent efforts. The court found that in addition to the eviction, the DPW felt that the mother did not properly care for the child. Also apparent was a lack of concern by the mother during the eight months between the DPW taking custody of the children and the termination proceedings. The court found that the DPW had satisfied its burdens and that termination of the mother’s parental rights was proper.

*In the Matter of Darla Jones*, 436 N.E.2d 849 (Ind. App. 1982) – TPR – Reversed.

The child was removed because of substandard living conditions in the parents' home. The parents had minimal visitation with the child. The agency paid medical bills and had referred the parents to counseling for parenting training and homemaking skills. The appellate court ruled that the agency should have assisted the parents in obtaining a stable residence and made certain that the homemaker actually made visits and that the parents received training. The evidence did not establish that the County Department of Public Welfare offered or provided the parents with the services required by Ind. Code § 31-6-5-4. The court noted that statements such as "I believe I did" or "maybe a caseworker did" were not sufficient to prove reasonable services were offered. Courts should look at whether there is a relationship between the reason for removal and the services the parents should participate in. The court held that before termination can occur, there must be proof that the child has been removed for more than 6 months, that there is a reasonable probability that the conditions which resulted in the removal will not be remedied, termination is in the best interests of the child, that the county has a satisfactory plan for the child, and reasonable services have been offered or provided to the parent to assist in fulfilling the parental obligation and the parent has failed to accept them or they have been ineffective. Ruling: No reasonable efforts.

*In the Matter of Leckrone*, 413 N.E.2d 977 (Ind. App. 1980) – TPR – Affirmed.

At a termination hearing where the child was referred to the agency because of inadequate shelter and poor housekeeping, the agency proved it had provided housing assistance, furniture, food stamps, AFDC, transportation services, homemaker services and intensive social work. The trial and appellate courts held these were reasonable.

*In the Matter of VMS, AOS, SMS, EAS, and VLS*, 446 N.E.2d 632, 1983 Ind. App. LEXIS 2748 (1983) – TPR – Affirmed.

Parents lived a life style with dirty, cluttered, inadequate living conditions and medical neglect of the children. The parents did nothing to change their life style during the reunification period. They claimed that the statute was unconstitutional. Held: the department proved by clear and convincing evidence that it had provided reasonable services to assist the parents in fulfilling their parental obligations.

## **Mental Health Issues**

*In re Wardship of B.C.*, 441 N.E. 2d 208 (Ind. App. 1982) – TPR – denied – Reversed.

Mentally ill mother's parental rights terminated. Reasonable efforts found. The court held that the trial court properly found that the trier of fact, even without hearing any evidence from a medical expert, was most capable of determining whether or not there was a reasonable probability that the conditions warranting the daughter's removal would not be remedied and that it was in the daughter's best interest to terminate the mother's parental authority. The existence of a service that might have helped the parent is insufficient to demonstrate that the agency did not meet its duty. (at p. 211)

*In re E.E.*, 736 N.E.2d 791 (Ind. Ct. App. 2000) – TPR – Affirmed.

A mentally disabled parent appealed at TPR claiming that the Americans With Disabilities Act guaranteed her that the state would provide appropriate services. The court rejected her appeal, noting the TPR was based on the fact that she previously lost a child to the state. The court also stated that she would have been offered special services consistent with her special needs had there not

been a previous termination.

*Stone v Daviess County Div. of Children and Family Services*, 656 N.E.2d 824, 13 A.D.D. 325 (Ind. Ct. App. 1995) – TPR – Affirmed.

The mentally retarded mother and the intellectually limited father argued for reversal of the termination. The appellate court held that the Indiana termination statute did not require the state to provide rehabilitative services to all parents prior to terminating parental rights. Nor does the Americans With Disabilities Act provide a defense to a termination proceeding.

### **Aggravated Circumstances**

*Inkenhaus v. Vanderburgh County Office of Family & Children*, 825 N.E.2d 798, TPR – Affirmed.

The father allegedly sexually molested his daughter and inflicted violence on the mother. Both the father and the mother were drug abusers and failed to stay off drugs. The parents were homeless at the time of the termination proceedings. The trial court did not err in finding, pursuant to Ind. Code § 31-35-2-4(b)(2)(B)(i), that the reasons for the daughter's removal would not be remedied.

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“Rarely do the reasonable efforts findings get challenged or contested. They should, but I have some real strong opinions about this now, Len, having seen it from both sides. While my experiences are here in Indiana and may be limited, it may be true with others. Let me also say that I spoke to our 150 attorneys yesterday and in preparing for it I came to the realization that I am no longer an attorney – I knew I was no longer a judge six years ago – but this was the first time I really have not been involved in the practice of law for 40+ years. It was unsettling to say the least.

“My observations are this. In most smaller jurisdictions where judges have multiple responsibilities such as juvenile, criminal, probate, civil, etc., the judges generally do what we ask them to do without question and often without clear understanding. While as an agency, from top to bottom, we like that, I think it is wrong. Judges offer the check and balance for both in overaggressive agency and an underperforming agency. If they don't do their job, we have too much latitude to do bad work either way.

“What I don't know is how to get judges to accept that responsibility of oversight that may lead to the contesting of reasonable efforts. I have situations in mind where we made very little efforts but still the court supports us. I have other situations in mind where we make the effort to provide services and the parents have not complied so we want to close it out – in other words, there are reasonable efforts and we just accept minimum participation. This puts children at risk and we put ourselves in the position where we asked the judge to order things, in then we don't follow through with it. That's bad for our relationship with the judge and the families. Fortunately I cannot tell you that that is because of cost– in other words that we are not asking for things or not enforcing things because of money. What I read around the country is things are going to start changing dramatically-more because of cost of services than any other factor. Foster payments being reduced, mental health and other services not available because of budget cuts, and therefore everyone will determine a weaker standard of reasonable efforts. That is bad for kids and families and I suspect eventually re-abuse will occur. The point is that too many judges with multiple jurisdictions don't do their job and just do

what we ask.

“On the other hand, in larger jurisdictions where judges do this full-time, as you and I did, the story is a little bit different. I think in some cases we get questioned and pushed by judges who want to intervene too much, are too therapeutic, are too demanding, and expect more than is reasonable. The other problem I see right now is that judges starting to demand their own things in their own jurisdiction. By that I mean demanding visitations in one jurisdiction two times a week, and another four times a week, in a other six times a week and in another every other week. There is a problem with courts demanding more than standard policy throughout the state can bear. What I have also learned is that it is important for uniformity and consistency in a state – whether it is state run or county run. Training and policy are far too important to have, for instance in Indiana, 91 different visitation schedules. It cannot be trained to in it cannot be supported financially.

“While I appreciate judicial involvement, more in larger jurisdictions than in small in my experience, it can go too far. On the other hand, judicial involvement in larger jurisdictions ensures that the agency is on its toes. There is a balance. I’ve not found it but I know it’s there.”

Email from Judge/Director Jim Payne (ret.) (Former juvenile court judge in Marion County and former Director of Children’s Services for the State of Indiana. A copy is available from the author.

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## **IOWA**

**STATUTES:** IOWA Code Ann. § 232.102(10)(a)(1) (West Supp. 2002) – The court should consider the “type, duration, and intensity of services or support offered or provided....” §§ 232.52(6),.95(2) (a) (West, 1985), § 232.102(3)(b) (West Supp. 1989); § 232.102(5)(b) “reasonable efforts shall be made to make it possible for the child to safely return to the family’s home.” § 232.102(9) (a) (Supp. 1998) – “The efforts made to prevent or eliminate the need for removal of a child from the child’s home. Reasonable efforts may include intensive family preservation services or family-centered services if the child’s safety in the home can be maintained during the time the services are provided.” The parent should request needed services. §232.99(3); Services may be waived in certain circumstances section 232.116(1)(h) & 232.102(12)(c).§2232.102(7) – the court must make reasonable efforts determinations during all dispositional hearings including periodic dispositional review hearings, permanency hearings and termination of parental rights hearings.

## **CASE LAW:**

### **Reasonable Efforts to Prevent Removal**

*In the Interest of M.D.S.*, 488 N.W.2d 715 (Iowa App. 1992) – Placement of youth in group home reversed as agency did not make any attempt to “prevent or eliminate the need for removal of the child from the child’s home.”

### **Reasonable efforts to Effect Safe Reunification of the Child and Family**

*In re C.B.*, 611 N.W.2d 489 (Iowa Supreme Court, 2000) – TPR – Affirmed.

2 children removed for child endangerment. The father assaulted one child with belt and threatened to kill the child. There was a long history of parental drug and alcohol abuse. The children were placed with the maternal grandmother in Los Angeles. The mother followed them to Los Angeles and against court orders cared for them. She participated in some services, but psychological evaluation said she could not care for them. TPR filed. The trial court ruled that the mother did not maintain contact with the children and did not complete her services. Ct of Appeals reversed, but Supreme Court affirmed the trial court. “We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.” “This case emphasizes the critical need for services to be implemented by the DHS early in the intervention process and for the parents to actively and promptly respond to those services, as well as to voice any problems with services so changes or corrections in the case plan can be made. Time is a critical element. A parent cannot wait until the eve of termination, after the statutory time periods for reunification have expired to begin to express an interest in parenting.” The problem, however, was not with the services, but was with H.W.’s response to those services (at 495) “the family preservation policy for the last two decades was found to be detrimental to children in some cases.” (At 493). “While we recognize the law requires a ‘full measure of patience with troubled parents who attempt to remedy a lack of parenting skills,’ ...”[t]he crucial days of childhood cannot be suspended while parents experiment with ways to face up to their own problems.”...[W]e cannot gamble with the children’s future[.] [T]hey must not be made to await their mother’s maturity. (at p. 494). When courts assess reunification efforts, “[t]ime is a critical element.” ASFA’s goal is not reunification, but a *timely* reunification that is consistent with the health and safety of the child. (at 493). There is a “[c]ritical role of reasonable efforts from the very beginning of intervention” and “the critical need for services to be implemented by the [agency] early in the intervention process.” Parents must “actively and promptly respond to [the agency’s] services. (at. 495).

*In re M.H.*, 444 N.W.2d 110 (Iowa App, 1989) – TPR – Reversed.

The requirement of R/E pursuant to § 671(a)(15)(B) is enforceable in proceedings to terminate parental rights. In this case the appellate court held that the trial court failed to determine whether the agency made reasonable efforts to facilitate the child’s return to her family home.

*In re C.L.H.*, 500 N.W.2d 449, 453 (Iowa App 1993) – TPR – Affirmed.

The state is required to make reasonable efforts to reunite parent and child prior to initiating termination proceedings. In this case although the State and juvenile court made reasonable efforts to promote reunification between the children and the parents, the parents took virtually no steps to work towards that goal. The parents missed visitation and failed to stay in contact with the Iowa Department of Human Services.

*In re A.A.G.*, 708 N.W. 2d 85 (Iowa Ct. App. 2005) – Placement with father. Affirmed.

Mother argued that she could safely parent the children. The court disagreed stating: Given her admission that she was addicted to methamphetamine, her past failure to complete treatment successfully, and the recency of her treatment, the children would be at risk if returned to her care. While DHS has an obligation to make reasonable efforts toward reunification, a parent has an equal obligation to demand other, different, or additional services prior to a permanency or termination hearing or the issue is considered waived for further consideration on appeal.



*In re S.R.*, 600 N.W.2d 63, 65 (Iowa App. 1999) – TPR - Affirmed.

When a parent fails to demand services other than those provided, the issue of whether services provided were adequate has not been preserved for appellate review. The mother refused to acknowledge that serious injuries to the child could have come from a family member. “While the state has the obligation to provide reasonable reunification services, the Mother had the obligation to demand other, different or additional services prior to the termination hearing.” At p. 65. “Shania was placed with her paternal grandparents, less than ten miles from Faith and Jason so that supervised visitation would be easy to facilitate. Faith and Jason were provided with family and social skill development training which covered the topics of parenting, communication of feelings, stress reduction, age-appropriate expectations for an infant, and anger management. A social worker from DHS provided direct Family Centered Services supervision. Faith did not make progress within the services provided.” (at 65)

*In re B.J. & W.J.*, (WL 2420006, Iowa App., 2011) – TPR – Affirmed.

The children were removed because of a dirty home, then a sex abuser married mother and cared for kids. The trial court found reasonable efforts. The mother had surrendered the 4 children previously. The services included a psychological evaluation and therapy and kids remained with her. However, when the boyfriend moved in, the children were removed. A case plan with specifics was developed. The Mother worked hard for reunification, but lots of men (some of whom were offenders) were a part of her life. Reasonable efforts is not a strict substantive requirement of termination (citing *C.B.*) “The state must show reasonable efforts as a part of its ultimate proof the child cannot be safely returned to the care of the parent.” Mother appealed on the lack of visitation, but did not ask for other services. “...We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made.” (citing *In re C.B.*)

*In the Interest of T.A. and O.A.* (2003 WL 21459553 Iowa App., 2003) – TPR - Reversed.

The child was placed with relatives during mother’s incarceration. Agency did not permit visits in prison or half way house even after court order Held: Unreasonable to deny visitation to incarcerated mother. “We believe this alone was a violation of its reasonable efforts mandate. When combined with the fact that the Department neglected to perform a home study, and afforded Betty no counseling or skills development training, we believe the state failed in its burden of proof.” (citing *In re C.B.*)

*In re L.B.*, 530 N.W.2d at 465 (Iowa Ct. App. 1995) – TPR – Affirmed.

Reasonable efforts were found to be adequate including supervised visits, parenting classes, anger management assistance, and domestic abuse counseling. The parent did not cooperate.

*In the Interest of S.F.*, No. 00-0137, 2000 WL 961591 (Iowa Ct. App. July 12, 2000) – citing C.F.R. § 1356.21(d)(4) (1990) – now in 1356.21(g)(4). The case plan is an integral element of the reasonable efforts requirement. The case plan must “include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family.”

*In re C.H.*, 652 N.W.2d 144, 147 (Iowa, 2002) TPR for Mother – Affirmed.

TPR for father – Reversed.

While the trial court could not compel the father to admit his guilt in order to be eligible to regain custody, the trial court could require the father to comply with the case permanency plan. The case

permanency plan required the father to complete sexual offender treatment, substance abuse treatment, and participate in parenting skills services. The father failed to complete any of those requirements “Generally, in making reasonable efforts to provide services, the State’s focus is on services to improve parenting.” The “concept of reasonable efforts broadly includes a visitation agreement designed to facilitate reunification while protecting the child from the harm responsible for the removal.” (at 147) If a parent has a complaint regarding services, the parent must make such challenge at the removal, when the case permanency plan is entered, or at later review hearings. Moreover, voicing complaints regarding the adequacy of services to a social worker is not sufficient: a parent must inform the juvenile court of such challenge.

*In re S.J.*, 620 N.W.2d 522, 525 (Iowa Ct. App. 2000) – TPR – Affirmed.

The parent was incarcerated for most of the child’s life. Reasonable efforts can include child development classes. Assessing reasonable efforts where an incarcerated parent was involved, using a “subjective standard subject to a case-by-case analysis.” “The department must assess the nature of its reasonable efforts obligation based on the circumstances of each case.” (p. 525). “We have repeatedly stated that patience with parents should be limited to avoid intolerable hardship to the child.”

*In re M.T.*, 613 N.W. 2d 690, 692 (Iowa Ct. App. 2000) – TPR – Affirmed.

“[T]he only service [the agency] was able to offer [the father] during his incarceration was supervised visitation. [The father] cannot fault [the agency] for being unable to provide him additional services when his own actions prevented him from taking advantage of them.”

*In re K.C.*, 660 N.W. 2d 29, 35 (Iowa 2003) quoting *In re A.C.* (415 N.W.2d 609 (Iowa, 1987) – Order by court to file a TPR – Affirmed.

The “crucial days of childhood cannot be suspended” while parents attempt to deal with their problems.

*In re M.B.*, 595 N.W.2d 815, 818 (Iowa Ct. App. 1999) – TPR – Affirmed.

The appellate court described father’s resistance to services: “Agency after agency...attempted to provide [the father] services for his anger management and tendency to commit domestic violence. Rather than accept and participate in services, he threatened service providers, causing them to legitimately fear for their own safety. The State cannot be expected to place staff members in physical danger to provide services to a parent. [The father’s] behavior was tantamount to a rejection of the services provided to him. [His] own behavior prevented him from partaking in services to aid reuniting him with his family....We find the services offered to [the] father were reasonable under the circumstances of this case.”

*In re T.C.*, 522 N.W. 2d 106, (Iowa Ct. App. 1994) – TPR – Affirmed.

This case involved a disabled child who had never lived at home. The parents said they could be taught to care for the child. The court held that every reasonable effort toward reunification had been made, but that the evidence established that the parents just did not have the emotional, financial, and intellectual ability to learn how to care for the child. “Reasonable efforts to reunite the parent and child are required prior to termination.” (not based on statute).

*In the Interest of N.D.S.*, 488 N.W.2d 715 (Iowa, 1992) – A youth was placed in detention because of delinquent acts. Reversed.

The fact that the child had problems had not supported a finding that reasonable efforts were made to keep him at home. There was no evidence society was at serious risk if the child was allowed to remain at home. The only witness that testified about the child's hyperactivity treatment had an interest in the child's placement in the group home. There was evidence that school and peer relationship problems were better addressed at home.

*In re C.K.*, 558 N.W.2d 170 (Iowa, 1997) – TPR – Affirmed.

The month after the minor's birth the Iowa department of human services (DHS) began providing the parents desperately needed parental skill development and homemaking services. The services were withdrawn after the parents refused to get up by 8 a.m. when the homemaker would arrive.

Subsequently, DHS returned on numerous occasions to find the home in an unhealthy and unsafe condition. DHS increased supervised visitation, provided marital counseling for the couple, and provided individual therapy. When these efforts failed the petition was filed to terminate parental rights. After the statutory time, the patience with parents must yield to needs of the child (at p. 175).

*In re B.K.K.*, 500 N.W.2d 54 (1993) – TPR – Affirmed.

The child was sexually abused by the mother's boyfriend. Mother denied responsibility. The court found reasonable efforts were offered to equip mother with parenting abilities. The court found that despite parenting classes and counseling, the mother remained unemployed and had demonstrated during supervised visitation that she was not capable of caring for the child in an adequate manner. "We have repeatedly emphasized the importance for a parent to object to services early in the process so appropriate changes can be made."

*In re N.M.W.*, 461 N.W.2d 478 (Ct. App., Iowa, 1990) – Removal from a dirty home – Affirmed.

The child was removed because of living in a dirty home for which there had been several referrals. The majority affirmed the removal. The dissent asked whether the agency could have helped the mother clean the house and thus maintain the child with her parent. The dissent argued that the Department should have helped clean house, stating that that is what reasonable efforts is all about.

The dissenting justice stated: "However, the house could have been cleaned without taking the child from her mother. I do not, however, feel removal from the parental home was in the child's best interests and feel the matter should be remanded to direct reasonable efforts be utilized to allow the child to return home. Houses can be cleaned, but the trauma a child experiences when he or she is removed from the only parental home he or she has ever known can cause emotional scars that can last a lifetime."

*In re N.J.*, 2001 WL 488067 (Iowa Ct. App. 2001) – TPR – Affirmed.

The court found that ASFA precluded long-term efforts for reunification.

## **Mental Health Issues**

*In Interest of A.C.*, 415 N.W.2d 609 (Iowa 1987), TPR – Affirmed.

The appellate court reversed a trial court's decision to allow the bipolar mother additional time to become rehabilitated so that she could be reunited with her five children. The appellate court

emphasized the need for permanence in the children's lives, the fact that the mother had been totally unable to provide for their basic needs when they first came into state custody, and the fact that although she had improved on medication she was still not in a position to care for them and had no home or job. **DISSENT:** The justice noted that none of the expert witnesses had recommended termination, and that there was ample evidence that once the mother's mental illness was diagnosed she made great progress.

*In Interest of C.M.*, 526 N.W.2d 562, 8 A.D.D. 1315 (Iowa Ct., App. 1994) – TPR – Affirmed. The mentally ill mother brought her discrimination claim too late in the case to be recognized by the court. Nevertheless, the appellate court affirmed that the state met its burden by providing extensive rehabilitative services that reasonably accommodated mother's disability.

*In Interest of C.D.*, 524 N.W.2d 432 (Iowa Ct. App. 1994) – TPR – Affirmed. Four children were removed from an intellectually challenged mother. The mother had received family preservation services, parenting skill training, educational assistance for her and the children, extensive medical care, protective day care, Head Start, speech therapy, visiting nurses, diagnostic and regular foster care, and visitation services. The court noted that while there was some indication of improvement in the mother's parenting and maturity, she herself had testified that she could not handle all four children at home, and it appeared that she might not even be able to handle one of the children.

*Interest of T.O.*, 470 N.W.2d 8 (Iowa 1991) – TPR – Dismissed. Mentally ill parent was showing signs of recovery. The appellate court affirmed stating that mental disability standing alone is not sufficient reason for termination of parent-child relationship, but is a contributing factor to inability to perform the duties of parenthood, the court examined how two of the mother's witnesses characterized the effect her mental limitations had on her parenting ability. A social worker who met with the mother weekly for more than two years testified that she had been instructed in child development, parenting, household management and nutrition, had been able to maintain an immaculate apartment for some time, and was capable in knowing what to eat and how to cook and clean. The mother had supplemented this instruction with participation in activities and groups at a local program several times a week. There, she learned better methods of child discipline, found people she could turn to for help with parenting issues, and successfully worked on improving her self-esteem so that she could stand up for herself and no longer be manipulated or abused by men. The mother also attended a community college to learn to read better in order to be a capable parent, and was able to benefit from using parenting pamphlets.

*In re A.C.*, 415 N.W.2d 609 (Iowa 1987) – Trial court extended services – Reversed. The Supreme Court ruled that the child could not wait longer for permanency even though by taking medication she had improved her mental illness. **DISSENT:** None of the experts thought TPR was appropriate and mother was improving rapidly.

*In re L.M.W.*, 518 N.W. 2d 804, 807 (Iowa Ct. App. 1994) – TPR – Affirmed. The mentally ill mother had lost two older children. The court found that the mother's mental illness was well documented as was its adverse effect on her ability to care for children. The court determined that although there was no evidence that the trial court made reasonable efforts to eliminate the need for removal pursuant to

Iowa Code § 232.102(4), the parents failed to timely raise the issue. The court concluded that a parent's mental disability was a proper factor to consider in determining whether the child's welfare required termination. A parent must demand services if he or she feels they are inadequate prior to termination.

*In re J.A.*, 671 N.W.2d 533 (Iowa Ct. App. 2003) – TPR – Affirmed.

The appellate court found that the agency had offered services consistent with the Americans With Disabilities Act and with the reasonable efforts mandate. The mother totally failed to address substance abuse and mental health issues.

## ICWA

*In re L.N.W.* 457 N.W.2d 17; 1990 Iowa App. LEXIS 44. TPR – Affirmed.

The court also ruled that the record showed conclusively that the state made a number of efforts at providing the mother with remedial services and rehabilitative programs to prevent the breakup of the Indian family as required by the Indian Child Welfare Act, 15 U.S.C.S. § 1912(d), but that the efforts proved unsuccessful.

### Aggravated Circumstances

*In re N.S.*, 2001 WL 98571 (Iowa Ct. App. 2001) TPR - Services waived – Affirmed.

ASFA permits waiver of services in certain circumstances. In this case father had abused the children in the past, engaged in a high-speed car chase endangering the lives of the children, sent a threatening letter to the children's mother and the children, and took nude photos of the children. By clear and convincing evidence all this showed father's conduct posed a risk of imminent danger to the children.

*In re K.R.* 2000 WL 854325 (Iowa Ct. App. 2000) – TPR – Affirmed.

A waiver of reunification services is proper if aggravated circumstances are proven. Here the termination of the parental rights to a sibling and clear and convincing evidence that the offer of services would not likely within a reasonable time correct the conditions which led to the child's removal.

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“In Iowa, attorneys for parents are appointed when a petition for removal or adjudication is filed. So, if it is an *ex parte* removal, it means it is after hours and an immediate removal; then the attorney does not get assigned until the next business day and after the removal. Attorneys are always appointed prior to the temporary removal hearing which must occur within 10 days, which NCJ calls the preliminary protective hearing. If the petition is filed for removal and the child is not already removed, the attorney is assigned at the petition time and might have a chance to meet with the parent and might try to prevent the removal. It is rare to see a lack of reasonable efforts argument action though. There are pre-hearing conferences, “pre-removal conferences, and post-removal conferences, but those primarily are used as opportunities to set up early visitation and maybe negotiate voluntary placements with relatives.

“It is rare that we see a “lack of reasonable efforts” argument raised at time of removal or on appeal at the removal or adjudication. Many attorneys know they can raise it, but there is a culture of “just go along with this and we will get DHS and the court out of your lives more easily”. Stipulations are the typical response. Judges are also hesitant to issue a lack of reasonable efforts finding, because they don't want to jeopardize IV E funding. There are a few courageous judges who will make that ruling, or will suspend a decision to allow the state agency to complete efforts the judge considers reasonable. Frequently, we use your letter on reasonable efforts that is in the Resource Guidelines for training with judges.

“So rather than being unaware of the use of a reasonable efforts to prevent removal argument, I would say that it is a cultural issue. When we have done any training that encourages advocacy for

reasonable efforts, we get push back from the judges and county attorneys that we are creating an adversarial environment.

“Bottom line, I think there is a great need for training on reasonable efforts, for both attorneys and judges. This year, we are focusing on improving the quality of parent representation and gearing up to increase our training efforts, so any resources or ideas would be very welcome. Comments of Gail Barber, Director, Iowa Children’s Justice, State Court Administration, email to author, available from author.

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“Our attorneys are appointed before the removal hearing so that they are prepared for that hearing. They do raise the reasonable efforts to prevent removal on occasion. They are very aware of the reasonable efforts issue because that is a part of attorney training in Iowa. In fact, as of 2015 attorneys will be required to have 3 hours of training in dependency law each year.” Email from Judge Constance Cohen, Associate Juvenile Judge, Fifth Judicial District of Iowa. A copy of the email is available from the author.

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See also Haney, J., & Kay., L. “Making Reasonable Efforts in Iowa Foster Care Cases: An Empirical Analysis,” 81 *Iowa Law Review* 1629, July, 1996, stating that “judges and attorneys are striving to comply with reasonable efforts mandates in Iowa, but improvements are needed to permit meaningful reasonable efforts determinations and to comply with the true letter and spirit of reasonable efforts legislation.” At page 1686.

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## **KANSAS**

**STATUTES:** KAN. STAT. ANN. §38-2255; §38-1583(b)(7) (1986); § 38-1542(f), - 1543(i), 1563(h) (1986); K.S.A. § 38-2335 (2011) (includes prevent removal) - § 38-1583(b)(7)(e) (2002) – Reasonable efforts is a factor in considering whether to TPR. K.S.A. §23-3207 (c)(2) A court must make a finding of reasonable efforts before the court places a child with a non-parent or agency. K.S.A. §38-2264(a) –if reasonable efforts to effect permanency are not provided, the court may rescind placement orders with relatives and make orders consistent with the child’s best interests.

### **CASE LAW:**

*In the Interest of J.D.D., K.W.J., and K.J.J.*, 21 Kan. App. 2d 871, (1995) – TPR – Affirmed. Did agency provide Reasonable Efforts to prevent removal? The removal was based on a court order. But not included in appellate papers – therefore no decision. (But court mentions emergency existed – serious physical abuse). The appellate court held that the district court properly found that an emergency existed when it issued the protective orders, and that the record was replete with efforts, although unsuccessful, to keep the children in the home? History reveals several removals with services along the way.

## **Reasonable Efforts to Finalize An Alternative Permanency Plan**

*In re N.A.C.*, 2013 WL 6383024 (Kansas Ct. App, 2013) - Trial Court ordered placement and found “no reasonable efforts.” - Reversed (with dissent). The infant had been in foster care since birth and parental rights had been terminated. The permanency plan was to place with out-of-state relatives. The private agency delayed, set up few visits with the relatives and had no transition plan. The trial court found the agency had not made reasonable efforts and awarded custody to the foster parents.

The appellate court held that this was an appealable order and that the “no reasonable efforts” finding was not supported by the facts. The dissent agreed with the trial court on both issues.

## **ICWA**

*In the Interest of A.P.*, 25 Kan. App. 2d 268, 961 P.2d 706 (Ct. App. Kan. 1998) – TPR – Affirmed. The mother was an alcoholic and had failed at efforts at treatment. There was also substantial competent evidence that efforts were made to prevent the breakup of this Indian family. Finally, the court found that there was substantial evidence for finding beyond a reasonable doubt that the continued custody of the child by the mother was likely to result in serious emotional or physical damage to the child.

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“1. Reasonable efforts did not get tried in my court; however, I did on occasion threaten a hearing on reasonable efforts. The state child welfare department, SRS, would quickly send in their senior attorney and an experienced case manager and correct the problem. I was not aware of any other courts litigating reasonable efforts which explains the lack of appellate case law. However, there is a new case (Dec. 2013) that does address this issue. Please see *In the Interest of N.A.C.* which is available in Westlaw. Open (KS-CS) and type “WL 6383024”. Please note there is a dissent in this case by Judge Malone wherein he discusses the evidence that supports the trial court’s finding of no reasonable efforts to find an adoptive placement.

“I just heard this past week that our court had a no reasonable efforts case and that it is on appeal. I will follow up on this and e-mail you.

“2. I am not aware of any cases litigating the reasonable efforts requirement at any stage of the process.

“3. There was a training sponsored by HHS in Kansas City, Mo. that I attended. This training was 10 plus years ago. I am not aware of any other educational opportunities for judges or attorneys.”

Partial Email from Judge Allen Slater (ret.) a judge for the Tenth Judicial District of the District Courts in Kansas.

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## **KENTUCKY**

**STATUTES:** Ky. Rev. Stat. Ann. § 620.020(10)-(11) and § 625.090(3)(c) (Michie Supp. 2002); § 62.020(9) – The exercise of ordinary diligence and care by the department to utilize all preventive



and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home.” R/E must be considered in TPR case (Ky. Rev. Stat. Ann. § 625.090(3)(c)). Ky Rev. Stat. §610.127(6) – mental health disability can be reason for no services. Ky. Rev. Stat. Ann. § 620.130(1) – requirement that the court decide if “alternatives less restrictive than removal...are adequate to reasonable protect the child.” KRS § 610.020 – Reasonable efforts not required if (1) – (6)...

## **CASE LAW:**

### **Reasonable Efforts to Prevent Removal**

*B.C. v B.T.*, 182 S.W.3d 213 (Ky.Ct.App.2005) – Child placed with relatives. Father appealed his lack of visitation. Affirmed.

The appellate court held that the custodians were on an equal footing with the parents. However, pursuant to Ky. Rev. Stat. Ann. § 610.127(7), “reasonable efforts” as defined in Ky. Rev. Stat. Ann. § 620.020 shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction determines that the parent has other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child. In this case the less restrictive alternatives (relative placement) consideration “seems” to be equivalent to “reasonable efforts” to prevent removal requirement.

### **Reasonable Efforts to Promote Reunification**

*A.M.O., S.E.L.O., W.K.O., & M.L.O. v Cabinet for Health and Family Services*, 2008 (Ky. App. Unpub.) TPR - Affirmed.

The children were removed because of sexual abuse of one child, dirty home, and physical abuse of children. The mother had access to free psychological evaluation and therapy, parenting classes, child protection classes, the family preservation and reunification programs, plus visitation to assist her. Reasonable Efforts were offered. Four children spent most of their lives in foster care. Mother argues no reasonable efforts. Mother did not visit for 3 months after removal. Mother started improving when TPR was filed, but court concluded “too little, too late.” Father had sexually abused the children.

*L.A.H.C. v. Com. Cabinet for Health and Family*, - TPR – Affirmed.

The children were removed because of medical and educational neglect. Termination upheld and reasonable efforts found in finding relatives because aunt did not come forward until 2 months before the final termination hearing.

*R.S.W. v Cabinet for Health and Family*, 2007 WL 29658 (unreported) – TPR – Affirmed.

The children were removed because of domestic violence and father drove into a trailer with the children inside. Mother voluntarily gave up parental rights. Agency offered father individual and group counseling, medications, parenting classes, anger management, and psychological evaluation. In prison he received AA and NA classes. Father rejected treatment plan. Reasonable Efforts found.

*Cabinet for Health and Family Services v C.V.*, 192 S.W. 3d 703 (Ky. App. 2006) – TPR –

Dismissed – Affirmed.

The child was removed from parental care because of a drug-related lifestyle. The plan was for reunification. At the 6 month hearing the court found that the agency had not provided services consistent with the case plan. Six months later the agency filed a TPR petition. The trial court made incorrect orders at that hearing. The appellate court agreed that a finding of reasonable efforts is not a necessary pre-condition to a TPR, but that incorrect orders resulted in a lack of proof for the termination.

*M.E.C. v Commonwealth*, 254 S.W. 3d 846 (Ky. App. 2006) – TPR – Reversed.

The mother was either incarcerated or hospitalized during the reunification period. The case plan was not adjusted to account for her inability to perform the services. Reasonable services to reunite the family were not provided to the mother and her children. The goal from reunification to termination was changed after only eight months, during which time the mother was either incarcerated or hospitalized. The Cabinet never changed its plan for reunification to accommodate the mother during this time. In addition, the Cabinet never provided any rationale for changing the goal. The Cabinet failed to meet its burden for establishing grounds for termination because all of its court testimony focused on past behavior without any significant evaluation of future parenting capacity. The termination order was an abuse of discretion.

*Cabinet for Families and Children v. G.C.W.*, 139 S.W.3d 172 (Ky. Ct. App. 2004) – TPR - Denied at trial court – Reversed on appeal.

Just because the children subject to the termination petition were teenagers is not reason enough to terminate parental rights. ASFA and Kentucky statutes now include time limits for reunification efforts. The children have a right to a safe and stable home.

## **Mental Health Issues**

*In re T.G.*, 2008 Ky. Unpublished LEXIS 150 (Supreme Court 2008) - TPR – Affirmed.

The child was removed from a mentally ill mother. The court held that the mother's illness rendered her incapable of providing essential care, protection, and basic necessities for her child. While there was no abuse, mother's behavior indicated she could not safely care for the child and services did not show any improvement.<sup>546</sup>

“We do not have frequent trials over RE. My theory is that by having frequent hearings and reviewing the agency's actions and services provided/needed at every hearing, we head off major challenges, since deficiencies are identified and addressed early on. If I've done my job in the DNA action, lack of reasonable efforts shouldn't be an issue at a TPR. Of course, with budget issues we are facing now, that may change. What I'd really like to do is find that the legislature has failed to make RE, since that body fails to fund the programs we so desperately need.”

Excerpt of email from Judge Patricia FitzGerald, Chief Judge, Jefferson County Family Court, Louisville, Kentucky.

**STATUTES:** LA. Children’s Code Ann. § 603(17), (23) (West 2002) and §§ 623, 672.1, & 684(C) which asks the reviewing court to make findings regarding reasonable efforts. “The exercise of ordinary diligence and care by department caseworkers and supervisors; assume[s] the availability of a reasonable program of services to children and their families.” LA. REV. STAT. ANN § 13.1601(D) (4), (F)(4) (West, 1989); LA. STAT. ANN. CODE JUV. PRO. (Supp 1988) art.87 (West 1988); LA. Ch.C. art. 619(B):

## **CASE LAW:**

### **Reasonable Efforts to Prevent Removal**

*State of Louisiana v In the Interest of C.W.*, 848 So.2d 70 (LA App., 2003) – Child in custody because of physical abuse – probably by mother’s boyfriend. Placed with relative without state supervision. Reversed.

Services to prevent removal included work with mother, but she refused to believe he did it and would not comply with safety plan. Relatives found and placement made. Trial court found no Reasonable Efforts to locate and place with relatives before the formal removal. The state appealed, claiming that the informal placement would not have provided protection. Trial court was reversed. Appellate court held that the child would still be in danger with relatives. “The Court shall determine whether reasonable efforts have been made by the department to prevent or eliminate the need for the child’s removal, including whether the department has requested a temporary restraining order pursuant to Article 617 or a protective order pursuant to Article 618.” The “no reasonable efforts” finding was reversed – the agency was correct in not trusting mother to protect the child even if in relative placement.

### **Reasonable Efforts to effect the Safe Reunification of the Child and Family**

*State In Interest of JML*, 540 So. 2d 1244 (La. Ct. App. 3d Cir. 1989) – TPR – Dismissed. The mother was mentally ill and hospitalized. The trial court concluded that the mother might recover and be a competent parent. The appellate court concluded that it was proper to deny a petition for termination of parental custody. The court observed that the child had been placed in foster care when he was seven, where the mother’s mental illness and possible brain damage made it impossible for her to care for him. At the time of trial, the mother had been confined to a nursing home and clearly could not care for her child, but she loved him and looked forward to their reunification. The state’s expert testified that the mother had a poor prognosis for improvement, but the people who treated her on a daily basis disagreed and testified that she was improving and continuing to improve.

*State ex rel. A.T.*, 936 So. 2d 79 (La. 2006) – TPR – Reversed.

The social services department “admits that no rehabilitative services were offered to [the mother] to assist her in obtaining suitable housing after the children were taken into custody...yet this was the main, if not sole, impediment to reunification cited continuously by [the department].”

### **Mental Health Issues**

*State in Interest of C.L.R. v Russo*, 567 So.2d 703 (La. Ct. App. 3<sup>rd</sup> Cir. 1990) – TPR – Affirmed. The children were removed from a mentally ill mother in a burnt out house. The state developed a

three-pronged approach to deal with the mother's parenting inadequacies, but after a brief period of cooperation she refused to attend any mental health sessions, changed her mind about attending parenting skills classes, and failed to repair the home or obtain suitable housing. At the termination hearing, a clinical psychologist testified that any plan to return the child should be done carefully, gradually, and under close agency supervision and monitoring. Another psychologist opined that it would be difficult for the mother to improve her parenting skills and highly unlikely that she would be able to care for the child on her own. Because of the mother's failure to improve and the likelihood that she would not improve in the future, the court terminated her parental rights after finding that doing so was in her child's best interests.

*State ex rel. M.R.H. v. B.F.*, 799 So. 2d 1178 (La. Ct. App. 2d Cir. 2001) – TPR – Affirmed.

The infant was placed in foster care, and since both parents were mildly retarded the state provided them with multiple services to enable them to acquire parenting skills, including transportation, home visits, and several forms of individualized and group parenting instruction. Although the parents worked to gain parenting skills, they gained little benefit from this intervention because of their limited mental capabilities.

*State in Interest of S.C. v. D.N.C.*, 639 So. 2d 426 (La. Ct. App. 2d Cir. 1994), writ denied, 644 So.2d 1061 (La. 1994) – TPR – Affirmed.

The appellate court upheld termination of the parental rights of a mentally ill mother who did not follow five different case plans, did not see her children for more than a year, and had no idea of her children's needs or what parenting entailed.

*Interest of B.J.*, 672 So. 2d 343 (La. Ct. App. 1st Cir. 1996) – TPR – Affirmed.

The children were removed from the mentally retarded parents. Expert testimony established that the parents could not adequately care for the children, one of which was sexually abused while in the care of the parents. The court found that the state had offered every available service with little or no benefit to either parent.

*State in Interest of J.M.L.*, 540 So.2d 1244 (La. Ct. App. 3d Cir. 1989) – TPR – Denied and Stayed –

The mother was presently incapable of parenting her child because of mental illness, but where there was a reasonable prospect of being able to do so in the future, it was proper to deny a petition for TPR. Mother was in a care home and her caretakers testified she could recover and parent again.

*Interest of C.H.*, 599 So. 2d 850 (La. App. 1st Cir. 1992) – Petition for TPR – Dismissed by trial court – Affirmed on appeal.

The agency set a goal of adoption from the outset and failed to work diligently toward family reunification even though the mentally retarded parent was cooperative and possibly could have achieved the goal of reunification. The mother followed the reunification plan, but the agency placed the child in a pre-adoptive home.

*State in Interest of B.K.F.*, 704 So.2d 314 (La. Ct. App. 5<sup>th</sup> Cir. 1997) – TPR - Writ – Denied.

The Americans With Disabilities Act does not apply to termination of parental rights proceedings.

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“Yes the matter of reasonable efforts is brought up especially at the initial hearings in discussing removal and the need to place the child in the custody of the state. That discussion will continue if family options are not available. As the case moves closer to termination reasonable efforts are again an issue with great discussion, however i have not had cases appealed on that issue alone. There is an attorney out of Baton Rouge - Todd Gaudin - who has appeared in my court and has done an excellent job in highlighting “reasonable efforts”.

“The topic is one that should be explored and discussed and encourage the topic at future trainings.”

Email from Judge Patricia Koch, Judge, 9th Judicial District Court, Alexandria, LA 71309.

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Do you find that the “reasonable efforts to prevent removal” issue is tried in the Louisiana juvenile courts? (TODD: This issue can be tried in front of the trial judge but probably does not reach the appellate level often. It’s usually informally work-out with the State before permanency hearing. When in doubt, judges will give the benefit of the doubt to the State and see if the parents can show there’s no cause to keep child in state care.

How about the “reasonable efforts to facilitate reunification?” (TODD: to my knowledge, there are a few appellate cases that try to outline the parameter of what it would take to “facilitate” reunification. One of them focused on the State’s efforts to help a mother find housing and how much effort the State should put into that element.) This issue is probably litigated more than the first because it would be an issue after the parental rights of the parent had been terminated for “not completing the case plan.”

The appellate case law seems to have most reasonable efforts issues arising after a termination of parental rights. (TODD: Yes, agreed)

Is that your experience? (TODD: Yes)

Email exchange between the author and Todd Gaudin, Esq, an attorney practicing in Baton Rouge, LA.

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## **MAINE**

**STATUTES:** ME. REV. STAT. ANN. Tit. 15. §§ 4041(1-A), 3314-1, 3317; Tit. 22 M.R.S.A. §4036-B(3) “department shall make reasonable efforts to prevent removal of the child from home, unless the court finds the presence of an aggravating factor.” & § 4055(1(B)(2(B) (Supp. 1989); Tit. 22 section 4002 (1-B)(A)(1) – regarding aggravated circumstances.

## **CASE LAW:**

### **Reasonable Efforts to Prevent Removal**

*In re Dakota P.*, (Maine Supreme Court, 2005) – Mother appeals removal of children – one ground – Trial court found no reasonable efforts to prevent removal. Injuries to children were reason for

petition and removal. The mother also was not able to provide medical care for children. Reasonable Efforts included “safety assessment and planning, referrals for evaluations, parenting education and counseling and social worker services.” Reversed on other grounds and remanded.

### **Reasonable Efforts to effect the Safe Reunification of the Child and Family**

*In re Mariah B.*, (Maine Supreme Court, 2006) – TPR – Reversed.

No TPR of son, only of Mariah. Court noted deficiencies in delivery of services. But court reversed based on insufficient record on findings regarding parental unfitness. The case was remanded to the trial court.

*In re Doris G.*, (Maine Supreme Court, 2006) – TPR – Affirmed.

The father was a criminal and was uncooperative with the social worker. He failed to meet with social worker to discuss the reunification plan. The social worker finally met with father and discussed at length what he needed to do. Father did not complain about the plan until TPR.

*In re Thomas D.*, 2004 ME 104, 854 A.2d 198 – TPR – Reversed.

Dependency was declared, but no reunification plan was ever submitted to the court or approved by the court. Two case plan requirements were inappropriate for father (substance abuse program and domestic violence counseling), and father improved in other areas where he had problems – parenting and alcohol abuse. Department must develop a plan including rehabilitation services to be completed. Lack of a plan is a factor in determining parental unfitness. Judgment vacated.

*In re Kayla S.*, 772 A.2d 858, 862-3 (Me 2001) – TPR – Affirmed.

Evidence of reasonable efforts at TPR only needs to be proven by a preponderance of the evidence. “The department must demonstrate...that it made a good faith effort to rehabilitate the parent and reunify her with her children. (862). The parent’s efforts are also scrutinized. (863) “Here, the court found that, although the Department made a good faith effort to establish and implement a reunification program, the mother did not comply in good faith with her obligations....Even if there is some merit in the mother’s assertions that [agency] caseworkers hindered reunification, the mother continued to abuse drugs, remained in contact with an individual with whom the court ordered her to have no contact, failed to follow through with reunification efforts with in-home counselors, and continued her inconsistent conduct. The [trial] court acted within its discretion in determining that the Department should be relieved of any further responsibility to assist the mother in rehabilitating and reunifying with [the child.]”

### **Mental Health Issues**

*In re Angel B.*, 659 A.2d 277, 10 A.D.D. 723 (Me. 1995) – TPR – Affirmed.

The court found no discrimination regarding the mentally ill mother according to the Americans with Disabilities Act. The record disclosed that the state offered a number of services that took the mother’s delayed pace and limited cognitive skills into account.

### **ICWA**

*In re Annette P.*, 589 A.2d 924 (Maine 1991) – TPR – Affirmed.

The court affirmed the trial court’s termination of parental rights, finding that the DHS had taken all

reasonable active efforts required by the Indian Children Welfare Act to develop a plan that would reunify the family and that the parents had no real interest in taking meaningful steps to regain custody of their children.

### **Aggravated Circumstances**

*In re Ashley S.*, 2000 ME 212, 762 A.2d 941 (ME. 2000) – TPR – Affirmed.

The state statute closely tracked ASFA language and the appellate court affirmed the trial court order relieving the state from offering reasonable efforts when aggravated circumstances are involved. Here the father subjected the child and her brother to unsanitary conditions, ignoring the children for days, children sitting in their own excrement, unattended, unfed and unwashed, no human contact for hours on end. No reunification services need be offered.

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“We have regular trainings that include reference to reasonable efforts.”

Summary of telephone conversation with Kristina Gefvert, Court Improvement Director, Maine.

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### **MARYLAND**

**STATUTES:** MD. Code Ann. Fam. Law § 5-525(b)(3)(iii) & (d)(1)-(2) & (e) (Supp. 1998); Cts. & Jud. Proc. § 3-823(h)(2)(vi)(vi). R/E defined in Cts. & Jud. Proc. § 3-801(v) “reasonable efforts” are “efforts that are reasonably likely to achieve the objectives set forth in [C.J.] § 3-816.1(b) (1) & (2),” which consist of “prevent[ing] placement of the child into the local department’s custody.” C.J. § 3-816.1(b)(1) and, for children who are placed in State custody, [f]inaliz[ing] the permanency plan in effect for the child.” C.J. § 3-816.1(b)(2)(i), and [m]eet[ing] the needs of the child, including the child’s health, education, safety, and preparation for independence.” C.J. §3-816.1(b)(2)(ii). See also Code of Maryland Regulations 07.02.11.14(A) “to the extent that funds and other resources are available, a range of services that will facilitate or maintain successful reunification of the child shall be provided by the local department.” These include rent deposits, vocational counseling or training and assistance to locate housing.

### **CASE LAW:**

*In re James G.*, 178 Md. App. 543, 943 A.2d 53 (2008): Reunification services terminated by the trial court – Reversed on appeal. The trial court changed the permanent plan from reunification to placement with a relative. Father appealed saying only employment and housing prevented reunification. DSS said it couldn’t offer housing assistance until father was employed. The appellate court held that DSS did not follow the law and did not offer reasonable efforts. DSS made only one referral to father for vocational assistance and did not follow up. Father’s lack of education, lack of skills, and prior criminal record clearly indicated father’s need for more intensive assistance. The trial court focused on the length of time the child was in care and not best interests. Passage of 22 months since the child’s out-of-home placement is not, standing alone, a sufficient justification for abridgment of parental rights, if in that period, the responsible agency did not make reasonable efforts

to effect reunification.

*In Re Adoption/Guardianship Nos. CAA 92-10852*, 103 Md. App. 1, 651 A.2d 891 (Md. Ct. App.1994) – TPR – Reversed.

The father was incarcerated when the TPR took place. The department of social services failed to provide the father with those services that it was statutorily obligated to provide prior to taking the extreme measure of terminating his parental rights. Finally, the father’s incarceration did not per se constitute a “disability” under Md. Code Ann., Fam. Law § 5-313(d)(1)(i) (1989) and justify the termination of his or her parental rights.

*In re Adoption/Guardianship of Rashawn Kevon H. and Tyresa H.*, 402 Md.477, 937 A.2d 177 (2007) – TPR – Vacated and remanded.

Mother was impoverished. The appellate court could not tell what the relationship between the mother and children was. The court reversed the judgment of the special appellate court and remanded the case to that court with instructions to vacate the judgments and remand the case to the trial court. The trial court is directed to make clear and specific findings with respect to each of the relevant statutory factors and permit the parties to present additional evidence. “Poverty, of itself, can never justify the termination of parental rights.”

The appellate court continued: “[T]he State [may not] leave parents in need adrift and then take away their children. The court is required to consider the timeliness, nature, and extent of the services offered by DSS or other support agencies, the social service agreements between DSS and the parents, the extent to which both parties have fulfilled their obligations under those agreements, and whether additional services would be likely to bring about a sufficient and lasting parental adjustment that would allow the child to be returned to the parent. Implicit in that requirement is that a reasonable level of those services, designed to address both the root causes and the effect of the problem, must be offered – educational services, vocational training, assistance in finding suitable housing and employment, teaching basic parental and daily living skills, therapy to deal with illnesses, disorders, addictions, and other disabilities suffered by the parent or the child, counseling designed to restore or strengthen bonding between parent and child, as relevant. Indeed, the requirement is more than implicit. FL § 5-525(d), dealing with foster care and out-of-home placement, explicitly requires DSS to make “reasonable efforts” to “preserve and reunify families” and “to make it possible for a child to safely return to the child’s home.”

## **Mental Health Issues**

*In re Adoption/Guardianship Nos. J9610436 & J9711031*, 368 Md. 666, 796 A.2d 778 (2002) TPR – Reversed.

A father with cognitive limitations nevertheless held a job and had graduated from high school. The appellate court held that there was insufficient evidence that the Department had “made adequate reunification efforts to improve [Mr. F.’s] parenting skills.” It noted that, “[i]nsofar as we have been able to discern from the record, [the Department] never offered any specialized services designed to be particularly helpful to a parent with the intellectual and cognitive skill levels [the Department] alleges are possessed by petitioner,” noting specifically that the Department did not seek to utilize services that might be available through DDA. “Primarily,[the Department] failed petitioner, and did



not adequately perform its statutorily mandated duties under section 5-313(c)(2), by failing to provide a timely and sufficiently extensive array of available programs for petitioner, who, while perhaps hampered by some cognitive limitations, is eager and may well be able, with properly tailored services, to care for his children. From the moment petitioner came to ask for help, [the Department], as far as we can discern, provided only untailored reunification services. [The Department] should have, instead of providing services for which there was little or no need, provided more specific services for petitioner who consistently displayed a willingness and genuine desire to care for his children. [The Department] had at its disposition better suited services for petitioner.”

*In re Shirley B.*, 419 Md. 1 (2011) - Order terminating reunification services – Affirmed.

The children were removed because of abuse in the home. The mother appealed a trial court order terminating services and directing the case towards adoption. The mother claimed there were inadequate services offered. In fact, there was no funding for the services the agency identified as appropriate for the mentally challenged mother. The appellate court found that there were well-documented instances of physical and sexual abuse and extreme neglect. Moreover, the number of services readily available to the Department was limited by a general dearth of financial resources. Despite these financial obstacles, the Department’s reunification efforts were numerous, including arranging for and transporting the mother to medical appointments and assisting her in reactivating her medical assistance. There was no abuse of discretion in the decision to change the children’s permanency plans from reunification to adoption. The mother’s inability to improve her situation, arguably through no fault of her own, left the children in foster care for 28 months, with no end in sight.

*In re Shirley B.*, 191 Md. 678 (2010) – Appeal of court order changing plan from reunification to adoption – Affirmed.

The children were removed from a mentally challenged mother and the department worked with her for 28 months. The court found that the Department, nevertheless, made extensive efforts to get Ms. B. services that might enable her to reunify with her children. It referred Ms. B. to parenting classes with the Family Tree. It arranged, and paid for, individual mental health therapy at Community Counseling and Mentoring, with therapist Debbie Austin, to address Ms. B.’s mental health needs and parenting skills. The Department then sought more specific services for Ms. B. due to her cognitive limitations, including referring Ms. B. to DORS, Melwood, and DDA, and helping Ms. B. complete an application for services. When Ms. B. was placed on a waiting list for DDA because adequate funding was not available, the Department attempted, albeit without success, to locate an alternative source of funds through the Community Connections Agency. It provided Ms. B. with information about ARC, which offered a support group for parents with developmental disabilities. Additionally, the Department paid for an individual neuropsychological evaluation for Ms. B. It cannot be said here, in contrast to *Case 36*, that the Department did not seek specialized services to assist Ms. B.

*In re Adoption/Guardianship No. 10941*, 642 A.2d 201 (Md. 1994) – Petition for Guardianship – Denied – Reversed.

The child resided with a grandparent. After years, the agency filed for guardianship with leave for TPR thereafter. The trial court denied the petition. The trial court further found the department did not meet its obligation to attempt to reunify the mother and the child by affirmatively offering and providing services, including a psychological evaluation and visitation. On appeal the court stated

that “the problem with the trial judge’s analysis is that he failed to recognize that no amount of reunification services is likely ever to allow Sandra to get custody of her children. Assuming without deciding that the Department failed to meet its statutory duty to facilitate reunification, where, as in this case, attempts at reunification would obviously be futile, the Department need not go through the motions in offering services doomed to failure.”

## **ICWA**

*In re Nicole B.*, 175 Md. App. 450, 927 A.2d 1194 (Md. Ct. App. 2007) – Placement with Paternal Aunt and Dismissal. Reversed.

The trial court heard argument that the parents were making minimal progress, but that the two children were doing well in the parental aunt’s custody. The trial court then changed the permanency plan from reunification with the parents to custody and guardianship with the paternal aunt. The trial court later closed the CINA case. On appeal, the intermediate appellate court found that the trial court erred in closing the CINA case before making “active efforts” to prevent break-up of the family, as required by the Indian Child Welfare Act of 1978, 25 U.S.C.S. § 1901 et seq. it agreed with the majority of courts and held that the active efforts standard requires more effort than a “reasonable efforts” standard required by state statutes.

## **Aggravated Circumstances**

*In re Joy D.*, 2014 Md. App. LEXIS 5 (MD Court of Special Appeals, 2013) – Services bypassed – Affirmed.

The mother had lost her parental rights to four children previously. Her behavior with them was evident in the current case. The evidence was sufficient to justify waiving reunification services in this case also.

*In re: Adoption/Guardianship No. J970013*, 128 Md. App. 242, 737 A.2d 604 (Md. App. 1999) TPR – Affirmed.

Appellant’s indefinite incarceration was tantamount to a disability under Md. Code Ann., Fam. Law § 5-313(d)(1)(i), rendering him incapable of providing adequate care for his son. The Department of Social Services was relieved of its obligation under Md. Code Ann., Fam. Law §5-524 to provide appellant with reunification attempts because such attempts would be obviously futile.

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“Reasonable efforts are not limited to Termination of Parental Rights (TPR) cases in Maryland. The TPR statute is found in the Family Law Article of the Annotated Code of Maryland. The child protective cases, called Child In Need of Assistance or CINA cases in Maryland, are governed by the CINA statute, which is found in a separate volume of the Annotated Code of Maryland, the Courts and Judicial Proceedings Article.

“In CINA cases, reasonable efforts findings are required by statute to be made at shelter care, adjudication, disposition and permanency plan hearings. The requirements to make these findings can be found in the Courts and Judicial Proceedings Article at Sections 3-815, 3-817, 3-819 and 3-323. Each section sets out the requirement. Also Section 3-816.1 of the Courts and Judicial Proceedings Article requires reasonable efforts findings at all these hearings, and sets forth criteria that must be

considered to make the reasonable efforts findings. Permanency Plan review hearings, including the first permanency plan review hearing after disposition, must now be held every six months.

“The Court is also required to make reasonable efforts findings at guardianship review hearings. If a TPR has been granted and the child remains under guardianship without being adopted, then a review hearing must be held every six months. This hearing mirrors a permanency plan hearing for children in the CINA cases. The statute governing guardianships is found in the Family Law Article and requires, at Section 5-326, that guardianship reviews be held every 6 months. In addition, the provisions of Section 3-816.1, which set forth the criteria for making reasonable efforts findings, also apply to guardianship review hearings held under Section 5-326 of the Family Law Article.

“In short, Maryland law requires the Court to make reasonable efforts finding at every stage of the proceedings. The only types of proceedings I can think of where the findings are not required are: status conference hearings, advice of rights hearings to parents or a specially set review just to determine if some matter has been attended to or resolved.”

Email from Judge Leah J. Seaton, Associate Judge, Circuit Court for Wicomico County

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“There are a lot of cases that have the “reasonable efforts” language in their dicta - and I will definitely do a more thorough search in the next few days. I make the finding at ALL stages of CINA proceedings, including at Shelter. In fact, I denied a Shelter Care last week (kind of unusual) and still made the finding because I felt that it was warranted, given the In-Home services work that was attempted by the Department. I wasn’t sure of the need to do that -different Judges and Masters differ in Maryland as to whether that finding needs to be made in the case of denied Shelter - but I was concerned that the case may not “go away”, if you know what I mean...and that the efforts made by Mom & Dad to remediate the issues would subside after we cut them loose. If that happened, I wanted a record that the Dept had been involved and had attempted services.

“I rarely hear of counsel arguing that the Department didn’t make reasonable efforts, but it has been raised on at least one occasion that I remember - fairly recently, in fact, where Mom’s attorney argued that the Department failed to offer services specific to Mom’s special needs. I found that reasonable efforts HAD been made, they took exceptions, the Judge affirmed, and I believe it stopped there. By the way, I also made a recent finding that the Dept. had NOT made reasonable efforts: a situation where they had been involved since 2009 with various CPS investigations, all ruled “Unsubstantiated” but all concerning the same repetitive issues - but the parents had always managed to duck out of any services. The Dept. had closed their file on this family 3x, mainly because the parents wouldn’t accept services. Finally, they filed a CINA petition but asked for an OPS. I specifically found that they had not made the requisite reasonable efforts - because, in my mind, that petition should have been filed 2-3 years ago. No one asked for that finding; it was just that the history of the family upset me and I couldn’t justify the Dept. continuing to walk away.

“I, for one, would LOVE training on “reasonable efforts” - what it means throughout various jurisdictions, what to look for, etc.”

“The reasonable efforts issue is litigated in court proceedings. The attorneys do raise the issue at the shelter care hearing, and the court must make a specific factual finding regarding same. Currently, Maryland makes use of model court orders, but they are not mandatory. It is our hope that over the next few years, all of Maryland’s juvenile courts will use the model court orders. The model order for shelter care directs the judge to make the following factual findings regarding reasonable efforts:

Required Findings: Reasonable Efforts.

- That reasonable efforts to prevent or eliminate the need for removal of the child
- Were made. Those efforts were \_\_\_\_\_.
- Were not made, because the following emergent circumstances existed:  
\_\_\_\_\_.
- Were not made. The efforts or absence of reasonable efforts were not reasonable for the following reasons: \_\_\_\_\_.
- That clear and convincing evidence exists to relieve the Department of Social Services of the requirement to provide reunification services as this case involves abuse/torture/crimes of violence/prior involuntary termination of parental rights in accordance with Courts and Judicial Proceedings Article § 3-812.
- That the Court has not determined whether reasonable efforts were made or whether there was an emergent situation. Such finding will be made as a result of evidence presented at the Adjudication, and will be certified in a subsequent Order.

Email from a staff attorney working with Tracy Watkins-Tribbitt, MSW, Director, Foster Care Court Improvement Project, Maryland Judiciary/Court of Appeals

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## MASSACHUSETTS

**STATUTES:** MASS. GEN. LAWS Ann. Ch. 119, §§ 1, 24, 29B, & 29C (West Supp. 1989);  
Aggravated circumstances: G.L. chapter 210, section 3.

## CASE LAW:

*Adoption of Ilona*, 459 Mass. 53, 944 N.E.2d 115 (2011) – TPR – Affirmed.

A child was removed from a cognitively disabled mother (major depression & learning disorder). The Department of Children and Families has a duty to make reasonable efforts to preserve the original family including services to accommodate the special needs of a parent. A petition was filed and the trial judge concluded the parents could not safely care for child and services would not help

and ordered adoption. 2 clinicians agreed. Mother appealed stating services could assist her to become a competent parent. Law: “the department must ‘match services with needs, and the trial judge must be vigilant to ensure that it does so.’ Citing *Adoption of Lenore*, 55 Mass. App.Ct. 275 770 N.E.2d 498 (2002). The appellate court stated that “[h]owever, even where the department has failed to meet this obligation, a trial judge must still rule in the child’s best interest.” “A determination by the court that reasonable efforts were not made shall not preclude the court from making any appropriate order conducive to the child’s best interest.”

*Adoption of Gregory*, 747 N.E.2d 120(2001). The appellate court noted that there were some shortcomings in the delivery of services, but the mother received weekly counseling, monthly sessions with her psychiatrist, a nurturing class, and anger management training. She also received help with visits.

*In re Elaine*, 764 N.E.2d 917,922 (Mass. App. Ct. 2002) – TPR – Reversed.

The appellate court reversed in part because the agency had done little to assist father find housing for himself and his children. The agency gave father a list of places to call which was “insufficient, especially given that it did not contact him until several days before filing a petition to terminate his parental rights.”

*In re Talbot*, No. 01-P-1831, 2002 WL 31455226 at 2 (Mass. App. Ct. Nov. 4, 2002) – unpublished – TPR – Reversed.

The appellate court found that the agency had offered the mother a “paucity of services,” and that the trial court relied upon stale information.

*Adoption of Lenore*, 770 N.E.2d 498 (Mass. App. Ct. 2002) – TPR – Affirmed.

The children were removed because the parents were disabled. They argued that the agency did not provide them with reasonable efforts designed to address their disability. The court found the agency’s efforts are limited to linking parents to existing services and that it is not required to fill the gaps in available services on its own. The agency is not required to look hard for available services and can rely on an expert opinion concluding that no services exist. The parent’s applications for services recommended by the child protection agency were rejected. The appellate court chided the department for failing to use its own expertise, but affirmed the termination of parental rights. “[T]he requirement includes accommodating the special needs of biological parents who are handicapped or disabled. Nevertheless, heroic or extraordinary measures, however desirable they may at least abstractly be, are not required.” (at 503).

*Adoption of Mario*, 686 N.E.2d 1061 (Mass. App. Ct., 1997) – TPR – Affirmed.

The duty of the agency is to engage in reasonable efforts “contingent upon the mother’s fulfillment of her own parental responsibilities” and cooperation with the agency. (1066) However, the court focused on the parents’ lack of cooperation rather than the failures of the department.

*Adoption of Gregory*, 501 N.E. 2d 1179 (Mass. App. Ct. 1986) – Permanent removal from parental care without parental consent – Affirmed.

The appellate court affirmed the trial court finding of reasonable efforts despite the fact that the agency made no efforts for the first 20 months after the children were removed. At that point the

agency informed the institution where the children had been placed to work with the parents. The court concluded it was the parent's failings, not the agency's that made reunification impossible.

*Adoption of Madison*, No. 05-P-390, 2005 WL 2861460, (Mass. App. Ct. Nov. 2, 2005) – TPR – Affirmed.

In affirming a termination of parental rights the court noted that “this was not the Department's finest hour.” The Department had been involved with a needy family for many years yet did not enter a single service plan that would have established its efforts to preserve the family into the court record. The court found reasonable efforts had been offered since the parents had rejected some of the services offered.

*Adoption of Adam*, 500 N.E.2d 816 (Mass. App. Ct. 1986) –TPR – Affirmed.

While affirming a termination, the appellate court noted that it was “unusual” for a department case worker to serve as a therapist for a mother seeking reunification with her son.

*Adoption of Nicole*, 662 N.E.2d 1062 (Mass. App. Ct. 1996) – TPR – Affirmed.

In an appeal from a termination of parental rights the appellate court noted: “it is fair comment, for instance that the [agency charged with working with the father] did not do much for the father, but it is equally fair comment that [the agency] had little with which to work.” (at 1063). Further, the court noted that it would not allow the children involved to be penalized because of the deficiencies of the department.

*Adoption of Carlos*, 413 Mass. 339; 596 N.E.2d 1383 (Supreme Court of Massachusetts, 1992) –

This was a request to dispense with the consent of the mother to an adoption of her child. Trial court denied request. Affirmed on appeal. The trial court looked to the child's welfare and the progress the mother has made in dealing with the issues of the sexual abuse of her daughter.

### **Mental Health Issues**

*Care and Protection of Bruce*, 44 Mass. App. Ct. 758; 694 N.E.2d 27 (Mass App. Ct. 1998) – Mother appeals from a trial court decision that she is unfit to parent. Reversed.

Evidence that a parent suffers from bipolar disorder and refused to take prescribed lithium did not clearly and convincingly support the unfitness finding. There must be a connection between the mental disorder and the parent's ability to parent – there was none proven here.

*In re Eduardo*, 57 Mass. App. Ct. 278, 782 N.E. 2d 551 (2003) – TPR – Affirmed.

A mentally ill mother's appeal was rejected the appellate court stating that DSS's obligation to work with the mother was contingent upon her own obligation to fulfill various parental responsibilities including seeing and utilizing appropriate services. The trial judge found that the agency had repeatedly offered services to the parents but their efforts were rebuffed and that the mother failed to continue treatment or to take prescribed medications. The court also said the mother should have claimed a violation of her rights under either the Americans With Disabilities Act or other antidiscrimination legislation, but she did not do so in a timely fashion.

parents on the basis of failure to exercise reasonable efforts are difficult to find.... “Beyond these two cases, there do not appear to be instances where a judgment of termination was overturned by an appellate court on the ground that the Department did not use reasonable efforts to reunify the family.” (“Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases,” *Rutgers Journal of Law & Policy*, Vol. 7:1, Fall, 2009, at p.111).

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Reasonable efforts to prevent removal is not litigated in Massachusetts. The finding of reasonable efforts to prevent removal is “pro forma” in Massachusetts. Attorneys are reluctant to raise any reasonable efforts issue because of fear that the agency will lose Title IV E reimbursement dollars.

Summary of conversation with Amy Karp, Amy Karp, Training Director, Children and Family Law Division, Committee for Public Counsel Services, Boston, MA

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“If there are services that would have eliminated the need for removal, counsel should consider asking for a finding that DSS failed to make reasonable efforts. For example, if a parent left his or her child home unsupervised because the parent needed to work and did not have after school child care, counsel can argue that DSS should have provided that service. Alternatively, a child might be able to remain home with a cognitively limited parent if DSS provided a parent aide. On occasion, DSS will argue that at the moment of removal there were no services that reasonably could have permitted the child to stay home. However, particularly if the family was known to DSS for some time before it filed the petition, counsel can argue that DSS had the opportunity but failed to provide services to keep the family together.

“Judges generally prefer not to enter a finding that DSS has failed to make reasonable efforts because they do not want DSS to lose federal funds. Moreover, a finding that DSS failed to make reasonable efforts prior to removal of the child from his or her parents’ custody has the most severe consequences because it bars DSS from *ever* receiving federal reimbursement for the child’s placement. *See* 45 CFR § 1356.21(b)(1)(ii). (A finding that DSS failed to make reasonable efforts toward accomplishing the child’s goal at a permanency hearing may be “cured” and the funds restored. *See* 45 CFR § 1356.21(b)(2)(ii).) “

This is an excerpt from § 3.6 of Child Welfare Practice in Massachusetts, written by Julliette Hall, Esq., New York, NY.

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## **MICHIGAN**

**STATUTES:** MCL 2.004; MCL 712A.19a(6); MCL§§712A.13a(8)(a) et seq. Memo on file with all sections listed. Most important: R/E to prevent removal §712A.18f(1); R/E to reunify §714A.18f(3) & (4), 19(6), (7); Concurrent planning §714A.19(12) (13). Aggravated Circumstances 19(a) – R/E to permanency 19c(1)(c).

## CASE LAW:

*In re Rood*, 763 N.W. 2d 587, 483 Mich. 73 (2009) –TPR – Reversed.

The appellate court held that the father was deprived of minimal due process and reasonable efforts. “In sum, the state deprived respondent of even procedural due process by failing to adequately notify him of proceedings affecting his parental rights and then terminating his rights on the basis of his lack of participating without attempting to remedy the failure of notice. The state was aware of respondent’s status as A.’s father, his correct address, his release from jail, and his interest in obtaining custody of A. The state failed to make reasonable efforts to apprise him of the ongoing proceedings after becoming aware that most of its attempts at notice and contact had failed .... “he did not receive sufficient information to meaningfully participate-or to decline to participate-in the pre-termination proceedings.” At 118-9. Reasonable efforts are required by 712.19a(2) unless there are aggravated circumstances.

*In re Mason*, 486 Mich. 142, 782 N.W.2d 747 (Mich. App. 2010) – TPR – Reversed.

The appellate court held that reasonable efforts extends to incarcerated parents. The incarcerated father was not afforded a meaningful and adequate opportunity to participate in child protective proceedings – The TPR was premature. DHS abandoned its statutory duty to involve him in the reunification process and to provide services necessary for him to be reunified with his children. Incarceration alone is not a sufficient reason for TPR. Father’s request to participate in dependency proceedings was overlooked. The social worker had not spoken to father. Reasonable efforts must be offered to both parents unless there are aggravated circumstances which were not present in this case. No specific services in service plan. DHS manual states: “Casework service requires the engagement of the family in development of the service plan. The engagement must include an open conversation between all parents/guardians and the [foster care] worker....” The agency cannot start TPR proceedings if the state has not provided reasonable efforts. MCL712A.19a(6); Citing *In re Rood*.

*In re D.M.K.*, 289 Mich. App. 246, 796 N.W.2d 129 (2010) – TPR – Reversed.

The incarcerated father was not able to participate in proceedings and was never given a plan for reunification. The failure by, inter alia, the circuit court to adhere to the procedures in MCR 2.004(B) and (C) deprived the father of the opportunity to participate in all proceedings for several months. The father’s incarceration did not alter the fact that his participation could have supplied highly relevant information about, inter alia, his son’s special needs. Services should have been provided pursuant to MCL 712A.19a(6)(c) prior to termination proceedings.

*In re JK*, 468 Mich 202 (2003) – TPR – Reversed.

The mother fulfilled every requirement of her parent-agency agreement, which negated any statutory basis for termination. Because the mother filed a timely application for leave to appeal to the court pursuant to Mich. Ct. R. 7.302(C)(2), the trial court improperly allowed the adoption of the child before resolution of the application, and the adoption was invalid for violating Mich. Comp. Laws § 710.56(2) and Mich. Ct. R. 7.215(F). compliance with service plan is evidence of ability to provide proper care and custody. The service plan is presumed adequate to remedy the problems identified by the agency.

*In re Rogers II*, No. 246085, 2003 WL 21752814 (Mich. Ct. App.) – “[One of the] principal issues



that caused removal of the children...[was the mother's] alcoholism... However, despite the knowledge that traditional out-patient treatment programs were unsuccessful, the agency placed [the mother] back into the same [alcohol treatment] program that had previously failed to address the severity of her problem.” (at p.3).

*In re Mason*, 486 Mich. 142 – TPR – Reversed.

The incarcerated father was not provided services nor an opportunity to participate in all of the hearings. The Supreme Court found that the trial court and state human services department's failure to include him in most of those hearings, despite being required by MCR 2.004 to make telephone communication arrangements for incarcerated parents, meant he was not given a meaningful chance to participate. It also added that his parental rights could not be terminated based on his incarceration alone... The termination was premature and reversed by court.

*In re Newman*, 189 Mich App. 61 (1991) –TPR – Reversed.

The court held that the probate court erred in finding the conditions in the home to be a basis for terminating the parental rights because the parents were not given a full and fair opportunity to maintain the home. The court held that the conclusion that the parents had failed to adequately supervise their children was premature.

## **Mental Health Issues**

*In re Terry*, 240 Mich. App. 14, 610 N.W.2d 563 (2000) – TPR – Affirmed.

The parent was developmentally disabled. The appeal claimed that reasonable efforts were not provided and cited the Americans with Disabilities Act (ADA) for support. The appellate court said that if services do not reasonably accommodate the disability, then reasonable efforts cannot be found. The parent has the obligation to raise the issue. Reasonable efforts are not well defined, but they stop short of providing full-time live-in assistance. The court also rejected the claim that the ADA applied in the context of termination of parental rights cases.

*Matter of Zelzack*, 180 Mich. App. 117, 446 N.W.2d 588 (1989) – TPR – Affirmed.

The mentally ill father pled no contest to child neglect on condition the child would be returned. A psychological evaluation concluded that father could not respond to treatment. The court without specifying concluded the father had not fulfilled the service agreement and upheld the TPR.

## **ICWA Cases**

*In re Roe*, 281 Mich. App. 88, 764 N.W.2d 789 (2008) – TPR – Reversed.

No finding of Active Efforts so the case was remanded. Adopted the “futility” test in ruling on the “active efforts” issue under § 102(d) of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C.A. § 1912(d)) may be met in certain cases without additional services. The court held that “active efforts” require more than merely “passive efforts,” but efforts that specifically include tribal services and other culturally appropriate services.

*In re Dougherty*, 236 Mich.App. 240, 599 N.W.2d 772 (Mich. App. 1999). TPR – Affirmed.

Respondent was not entitled to the active efforts of reunification found in § 1912(d) because the family was already disbanded by the time the termination action had begun. Respondent moved away

from his children, failed to financially support them, and failed to take an active role in their lives. The state, through the testimony of experts, proved that any relationship between respondent and the children would seriously damage the children.

*In re Morgan*, 140 Mich. App. 594; 364 N.W.2d 754 (Mich. App. 1985) – TPR- Reversed.

There was no attempt by the state to show that active efforts had been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts had proven unsuccessful.

*In re Elliott*, 218 Mich. App. 196, 554 N.W.2d 32 (1996) - TPR – Reversed.

The trial court terminated parental rights using the “existing family exception” to the ICWA. The appellate court noted the importance of the ICWA policies, reversed and ordered the trial court to begin the proceedings over from the beginning.

*In re JL*, 483 Mich. 300 (2009) – TPR – Affirmed.

The testimony and other evidence demonstrated beyond a reasonable doubt that the mother’s continued custody of the child would likely have resulted in serious emotional or physical damage to the child. The extensive services provided to the mother before the DHS filed the instant termination petition satisfied the active efforts requirement. Active efforts are affirmative, more proactive, and amount to more than reasonable efforts. Efforts need not be current but cannot be in distant past and must be relevant to current circumstances. The court observed that the version of the State Department of Human Services’ (DHS) Children’s Foster Care Manual in effect at the time of the proceeding to terminate parental rights at issue in the present case stated that “‘reasonable efforts’ as defined in other parts of current DHS policy are not sufficient.”

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Judge John Steketee (ret.) a national leader in child welfare law, commented that reasonable efforts offered by the child welfare agency in his jurisdiction (Kent County) are excellent. He comments:

By the time a petition is filed, the family has been given a wide array of social services. Those are well documented. Filing a petition clearly becomes a last resort. The result is that in Kent County more than 50% of the petitions which are filed result in a termination of parental rights and an adoption. All parties agree that social services has offered whatever services were appropriate, but the family was not in a position to take advantage of them.<sup>547</sup>

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“We have good compliance in the state on reasonable efforts to reunify. There are always workers or counties who do not go the extra mile to engage the parents – like not providing transportation assistance – and delayed referrals. But for the most part the trial judiciary insists on service and they are provided by the agency, with one caveat. If the state contracts with a private (adoption) agency to do the foster care, none of what I just said above is true. Private agency compliance is a real problem in Michigan. The Legislature is requiring the agency to give them about half the foster care and all the adoptions.

“Also, the intermediate appeal court reviews the reasonable efforts to reunify in termination appeals and reverses on the basis.

“Yes, I raise the reasonable efforts to prevent removal. If I am involved from the start, at the preliminary hearing I argue no reasonable efforts as a basis for vacating the removal order. It only worked one time. I try to get an evidentiary hearing on the issue because this is what the court rule requires.

“Very few parent attorneys contest the lack of pre-removal efforts. In fact, most do not contest the removal order – just the subsequent placement order. In part, that’s because the preliminary hearing rule does not provide for judicial review of the removal order.

“On the reasonable efforts list the agency puts in the removal petition, sometimes the only efforts listed are “CPS and police investigation”. I don’t think those are the efforts to prevent a removal-but are efforts to obtain a removal. Judges issue removal orders even if “investigation” is the only effort listed.

“I practice statewide and do training on removals. I also do civil rights litigation on CPS cases. So I keep up on what’s going on. And pre-removal efforts are usually either a coerced safety plan or no efforts or investigations-as-efforts. There are new agency policies about pre-removal efforts that are really good.”

Email from Elizabeth Warner, Attorney, Jackson, Michigan. A copy is available from the author.

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“Reasonable efforts findings in our courts are mostly perfunctory for the purpose of not losing Title IV-E funding. For this reason the foster care caseworker’s report to the court of their efforts are rarely challenged by the jurist or attorneys. From what I understand, the parent attorney will at times challenge reasonable efforts at the preliminary and adjudication hearings, but we do not see/review that part of the file.

“Casey Anbender, who is our Title IV-E expert here at SCAO, has provided the courts with strategic ways of making *no reasonable efforts* findings when warranted, and not losing funding. However, it is very rare where courts have been willing to make this finding.

“When we read court order’s in our case reviews there are times things are written as reasonable efforts on the order that provide little information, and then there are other times when substantive efforts are noted on the order -but are not found in the actual case services plan - which is where they are to be documented. The state has a new standardize court report that also is structured to clearly list reasonable efforts, however it is not yet being used statewide. In consulting with Casey, she noted similar findings to what I have noted in her random reviews.

“When we do statewide new judges training we address this quite thoroughly as a mandate of ASFA, and Casey addresses this in her local trainings.”

A survey of Michigan judges found that 20 % said they always concluded that R/E had been made. Another 70% said they rarely concluded otherwise. 40% admitted that they lied – that they made R/E findings in cases where the judges really didn't believe it. They did so because of their fear that the state would lose federal funding. Muskie School of Public Service Cutler Institute For Child and Family Policy, University of Maine, and American Bar Association Center for Children and the Law, "Michigan Court Improvement Program Reassessment," August 2005.

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## **MINNESOTA**

**STATUTES:** MINN. Stat. Ann. §§ 260.012(a), (b)(1)-(2), (c), 260C.301 (West Supp. 2002) – Courts must consider whether services were relevant, adequate, culturally appropriate, available, accessible, consistent, timely, and realistic. The court must “ensure that reasonable efforts, including culturally appropriate services by the social services agency, are made....” The state bears the burden to show the services provided as outlined in a six-factor test. (1) Were the services “(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; (6) realistic under the circumstances.” [subdivision (c)]. But TPR can take place when “the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship,” [subd. (b)(2)] but only if “reasonable efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or reasonable efforts would be futile and therefore unreasonable.”[ID]. § 260.221(b)(5) (Supp. 1990); No R/E if parent “palpably unfit” § 260.221.1(4) (West, 1998). Also R/E not required ‘if a termination of parental rights petition...has been filed alleging a prima facie case that the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances.’ MINN Stat. § 260.012(a)(3).

## **CASE LAW**

*In re Welfare of P.R.L.*, 622 N.W. 2d 538 (2001). TPR – Affirmed.

The mother remained in an abusive relationship for years and would not enforce restraining orders. Her continued contact with the abuser led to the termination. TPR upheld because of failure to end relationship. “Respondent’s relationship with [her abuser] is, and has been for years, the primary basis of her unfitness to be a parent.” (at 545)

*In re Child of E.V.*, 634 N.W. 2d 443 (2001) – TPR – Reversed.

The mother was the victim of abuse and her child was removed. The abuser was deported. The mother completed services, but denied child was ADHD. Appellate court reversed TPR saying mother did enough to address the problems that brought the child to the attention of the court. The trial court must explain ‘why certain case plan components were necessary to correct the conditions that

first prompted public intervention.’ The case plan must address what is “necessary to correct the conditions that led to the out-of-home placement.” (p. 447). (citing *In re M.A.* [below]). The case plan must not “consist of a litany of required services that [are] not related to the conditions that eventually gave rise to the dependency adjudication.”

*In Matter of Welfare of J.A.*, 377 N.W.2d 69 (Minn. Ct. App. 1985) TPR – Affirmed.

The court concluded that there were adequate grounds for termination. The court noted that the mother, despite reasonable social service efforts, had failed to correct the conditions of neglect and that competent medical evidence indicated that the mother’s course of conduct, dangerous to her child and to herself, involved a character disorder that could not be remedied through any treatment plans known to be available. “To measure the adequacy of services, it is necessary to learn whether the services go beyond the mere matters of form, such as scheduling of appointments, so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent with the child.” (at pp 80-81)

*In the Matter of the Welfare of M.A. and J.A.*, 408 N.W.2d 227 (Minn.App.1987) – TPR – Affirmed.

The parents gave their children voluntarily to agency. There was a case plan for each parent. The parents were poor and the mother had a volatile temper. Visits ended with both parents because of children’s reactions and a psychologist’s testimony. Parental unfitness was the agency’s theory. Reasonable efforts were not provided. Agency did not provide any assistance to relieve existing financial pressures. No assessment of mother’s ability to achieve case plan tasks. “At a minimum ‘reasonable efforts’ requires the responsible agency to provide those services that would assist in alleviating the conditions leading to the determination of dependency.” (at p. 235). “There is no evidence that the welfare agency assisted in locating adequate and affordable housing.” (at p.236). “In addition, the plan was primarily a litany of required services that were not related to the conditions that eventually gave rise to the dependency adjudication.” (at p. 236). However, the trial court ruling is affirmed.

*In re J.S.S.*, No. C2-960547, 1996 Minn. App. LEXIS 1152 (Minn. Ct. App. Oct. 1, 1996 (unpublished) – TPR – Affirmed.

The court found that “the record contains sufficient evidence to support the trial court’s findings that the agency made reasonable efforts to reunify the family. The court stated that the record contained sufficient evidence to support the trial court’s findings that the mother was offered adequate chemical dependency services. The court stated that the mother had admitted that she was chemically dependent, and that she neither attended the agreed-upon treatment program nor voluntarily sought treatment elsewhere. The court stated that it was not inappropriate as a matter of law for the trial court to have determined that the difficulties between the mother and the social worker did not justify ignoring the children.

*In re Welfare of H.K.*, 455 N.W.2d 529, 532 (Minn. App. 1989) – TPR of Mother’s rights – Affirmed. Step parent adoption. Reasonable efforts are more than matters of form and must include real, genuine assistance in alleviating the conditions that gave rise to the dependency adjudication. Held that these efforts were reasonable.

*In re Welfare of I.A.Q.*, No. C4-01-680, 2001 WL 1407698 (Minn. App., 2001) – TPR – Affirmed.

The services offered by the agency were not reasonable, but the parental response to efforts made any further services futile. The state's shortcomings in making efforts at reunification were reasonable due to the mother's resistance to change.

*In re Welfare of A.H.*, 402 N.W.2d 598, 604 (Minn. Ct. App. 2000) – TPR – Affirmed.

The mother and children had mental health problems. The appellate court affirmed holding that the evidence indicated that the children had special needs which the birth mother could not take care of and the birth mother's debilitating mental illness was very unlikely to be remedied. The children were properly found to be neglected and in foster care because the birth mother had been receiving help from a variety of county agencies for several years. To measure the adequacy of services, it is necessary to learn whether the services go beyond mere matters of form, such as the scheduling of appointments, so as to include real, genuine help to see that all things are done that might conceivably improve the circumstances of the parent and the relationship of the parent to the child."

*In re A.R.M.*, 611 N.W.2d 43, 46 (Minn. Ct. App. 2000) – Placement with father – Affirmed.

The mother obtained custody of the children after a divorce. When she neglected the children, they were placed with the father. Reasonable efforts were offered before the placement "...the county had used 'all available resources' to try to reunite mother and the child."

*In re J.J.B.*, 390 N.W.2d 274 (Minn. 1986) –TPR – Affirmed.

Reasonable efforts found as court noted that agencies in two different counties helped the mother with the assistance of twenty-one different agencies. The court held that the mere quantity of service, a review of the record convinced the court that, from the determination of dependency and transfer of custody until visitation was finally discontinued, the county did make a reasonable effort to reunite mother and daughter.

*In re K.L.P.*, No. C1-99-1235, 2000 WL 343203 (Minn. Ct. App.) – The case plan must require the agency to "provide those services that would assist in alleviating the conditions leading to the determination of dependency." At 5.

*In re D.T.J.*, 554 N.W. 2d 104 (Minn. Ct. App. 1996) – TPR - Affirmed.

Reasonable efforts included a free bus pass and paid-for babysitting services so that the mother could attend visits with her children and school conferences on their behalf and for her to attend recommended drug treatment programs.

## **Mental Health Issues**

*Matter of Welfare of T.M.D.*, 374 N.W.2d 206 (Minn. Ct. App. 1985) – TPR – Affirmed.

The four children were removed from the borderline retarded mother because they received injuries while in her care. Although the mother attempted to fulfill the goals set by court order for return of her children by seeking numerous services and parenting classes, professionals administering those programs concluded that she was incapable of changing to become a proper parent. Testimony on behalf of the mother indicated that she had moved to a safer neighborhood, kept a clean house, made genuine efforts to achieve the goals set for her, was more knowledgeable about children, and did not lose her temper as quickly as she had in the past. However, she was not capable of dealing with the

psychological and behavioral problems her older children had developed, and visitation with them had been dramatically curtailed because the mother's behavior exacerbated their emotional distress.

*In re Welfare of A.R.G.-B.*, 551 N.W.2d 256 (Minn. Ct. App., 1996) – TPR - Affirmed. Reasonable efforts included housekeepers, in-home skills counselor and in-home public health nurses, along with a broad array of outpatient services.

*In re M.M.D.*, 410 N.W. 2d 72 (Minn. Ct. App. 1987) – TPR – Affirmed. The appellate court affirmed the trial judge's determination that the mentally ill mother's lack of progress on a reunification plan justified the TPR.

*In re Welfare of S.Z.*, 547 N.W. 2d 886, 893 (Minn. 1996) – TPR of father's rights. Affirmed. The father's long-term mental illness, with poor prognosis for recovery, coupled with the statements made by him which indicated his inability to recognize his child's needs, supported the district court's determination that additional services would be futile. Additional services were not likely to bring about lasting parental adjustment enabling the placement of the son with the father within a reasonable period of time.. "...the best interests of a child are not served by delay that precludes the establishment of parental bonds with the child by either the natural parent or adoptive parents...." The Supreme Court also stated that the trial court ensure that the social services agency has made reasonable efforts to reunite the family, but that part of that determination may be a finding that it would be unrealistic to provide services in a particular case.

*In re Welfare of A.V.*, 593 N.W.2d 720 (Minn. Ct. App. 1999) – TPR – Affirmed. Four children (two of whom were developmentally delayed) were removed from cognitively delayed parents. The appellate court noted that some of the services were not realistic, but found there were no reasonable alternatives that could enable the parents to acquire the necessary skills to enable them to parent their children.

*In re Welfare of B.L.W.*, 395 N.W.2d 426 (Minn. Ct. App. 1986) – TPR- Affirmed. The child was removed from the mentally retarded mother. During the reunification period the mother was permitted to live in the foster home and receive intensive education and role modeling. The evidence showed that she was not able to acquire sufficient parenting skills. Reasonable services had been offered.

*Matter of J.M.*, 574 N.W. 2d 717 (Minn. 1998) – TPR – Affirmed. After removal and during the rehabilitation period, the mother remained secretive about her living circumstances and was unable to assume the responsibilities of parenthood. The agency made every reasonable effort to assist the mother.

*In the Matter of the Welfare of the Children of B.M., J.M. and C.G., Parents*, MN Court of Appeals, A13-2025, April 21, 2014 – TPR – Reversed.

The father was mentally impaired (I.Q. 73) – The father completed the service plan, but the other 2 parents agreed to a TPR. The appellate court reversed stating that mental illness in and of itself is an insufficient reason to TPR. Furthermore, the county did not permit father to demonstrate he could parent with overnight visits. This was a denial of reasonable efforts.

## ICWA

*In re Welfare of Children of S.W.*, 727 N.W.2d 144 (Minn. Ct. App. 2007) – TPR - Affirmed. The state offered mother with mental health problems an array of services, including a substantial number of supervised and unsupervised visits totaling three weekly two-hour visits. The services were exhaustive and specifically designed to assist the mother and her individual needs. The court concluded that since this was a case governed by the ICWA that the mother by law deserved and received active efforts.

*In re Child of E.M.D.*, 2004 WL 1728610 (Minn. Ct. App. 2004), the court held that the efforts made throughout the course of the proceedings must be considered in determining whether the active requirements under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) is satisfied. Otherwise, the court explained, any interruption in the provision, however brief or justified, would compel a determination that active efforts were not made.

*In re J.B.*, 698 N.W.2d 160 (Minn. App. 2005) – TPR – Affirmed. The father’s failure to timely participate in the proceedings and the unreasonable restrictions he put on his receipt of proffered services rendered defective his argument that active efforts were not made to avoid the breakup of the Indian family, as required by § 1912(d).

*In re Welfare of T.J.J.*, 366 N.W.2d 651 (Minn. Ct. App. 1985) – TPR – Affirmed. The finding that attempts to reunite the mother with her children would seriously harm the children was proven beyond a reasonable doubt as required by 25 U.S.C.S. § 1912(f) of the Indian Child Welfare Act and was supported by evidence of the mother’s chronic failure in parenting and by the testimony of psychologists, who were qualified as experts under the Act. The county made sufficient remedial efforts to reunite the mother with her children as required by § 1912(d) through monthly visits with a social worker.

*In re Welfare of M.S.S.*, 465 N.W.2d 412 (Minn. Ct. App. 1991) - TPR – Reversed. The trial court terminated the father’s parental rights but the court reversed that decision. Under § 1912(d), any party that sought to terminate a Native American’s parental rights was required to demonstrate that active efforts were made to provide remedial services and rehabilitative programs to prevent the breakup of the family and that those efforts were unsuccessful. The court held that the adequacy of those efforts needed to be proven beyond a reasonable doubt and held that the county had not reached that standard.

### **Aggravated Circumstances**

*In re S.Z.*, 536 N.W.2d 886 (Minn. Ct. App. 1995) – TPR without services - Affirmed. Father palpably unfit per statute. “In some cases, any provision of services or further provision of services would be futile, and therefore unreasonable.... We agree with the district court’s finding that, in this case, [a]dditional services are not likely to bring about lasting parental adjustment... within a reasonable period of time.” Father was mentally ill. (at 892)

*In re Children of Vasquez*, 658 N.W. 2d 249, 252 (Minn. Ct. App. 2003) TPR – Affirmed. Father incarcerated for a lengthy period. No services offered. “Because of the clear futility of



returning the children to appellant’s day-to-day care, the county was not required to provide appellant with a case plan or services for the purpose of reunification.” “Under Minnesota case law, imprisonment alone is not sufficient to constitute abandonment. But imprisonment combined with other factors, such as parental neglect and withholding parental affection, can support a finding that a parent has abandoned his child.” (at 254) Many cases – mostly “failure to correct” leading to TPR. “[A] case plan aimed at returning the children to [the father’s] day-to-day care would be futile because of his lengthy incarceration....” (at 251).

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COMMENT: Jeanne Kaiser – Minnesota social services agency provides exhaustive services for parents. The Minnesota agencies take the reasonable efforts requirement very seriously. Kaiser, J. “Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases,” *Rutgers Journal of Law & Public Policy*, Vol. 7:1, Fall, 2009, at pp. 130-131.

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“Yes, the lawyers are lazy about raising reasonable efforts prior to CHIPS. Most cases that come in for emergency protective care hearings are fairly egregious and the lower level cases are dealt with through Family Assessment which is a voluntary program in which the family receives child protection services but no court supervision. So, if the case comes to court, it because the abuse/neglect is very serious; because there is a past history or because voluntary services (reasonable efforts) have not worked. That is the case in Hennepin County—I cannot really speak to the rest of the state. We are an odd combination of metro areas (Minneapolis, St. Paul, Duluth and Rochester) and judicial districts much larger rural areas made up of many counties.”

Partial email from Judge Kathryn L. Quaintance, Hennepin County, Minnesota.

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“Relative to other states’ laws, Minnesota law provides a more specific definition for reasonable efforts.” [548](#).

“The Minnesota appellate courts have been proactive in defining and determining reasonable efforts.”[549](#)

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## MISSISSIPPI

**STATUTES:** Miss. Code Ann. §43-51-3, §§ 43-21-301(4)(c), -309(4)(c), -405(6), § Miss. Code Ann. § 97-5-39(2) (Rev. 2006) describes aggravated circumstances. § 93-15-103 (2011) describes the legal bases for termination of parental rights. Miss. Code Ann. § 43-21-609(b), creating durable legal custody as a dispositional alternative.

## CASE LAW:

*In re S.A.M.*, 826 So.2d 1266 (Miss. 2002) – Child placed in durable legal custody of foster parents.

Affirmed.

Reasonable efforts are not required by the statute. The child had been severely physically abused and removed from the mother who at the time was living with her boyfriend.

*Brown v Panola County Dep't of Human Servs.*, 90 So. 3d 662 (Miss. Ct. App. 2012) - TPR – Affirmed. After removal of her children, the mother refused to sign a service agreement.

Nevertheless, the department of human services (DHS) did not seek termination of the mother's parental rights until almost four years after the children were removed from her care. The mother had had numerous opportunities to sign a service agreement and to comply with its terms, yet she had failed to do so.

*In re S.T.M.M.*, 942 So. 2d 266 (Miss. Ct. App. 2006) - TPR – Affirmed.

The children were removed because of a dirty, unsafe home. The mother was offered services. In this instance, the mother tested positive for cocaine and marijuana. DHS made every effort to assist the mother to reunite with her family. A.E.R. and DHS entered into a service agreement with the goal of allowing A.E.R. to adequately provide for her children and regain custody. The service agreement stipulated that A.E.R. was to complete a psychological evaluation, individual and family counseling, parenting classes, anger management classes, obtain and maintain housing and employment, receive random drug screens (at A.E.R.'s expense), outpatient drug treatment, and maintain regular visitation with her children. Simpson, the social worker initially assigned to A.E.R.'s case, was responsible for making referrals for parenting classes, anger management classes, counseling, and arranging visitation. Early in the case the court noted that it was apparent, despite DHS's efforts, little or no actual progress had been made by the mother.

*In re S.*, 47 So. 3d 715 (Miss. Ct. App. 2010) – Removal of children – Affirmed.

The appellate court stated that a reasonable person could have found, by a preponderance of the evidence, that both children were neglected. The mother was provided a service plan by DHS. As she progressed with the plan, she would be eligible for unsupervised visitation, and ultimately, upon compliance with the plan, the children could be returned to her custody.

*Green v Mississippi Dep't of Human Servs.*, 40 So.3d 660 (Miss. Ct. App. 2010) – TPR of 4 children – Affirmed.

The court held that the parents were offered a service agreement which they failed to complete. This agreement included proof of attendance at Alcoholics and Narcotics Anonymous meetings and maintenance of a stable home.

*H.D.H. v Prentiss County Dep't of Human Servs.*, 979 So. 2d 6 (Miss. Ct. App. 2008) – TPR – Affirmed.

Abuse of one child is enough under Miss. Code Ann. § 93-15-103(3)(c) (Rev. 2004) to terminate a parent's parental rights to all of his or her children. In fact, the Supreme Court of Mississippi has stated that no mother should be permitted to have custody or control of any children if she permits one child to be molested. It is of no matter that the child the parent is convicted of abusing under Miss. Code Ann. § 97-5-39(2) (Rev. 2006) may not be the parent's biological child. At the time of the TPR hearing the children had been in out-of-home care for several years.

*B.S.G. v J.E.H.*, 958 So. 2d 259 (Miss. Ct. App. 2007) - TPR – Affirmed.

Numerous attempts were made to aid the mother in regaining custody of the child, but each time the mother regained custody or visitation with the child, she would abuse drugs and/or leave the child for extended periods in the care of relatives. Furthermore, the mother had a history of drug abuse, she was unable to complete the youth court's requirements to regain custody, and reunification was not in the child's best interest.

*G.Q.A. v Harrison County Dep't of Human Services*, 771 So. 2d 331 (Miss. 2000) – TPR – Affirmed.

The child was removed because of burns that the parents waited a week to seek medical help. The trial court did not err in terminating appellants' rights under § 93-15-103(e)(ii) because appellants refused to attend court-ordered counseling in an effort to rehabilitate themselves from their abusive conduct.

*In re K.D.G. II*, 68 So. 3d 748 (Miss. Ct. App. 2011) - TPR of Father's rights – Affirmed.

The youth court provided him the opportunity to act as a father to his sons through complying with the permanency order and he failed to do so. The father had been out of jail for more than a year and a half before this court determination without making significant efforts to communicate with or support his sons.

### **Aggravated Circumstances**

*G.Q.A. v Harrison County Dept. of Human Resources*, 771 So. 2d 331 (Miss. 2000) – Reasonable efforts are not required if the court finds that the parent has subjected the child to aggravated circumstances as defined by state law.

*T.T. v Harrison County Dep't of Human Servs.*, 90 So.2d 1283 (Miss. Ct. App. 2012) – No services offered – Affirmed.

Severe injuries to siblings and one death were a sufficient basis not to offer reunification services to the child before the court. TPR hearing ordered by the court, but relative placement may still be considered by the court.

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## **MISSOURI**

**STATUTES:** MO. Ann. Stat. § 211.183(1)-(5) (West Supp. 2002) – “The division shall have the burden of demonstrating reasonable efforts.” Definition provided in statute. “R/E means the exercise of reasonable diligence and care by the division to utilize all available services related to meeting the needs of the juvenile and the family.” (4) a court may authorize a child's removal in the absence of R/E by the child welfare agency if it finds that ‘further efforts could not permit the child to remain at home.’ Mo. Ann. Stat. §211.447(3) (termination of parental rights).

### **CASE LAW:**

#### **Reasonable Efforts to Prevent Removal**

*Interest of A.L.W., L.R.W., A.M.W. and H.A.K.*, 733 S.W. 2d 129 (Mo. Ct. App. 1989): Appeal from Disposition – Reversed.

The department received an emergency call about the children. They responded - the children were left alone by mother, and removed the children. Jurisdiction was sustained, but the department failed to prove they had provided reasonable efforts to prevent removal.. No reasonable efforts provided to eliminate the need for removal. The decision was rendered 1 year after removal. Housing was an underlying problem. “The order of disposition entered in each case lacks both the determination of whether or not the Division of Family Services made reasonable efforts to avoid the need to remove each child from the home, what reasonable efforts were, and a detail of the evidence to explain those efforts.”(At 133).

*In re K.L.B.*, 898 S.W.2d 696 (Mo. App. Ct. 1995) – Removal – Reversed.

The infant was taken to a hospital with bruises at various stages of healing. A doctor concluded the bruises were not accidental. At trial the evidence pointed to the mother’s boyfriend, not the mother as the abuser. The court removed the child. The appellate court said that the trial court failed to make findings regarding preventive or reunification efforts by the department including events that have occurred since the entry of the disposition order. The appellate court held that the trial court “may, in its discretion, reopen the case for additional evidence, including events that have occurred since the order of disposition.” (this would be to determine whether an emergency existed at the time of removal).

### **Reasonable Efforts to Effect the Safe Reunification of the Child and Family**

*In the Interest of A.M.K.*, 723 S.W. 2d 50 (Mo. App. Ct., 1986) –TPR – Affirmed.

The children were removed for lack of food, clothing, and electricity. The mother had only sporadic employment. The agency listed services provided and mother’s failure to rectify her problems. The record indicates that DFS attempted to help appellant rectify the conditions and reunite her with the children by providing food and housing, securing a placement for appellant and her children at a residential home that taught parenting skills and promoted self-sufficiency, referring her to community service programs, and directing her to psychological counselors. DFS also arranged visits between appellant and her children. The opinion fails to make the connection between the problems/failures and the agency’s efforts.

*In re R.A. & E.A.*, 913 S.W.2d 142 (Mo. App., 1996) – TPR – Affirmed.

Reasonable efforts were found to be adequate. The agency made family preservation services with aftercare services, psychological evaluations, homemaking services, and a bonding assessment.

*In re R.R.T.*, 744 S.W.2d 829, (Mo. Ct. App. 1988) – TPR – Affirmed.

The court emphasized the parent’s failure to take advantage of available services.

*In re C.B.C.*, 810 S.W. 2d 671, 674 (Mo. Ct. App. 1991) –TPR – Affirmed.

The trial court did not have an obligation under Mo. Rev. Stat. § 211.447.2(3) to make specific findings regarding the efforts of DFS to help the mother. The court held that ample evidence supported the conclusion that termination of the mother’s parental rights was in the best interests of the child. The court reasoned that the mother’s ability to care for herself was marginal at best in light of her

psychiatric disorder and her chemical dependency. The legislation simply “details what actions must be taken by the state[s] in order to be entitled to receive federal...payments.”

*In re S.P.W.*, 707 S.W.2d 814 (Mo. Ct. App. W.D. 1986) – TPR – Reversed.

The court refused to fault the mentally ill mother for failing to comply with the treatment plans because the county had drafted the plans knowing from the outset that they were impossible for the mother to achieve. The appellate court held that the trial court was required to enter a finding supported by sufficient evidence that the plan was appropriate to remedy the parent’s alleged neglect of the children.

*In re C.N.G.*, 109 S.W.3d 702 (Mo. Ct. App. 2003) – TPR – Reversed.

The parent’s failure to rectify harmful conditions was not supported by adequate evidence. The two-year-old child was removed because the mother was abusing prescription medication and leaving her child without proper care for extended periods of time. During the reunification period unsupervised visits were achieved, but the mother relapsed and parental rights were terminated. The trial court stated mother had failed to rectify the problems that brought the child to the attention of the court, but the appellate court said there was evidence that the mother was making progress even though she had not completed the rehabilitation plan entirely.

## **Mental Health Issues**

*In the Interest of N.B.*, 64 S.W.3d 907, 915 (Mo. App. 2002) – TPR – Reversed.

Mother’s mental illness resulted in removal. The appellate court in reversing stated: “the mental illness of a parent is not *per se* harmful to a child.” The decision to terminate parental rights should be based upon an inability to provide a safe and healthy environment for the child rather than the illness of the parent.

*In Interest of C.P.B.*, 641 S.W.2d 456 (Mo. Ct. App. E.D. 1982) – TPR – Reversed.

The court ruled that the children should be placed with the grandparents since the mother’s mental illness did not result in abuse or neglect of the children. The trial court based the mother’s termination of rights on her personality disorder. The trial court further cited the fact that the mother had injured one of the children and pointed to future potential harm. The mother sought review. On appeal, the court reversed the judgment and remanded to the trial court with directions that custody be placed with the grandparents. The court held that while the record established that the children should not have been in the mother’s permanent custody, it did not warrant termination of her rights. The court ruled that the record did not warrant a termination under Mo. Rev. Stat. § 211.447.2(2)(g) because the mother’s mental illness did not render her so mentally deficient that she had repeatedly neglected her children. The appellate court stated that a reunification plan that merely prescribes certain actions for the parent to take without making it clear what criteria would be applied to determine if compliance with the plan produces successful results, cannot be properly evaluated by the court.

*In re W.S.M.*, 845 S.W.2d 147 (Mo. Ct. App. W.D. 2000) – TPR – Affirmed.

The child was removed because of a filthy home and the parent’s refusal to cooperate with social services. Both parents were mentally ill. The mother argued that the services offered did not address her problems.

Finding that the parents had not complied with their agreements to provide suitable housing for their child and to obtain counseling for father's alcohol abuse and to help their parenting skills, the court terminated their parental rights under Mo. Ann. Stat. § 211.447.2(3), where the child had been under the court's jurisdiction for a period of one year, conditions of a potentially harmful nature continued to exist, and that there was little likelihood that those conditions would be remedied at an early date so that the child could be returned to his parents in the near future.

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“This may come as a surprise to you, but in more than 11 years of handling this docket, I have never had an attorney make the argument that the Children's Division had failed to make reasonable efforts to prevent removal of a child. Not once. On a couple of occasions I have made a finding that Children's Division failed to make reasonable efforts, but I did that on my own without the issue ever being raised by counsel. Needless to say, at least in our circuit, there could be some attention given to the issue.

“That having been said, since I took the bench, I perceived that a whole lot more effort asserted to hold families together than when I was in private practice. My guess is it has something to do with the fact that they know I expect them to try to maintain family integrity. Very early in my tenure, I ruled that they had failed to make efforts in a case, and people were shocked, but the practices changed promptly. It has been much better ever since.

“I have no idea what is happening in other portions of the state. I am on the Family Court Committee here in Missouri, so I do have a context from which I could begin to make inquiry about this issue if you would like.”

Email from the Honorable Darrell Missey, Judge, Juvenile Division, Jefferson County, MO.

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“Missouri needs the funding necessary to hire adequately trained child protection employees and to provide salaries that will keep these employees from leaving their positions after a short time. With sufficient training, staff, and funding, child protection agencies would be capable of providing necessary services to families. Without additional resources, the child protection and foster care statutory schemes, regardless of how well planned and potentially useful, will never be implemented in a manner that brings the spirit of the federal laws into actual practice.” Pearson, A., “Law Summary Eulogies, Effigies, & Erroneous Interpretations: Comparing Missouri's Child Protection System to Federal Law,” *Missouri Law Review*, Vol. 69, Spring, 2004, pp. 589-605, at p. 604.

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**MONTANA**

**STATUTES:** MONT. CODE ANN. §§ 41-3-432(1) or 423, & 609(2)(g), 41-3-423;(1989); aggravated circumstances: §41-3-438(1).

**CASE LAW:**

*In the Matter of T.D.D.J.*, 2007 MT 4N (Montana Supreme Court, 2006) – TPR – Affirmed.  
Case plan not completed by father. The evidence showed that efforts to reunify the family were unsuccessful due to the inability or unwillingness of the mother and father to address the concerns raised in their treatment plans. They both had legal and drug-related problems and neither the mother nor the father complied with the majority of their plans. The Social worker’s opinion was not based on contact with father or knowledge of his progress in custody. Father did make progress in prison. Reasonable efforts were not used to get father’s records or to connect with him – 4 letters.

*In the Matter of J.J. & C.J.*, 2001 MT 131, 28 P.3d 1076 (2001) – TPR – Affirmed.  
Abandonment theory. No progress on treatment plan. No visits for six years. Five months may not have been long enough to complete agency recommendations, but “it was certainly long enough to begin work on some of the recommendations.” (at 1079)

*In re B.N.Y.*, 2006 MT 34, 130 P.3d 594 (2006) – Long term placement – Affirmed.  
Reasonable efforts were offered before permanent plan of planned permanent living arrangement ordered. They included therapy and treatment for child. That plan had been unsuccessful in reunification with mother. The mother objected arguing that the Department has not shown that reasonable efforts were made to prevent the need for removal of the child or to reunify the child with her mother. However, the record is replete with [evidence] of the Department’s efforts in this regard. This Court can not conceive of any other “reasonable efforts” which could have been made by the Department, nor has the natural mother provided other alternatives.

## **Mental Health Issues**

*Matter of S.C.*, 264 Mont. 24, 869 P.2d 266 (1994) – TPR – Affirmed.  
There was no testimony that the mother could not be rehabilitated but the appellate court stated that considering that the mother’s depression, anxiety disorder, and borderline personality disorder were so severe that she was hospitalized seven times in a three-year period and her seven-year-old daughter could stay with her for only five months of that time, and taking into account that the mother had complied with two treatment plans but her condition had barely improved, the appellate court held that there was clear and convincing evidence that the mother’s condition would not change within a reasonable period of time and that the trial court had properly terminated her parental rights.

*In re J.V.*, 2003 MT 68, 314 Mont. 487, 67 P.3d 242 – TPR – Affirmed.  
The parties’ four children had been removed from the mentally ill mother’s care after allegations of excessive punishment, non-supervision, inadequate living conditions, and inconsistent and chaotic parenting. The parents agreed to give the Department of Pensions, Health and Human Services temporary custody and to follow individual treatment plans. The court terminated each parent’s parental rights after determining that neither of them had successfully completed their treatment plans, relying on Mont. Code Ann. § 41-3-609(1)(f),

*Matter of J.R.*, 253 Mont. 434, 833 P.2d 1063 (1992) – TPR – Affirmed.  
The mother argued she should have received a treatment plan, but that the state should have paid for her psychological treatment because she was indigent. The court held that the psychologist had concluded that she would not benefit from any form of treatment so that the issue was moot.

*Matter of Custody and Parental Rights of M.M.*, 271 Mont. 52, 894 P.2d 298 (1995) – TPR – Affirmed.

Father who suffered from borderline intellectual functioning argued that the reunification plan did not take this into account. He argued the state should have conducted a psychological evaluation earlier in the case. The court noted that it took the father a year before he participated in the evaluation, that he was represented by counsel when he signed the service agreement, and the father failed to admit and address the problems the treatment plan was designed to overcome.

*In re A.M.*, 201 MT 60, 304 Mont. 379, 22 P.3d 185 (2001) – TPR – Affirmed.

The mentally ill mother argued that she was being discriminated against due to her mental illness, and that was a violation of the Americans with Disabilities Act. The court rejected that claim stating that it was not raised at the trial level.

### **ICWA**

*In re A.N.*, 2005 MT 19, 325 Mont. 379, 106 P.3d 556 (Mont. 2005) – TPR – Affirmed.

The father argued that active efforts had not been provided. The appellate court disagreed pointing out that the caseworker held two family group decision-making meetings and the State paid for the father’s sex-offender evaluation. Although the caseworker arranged a good-bye visit before the children moved to North Dakota to live with relatives for a while, the father failed to appear. Between December 2002 and September 2003, the father disappeared except for one visit to the caseworker to try to talk to his children. With the father so completely unavailable, the caseworker could not have been more active. The father left her no phone number and no address and moved between multiple residences. The State’s efforts were as active as possible. It was the father’s apparent apathy and indifference that prevented him from completing his treatment plans. Without any involvement, even to the absolute minimal level of giving the caseworker his contact information, the father prevented the State from making active efforts at providing more intensive services. The court also held that the term “active efforts” under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) implies heightened responsibility compared to passive efforts, adding that giving a parent a treatment plan and waiting for the parent to complete it would constitute passive efforts.

*In Re G.S.* 2002, 2002 MT 245, 59 P.3d 1063 (2002) – Children removed from mother for 180 days - Affirmed. The appellate court held that while the State Department of Public Health and Human Services (DPHSS) was required to work toward meeting the active efforts requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) from the time the DPHSS becomes involved with a family, it disagreed with the argument of the mother of an Indian child that remedial services and rehabilitative programs should have been offered before removal of the children from her custody. It was unrealistic, the court explained, to require the DPHSS to demonstrate compliance with § 1912(d) prior to a show cause hearing on the underlying proceeding given the complex nature of the issues involved with abuse and neglect proceedings as well as the often emergent circumstances. The court noted that the plain language of § 1912(d) requires the party seeking to effect either foster care placement or termination of parental rights to satisfy the court that active efforts have been made to prevent the breakup of the Indian family. Thus, the court advised, the DPHSS must work towards meeting the active efforts requirement from the time it becomes involved with a family until a show



cause hearing is held.

*In re S.R.*, 97 P.3d 559 (Mont. 2004) – TPR – Affirmed.

The court found that the record showed that the children were in foster care under the physical custody of the Department for 15 of the 22 months prior to the hearing, that remedial efforts were taken and that they were unsuccessful as required by 25 U.S.C.S. § 1912(d), that the father had not completed his treatment plans, and that the Department presented testimony from a qualified ICWA expert, as required by 25 U.S.C.S. § 1912(f), to establish beyond a reasonable doubt that continuation of the parent-child relationship would likely result in continued abuse and neglect and would likely cause serious emotional or physical damage to the children.

*In re A.S.*, 253 P.3d 799, (Montana, 2011) – TPR – Affirmed.

The trial court did not err in terminating her parental rights pursuant to Mont. Code Ann. §41-3-609(1)(f)(i), (ii). She failed to successfully complete three court-approved treatment plans. Specifically, she failed to complete the tasks designed to address her mental health and chemical dependency needs. She missed multiple evaluation appointments or attended them while being too high on drugs to complete testing. The circumstances causing her to be unfit for parenting were unlikely to change.

*In re I.B.*, 2011 MT 82, 360 Mont. 132, 255 P.3d 56 (2011). TPR – Affirmed.

Substantial evidence supported conclusion that Department of Public Health and Human Services made active efforts to provide remedial services and rehabilitative programs to parents of Indian child designed to prevent the breakup of the Indian family, as necessary to support termination of parental rights in compliance with the Indian Child Welfare Act; Department provided in-home trainings, parenting classes, parenting coaching, psychological evaluations to understand better the parents' abilities and limitations, transportation, and visitation services, and record did not support parents' assertion that Department set them up for failure by not providing more visitation sessions and therapy. Indian Child Welfare Act of 1978, § 102(d), 25 U.S.C.A. § 1912(d).

*In re D.S.B.*, 2013 MT 112, 300 P.3d 702 (Mont. 2013) Evidence supported finding that the State made active efforts to provide father was remedial services and rehabilitative programs, in compliance with the Indian Child Welfare Act (ICWA), in child dependency proceeding; the State provided father with two court-ordered treatment plans, supervised visitation, drug testing, chemical dependency treatment, counseling, referrals to treatment providers, in-home services, and parenting coaching, and father failed to avail himself of the services before he was incarcerated. Active efforts, for the purpose of the Indian Child Welfare Act (ICWA), implies a heightened responsibility compared to passive efforts. Indian Child Welfare Act of 1978, § 102(d), 25 U.S.C.A. § 1912(d).

### **Aggravated Circumstances**

*In re M.N.*, 261 P.3d 1047 (Mont. 2011) – TPR – Affirmed.

In a case involving a newborn child the appellate court affirmed a trial court judgment foregoing reasonable efforts because aggravated circumstances existed. The parents had been involved with the agency for years and several sibling neglect cases revealed a longstanding pattern of substandard sanitary conditions in the home and an unexplained injury despite intense preventative services. The

court found that the trial court did not abuse its discretion. The trial court had specifically noted that it had not seen a case where so many hours of one-on-one services were offered. Yet despite the services, the parents failed to follow through and keep up with the needs of the children.

*In re T.H.*, 2010 MT 176N, (Montana Supreme Court, 2010 LEXIS 282) – TPR - Removal of infant because of unexplained injuries. State asked to have court declare that reasonable efforts were not required. No services. One Doctor said “shaken baby”. No hearing on reasonable efforts.

*In re A.M.*, 2001 MT 60, 304 Mont. 379, 22 P.3d 185 (2001) – TPR – Affirmed.  
The court held that a court might be able to dispense with certain reunification services. The mother, who suffered from bipolar disorder and borderline personality disorder, had adequately cared for her daughter until she stopped taking her medication and engaged in a spree of bizarre behavior that culminated in her 24th hospitalization. Two doctors opined that the mother would not recover to adequately care for her child.

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“I agree with your observations about reasonable efforts and TPR hearings. Only a few of our large jurisdictions (Billings and Missoula) have early intervention hearings with attorneys present”

Partial email from John W. Larson, District Judge, Fourth Judicial District, Missoula, MT

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## **NEBRASKA**

**STATUTES:** NEB. REV. STAT. §§ 43-532(2) & 43-283.01; § 43-292(6) (1988); § 43-1315 (1987) (Aggravated Circumstances - § 43-283.01(4)(a) and section 43.245(11) (2004); Termination under § 43-292(6) requires finding that R/E to preserve and unify the family have failed. Sections 43-245-46 & 43-2, 129; Reasonable Efforts: §43-247(3)(a)

## **CASE LAW:**

*In re Tayla R.*, 767 N.W.2d 127 (2009) - One child was not returned to mother – Affirmed.  
The appellate court affirmed the juvenile court’s finding that reasonable efforts had been made to return custody of the three older children to the mother, but that return of the younger child would be contrary to the child’s best interest.

*In the Interest of Shelby L.*, 699 N.W.2d 392 (Nebraska Supreme Court, 2005) – TPR – Reversed.  
Munchausen’s Syndrome by Proxy case. The court held that the child was not harmed by mother’s frequent hospital visits.

*In the Interest of Rebecca P.*, 266 Neb. 869, 669 N.W.2d 658 (2003) – TPR – Reversed.  
The father was making progress in his reunification plan and had a good relationship with his daughter. Neb. Rev. Stat. § 43-292(6) requires a finding that following a determination that the juvenile is one as described in § 43-247(3)(a), reasonable efforts to preserve and unify the family

under the direction of the court have failed to correct the conditions leading to the determination. That finding was not made and would not be supported by the evidence.

*In re Ty M.*, 655 N.W.2d 672, 688 (Neb. 2003) – TPR – Affirmed.

The court found that the parents consistently failed to comply with reasonable steps for rehabilitation as ordered by the court by failing to attend individual counseling, address spousal violence, or demonstrate proper parenting skills during visitations. The evidence showed that DHHS provided multiple resources and services for both Shawn and Holly, but neither showed an ability or consistent commitment and willingness to succeed. The parents had been unable to make satisfactory progress toward reunification. The court also stated that the case plan must be created to fix the problems that required state involvement. Citing *In re Interest of P.D.*, 437 N.W.2d 156, 163 (Neb. 1989). “Children cannot, and should not be suspended in foster care, or be made to await uncertain parental maturity.”

*State v DeWayne G.*, 638 N.W.2d 510, 520 (Neb. 2002) – TPR – Affirmed.

Father incarcerated. This was a factor in the termination decision.

*In re Fatima S.*, 2010 WL 2990052 – TPR – Affirmed. Reasonable efforts found – agency provided mental health treatment for mother, helped with securing food, clothing and shelter for child and provisions for child’s physical and emotional health. Lutheran Family Services also provided many services.

*In re Interest of C.D.C.*, 455 N.W.2d 801 (1990) – TPR – Affirmed.

A battered child case. The parents did not comply with the reunification plan. The appellate courts have never interpreted state statutes to require that the department institute a plan for rehabilitation of a parent whose child has been found to be dependent and neglected.

*In re Interest of P.D.*, 231 Neb. 608, 437 N.W.2d 156 (1989) – TPR – Affirmed.

The appellate courts have never interpreted state statutes to require that the department institute a plan for rehabilitation of a parent whose child has been found to be dependent and neglected.

## **Mental Health Issues**

*In re Interest of L.C., J.C., and E.C.*, 235 Neb. 703, 457 N.W.2d 274 (1990) – TPR – Affirmed.

Parents claimed the department failed to provide reasonable efforts. The children were removed because of unclean house, lack of food, and living conditions. The department worked with the family for 12 years (perhaps too long according to the court). Parental cooperation was poor and parents demonstrated no improvement. However, the court also severely criticized the department for ruining any chance of reunification by setting the parents up to fail. The mother suffered from psychological problems, but those were not discovered until the trial date.

*In re Interest of D.A.B.*, 240 Neb. 653, 483 N.W. 2d 550 (1992) – TPR – Affirmed.

The court held that the mildly retarded mother did not progress in her ability to care for her children despite four years of intensive services, at-home visits, counseling, and parenting classes.

*In re Marcus W.*, 11 Neb. App. 313, 649 N.W.2d 899 (2002) – TPR – Affirmed.

The mother loved her children and complied with the service plan, became employed and had financial stability. Nevertheless her organic brain disorder prevented her from adequately parenting her children. It would take 24 hours a day, 7 days a week of supervision to assist her in parenting and that would be unreasonable.

*In re Interest of C.W.*, 226 Neb. 719, 414 N.W.2d 277 (1987) – TPR – Affirmed.

The appellate court wondered why the trial court spent so much time with this case as it was obvious that the mother's mental illness was incurable and she would never be able to comply with any order of rehabilitation.

*In re Kantril P.*, 257 Neb. 450, 598 N.W.2d 729 (1999) – TPR – Affirmed.

The mentally ill, drug-abusing mother argued that the reunification plan was unrelated to the goal of reunification. The plan called for supervised visitation, reunification with the father, chemical dependency and psychiatric assistance. The court found these were appropriate services and had she complied, the reunification would have been possible.

*In re J.S.*, 224 Neb. 234, 397 N.W. 2d 621 (1986) – TPR – Affirmed.

The mentally ill parents progressed well after leaving a treatment facility, but deteriorated after the children were returned to them. The court found that temporary improvements were insufficient and termination was warranted.

*In re V.M.*, 235 Neb. 724, 457 N.W. 2d 288 (1990) – TPR – Affirmed.

The schizophrenic mother asked for more time to reunify. The psychiatric report testified she was treatable, but the court looked at her progress and attitude over the two years of services and concluded her failure to take medication indicated that she would not change.

*In re Interest of Wanek*, 212 Neb. 394, 322 N.W.2d 803 (1982) – TPR – Affirmed.

The mentally retarded and alcoholic mother remained unchanged since the children were removed. The court concluded in spite of services that her condition would remain unchanged indefinitely.

## **ICWA**

*In re Interest of Walter W.*, 274 Neb. 859, 744 N.W.2d 55 (Neb. 2008) – TPR – Affirmed.

The court declined to require proof beyond a reasonable doubt to prove the “active efforts” element in Neb. Rev. Stat. § 43-1505(4). Proof had to be by clear and convincing evidence – the standard required for terminating parental rights under Nebraska law. The State met its burden. First it was noted that for nine months, the mother's whereabouts were unknown. And, although the State could have taken more progressive actions in some of its efforts, it made active efforts to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family. The court also held that the “active efforts” requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) and Neb. Rev. Stat. § 43-1505(4) requires more than the reasonable efforts standard that applies in non-ICWA cases.

*In re Interest of Sabrienia B.*, 9 Neb. App. 888, 621 N.W.2d 836 (2001) – TPR – Reversed.

The State was required to prove that active efforts were made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family pursuant to Neb. Rev. Stat. § 43-1505(4) (Reissue 1998). While the juvenile court made findings that active efforts were made, the State's petition failed to allege facts sufficient to constitute an action for termination of parental rights under the Nebraska Indian Child Welfare Act. The demurrer should have been granted. The court held that the active efforts requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) and Neb. Rev. Stat. § 43-1505(4) is separate and distinct from the reasonable efforts requirement under Neb. Rev. Stat. § 43-292(6), pointing out that § 43-292(6) does not require even reasonable efforts in all situations and does not mandate that reasonable efforts be active efforts in all situations. By contrast, the court noted, the ICWA mandates active efforts in every case involving an Indian child.

*In re Interest of Louis S.*, 774 N.W.2d 416, (Neb. App. Ct. 2009) – TPR – Affirmed. Grounds existed to terminate the mother's parental rights under Neb. Rev. Stat. § 43-292(2) (Reissue 2008). The evidence was sufficient to prove that active efforts were undertaken to prevent the breakup of the family and that further efforts would be futile and were not required under the Nebraska Indian Child Welfare Act, Neb. Rev. Stat. §§ 43-1501 through 43-1516

*In re Phoebe S.*, 11 Neb. App. 919, 664 N.W. 2d 470 (2003) – TPR – Affirmed. The mother argued that the social worker did not provide "active efforts." The appellate court disagreed pointing out that the primary Department of Health and Human Services caseworker for the mother's family testified that he arranged for therapeutic providers and parenting classes for the parents, personally supervised the visitation with the four children, provided bus passes and cab vouchers, arranged evaluations for the family, arranged for foster homes for the children, kept in regular contact with the parents, the foster parent, and the children, provided medical coverage for the children, and prepared case plans and court reports.

*In re Interest of Emma J.*, 18 Neb. App. 389, 782 N.W.2d 330 (2010), modified on clarification, 18 Neb. App. 529, 2010 WL 3655909 (2010). The child was removed from the father's custody and he appealed. The appellate court held that the state Department of Health and Human Services failed to show that it complied with the active efforts requirement under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) and Neb. Rev. Stat. § 43-1505(4) to prevent the Indian child's foster care placement. A transcript filed by the state contained an order regarding a motion for temporary custody in which the juvenile court found that active efforts had been made – including a pretreatment assessment, visitation for the mother, counseling services, and a comprehensive family assessment. However, reviewing the record, the court found it clear that the issue of active efforts was not further addressed by the State at the adjudication hearing. Thus, even if the court were to assume that the issues previously addressed by virtue of the juvenile court's order on the motion for temporary custody – which the court said it would not do – there was nothing in the record to substantiate that any efforts had been taken from that time until the adjudication that the child lacked proper parental care. Accordingly, although the court found that the State met its burden of proving that the child lacked proper parental care, the portion of the juvenile court's judgment ordering the child's continued out-of-home placement was reversed because the record was devoid of any evidence of active efforts.

*In re Enrique P.*, 14 Neb. App. 453, 709 N.W. 2d 676 (2006) – The children were removed from the

mother. Affirmed.

The instant court found that active efforts had been made to prevent a breakup of the family but were unsuccessful. The mother had a history of drug and alcohol abuse. She did not address her domestic violence issues and did not attend parenting classes. Clear and convincing evidence showed that custody with the mother would have resulted in serious emotional or physical damage to the children. The active efforts included therapy, placement, case management, psychiatric and chemical dependency evaluations, visitation services, transportation assistance with visitation, parenting and domestic violence classes, and random urine analysis.

*In re Interest of Jamyia M.*, 18 Neb. App. 679; 791 N.W.2d 343; 2010 Neb. App. LEXIS 179 TPR – No services offered – Reversed.

The parents argued that the juvenile court erred in finding that the state made active efforts to provide remedial services and rehabilitative programs and that those efforts were unsuccessful. The appellate court agreed finding active efforts were not made. The exception found in Neb. Rev. Stat. § 43-283.01 which relieved the State from its obligation to provide reasonable efforts when aggravating circumstances were present did not extend to the State's obligation to provide active efforts pursuant to Neb. Rev. Stat. § 43- 1505.

### **Aggravated Circumstances**

*In the Interest of C.W.*, 414 N.W.2d 277, 279 (Neb.1987) – TPR – Affirmed.

The appellate court upheld a termination of parental rights for a mother diagnosed with chronic undifferentiated schizophrenia. While the statute required reasonable efforts, the court ruled no efforts were needed because “the mother was destined by virtue of the mental condition never to be able to comply with any order of rehabilitation.” The court described mother's condition as “hopeless from inception.”

*In re Chance J.*, 279 Neb. 81, 776 N.W. 2d 519 (2009) – TPR – Affirmed.

The appellate court wrote that it was not necessary for the state to make reasonable efforts to reunify father and child when termination of parental rights was sought based on abandonment.

*In re Jac'Quez N.*, 266 Neb. 782, 669 N.W. 2d 429 (2003) – TPR – Not granted by trial court, but reversed by the Supreme Court.

The mother failed to take her seriously injured child for medical treatment. That was sufficient to make reasonable efforts unnecessary. Aggravated circumstances as used in the Nebraska statute must be so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of unreasonable risk of being re-abused.

*In re Kantril P.*, 257 Neb. 450, 598 N.W.2d 729 (1999) – TPR – Affirmed.

The mother was mentally ill and argued that the services did not address her problems. The service recommendations included a goal of supervised visitation for her, reunification with the children's noncustodial father, that she obtain chemical dependency treatment and psychiatric treatment, and that she visit her children. The court found that these provisions were unquestionably related to the goal of family reunification and that the record below indicated that DHHS would have considered reuniting the mother with her children if she would have complied with the provisions of the rehabilitation

plan. Since she failed to do so, the court held that her rights were properly terminated

*In re Interest of Ethan M.*, 15 Neb. App. 148, 723 N.W.2d 363 (2006) – The trial court placed the children with the father and did not offer reunification services to the mother. Affirmed on appeal, the appellate court stating that aggravated circumstances make R/E unnecessary, but in this case there was no clear and convincing evidence of aggravated circumstances proven while living with the father. Son sustained no physical injuries while living with father, nor was there evidence of any other type of abuse or neglect.

*In re T.E.*, 235 Neb. 420, 455 N.W. 2d 562 (1990) – TPR – Affirmed.

No services offered to parent because of a mental deficiency which rendered her unable to be rehabilitated within a reasonable time. Best interests require TPR without delay.

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“Re reasonable efforts – we make findings about it from the first order of removal, at the Protective Custody Hearing (also known unfortunately as a Detention hearing), Disposition Hearing, Review Hearing, Permanency Planning Hearing, 15/22 Hearing and at TPR hearings. Yes, we do discuss the issue of reasonable efforts to rehabilitate parents all throughout. I have pushed training on this for years. Like other states, newbies at every level need training, and for all of us on-going training. We borrowed Pima County’s Prehearing Conference which is mediation prior to the Protective Custody Hearing. I introduce why we are in court, what will happen, DHHS’ duty to provide reasonable efforts, introduce the Mediator and leave with my court reporter so an off-the- record discussion can occur. I will send you an article I wrote about it. Our issue is not talking about it but actually getting the services in a geographically proximate and timely fashion. We had a mental health-substance counselor at court for immediate PTA, but then funding dried up. As you know, frontloading can’t be in name only. Those are a few thoughts.”

Email from Judge Douglas F. Johnson, Omaha, Nebraska. A copy is available from the author. See also Johnson, D. “The Role of the Judge: Convene Stakeholders for Facilitated Pre-Hearing Conferences in Abuse, Neglect, and Dependency Cases,” *Juvenile and Family Justice Today*, Summer, 2009, at pp. 20-23.

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“It’s actually rarely brought up at TPR in Nebraska because reasonable efforts are only relevant at TPR if the specific ground is alleged (reasonable efforts failed), which isn’t often.”

Email from a staff attorney from the Court Improvement Program in Nebraska

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## NEVADA

**STATUTES:** NEV. REV. STAT. § 432B.393(1)-(2), (4)-(5) (2001) – The courts in determining reasonable efforts must “[e]valuate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made,” and to consider “any input from the

child.” §128.106(7) & (8) (Supp. 1989) § 432B-360(1986) §, -550 (Supp, 1989);

## **CASE LAW:**

*In the Matter of the Parental Rights as to T.A.M.G. v. The State of Nevada*, 2009 WL 3425651 (2009) –(Supreme Court of Nevada. Unpublished.) – TPR – Affirmed.

The mother was a drug user at the time of the child’s birth. Held: Mother received reasonable efforts and services. Mother did not comply with case plan. She knew what was expected of her, but complied with “too little, too late.” “While the district court must consider services offered to the parent, NRS 128.107, no specific termination statute requires “reasonable efforts” by the State as a condition of termination.

*Natasha S. v Sixth Judicial District Court of the State of Nevada*, 238 P.3d 858 (2008) – Placement of child out of state. Writ by mother. Denied. Mother takes a writ of mandamus to stop the placement of her child out of state with relatives. Supreme Court dismissed the writ holding that the child is primary concern.

*In the Matter of the Parental Rights as to K.D.L. and S.P.K. Richard J.K. v The State of Nevada Division of Child and Family Services*, 58 P.3d 181 (2002) – TPR – Affirmed.

The appellate court held that this violent father did not change his behavior over time even with DFCS assistance. The trial court found reasonable efforts were given to the parents. Father said he had changed in prison. The availability of services is not as substantial in prison as outside the prison.

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“In five years there was not a single ruling of no reasonable efforts on a removal or related to failure to reunify that I recall. We had numerous ones on adoption timelines.”

“I have not seen much, if anything, in the Child Welfare literature about this (reasonable efforts). Personally, I think there is an unholy alliance between Child Welfare agencies and the courts to look the other way, especially at removal hearings. Few in Child Welfare would know the distinction between the court’s responsibility under PL 96-272 to make a ‘determination’ versus a ‘positive finding.’ My only up front and personal experience on the ground is in Clark County. In five years there was not a single ruling of no reasonable efforts on a removal ore related to failure to reunify that I recall. We had numerous ones on adoption timeliness.”

Emails from Tom Morton, former Director of Children’s Services in Clark County (Las Vegas), Nevada

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“Now that we are representing 1,972 children, and just hired three attorneys, we are shifting our model to focus on every new case that comes into the system. We have our divided our attorneys into teams – We have four teams (sex abuse, north/west, central, and south/east. The first two teams will be governed by the Order I just sent you – they will represent every new child upon removal. We will be strongly advocating our child’s wishes early in the system, including questioning whether reasonable efforts to prevent removal were made, either at the first hearing or the second hearing, or



both. In fact, we anticipate that over the next year, that issue will be discussed more and more because we will be appearing earlier in the life of the case. We do raise it now, when appropriate, but less often because we are not involved in the case at its inception.”

Partial Email from Barbara Buckley, Esq., Executive Director, Legal Aid Center for Southern Nevada, Inc.

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“Our “shelter care” hearings are held in Court in Las Vegas and Reno, and in most of the rurals, and at annexes in Elko and Lyon Counties.

“And once again the experience varies – here in Las Vegas, they are actually ahead of the game thanks to a brilliant politician/lawyer named Barbara Buckley – where attorneys are always present for children, and parents too are often represented; also parents are sometimes represented by third year law students through a clinic where I am on the Board. Those lawyers *do* ask about removal issues.

“Deborah Schumacher, before she turned dependency over to Egan Walker – *she* asked about reasonable efforts to prevent removal, and the current head of Social Services in the North has been trained to have his people do a lot of that.

“So the situation is not too bad here from a global point of view, but it is still anecdotal and not doctrinal.”

Email from Judge Charles McGee, retired Washoe County judge.

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First, in Nevada counsel is not appointed at shelter care hearings. I am happy to report that appears about to change in Washoe County. Second, without the appearance of counsel at that critical stage, reasonable efforts becomes an afterthought. I was at a meeting today with CPS, children’s counsel, the agency heads and a new dependency judge. The issue was the permanency hearing. Throughout the presentation reasonable efforts were not mentioned at all until I raised it to say that the findings were required for IVE review. The focus was entirely on parent compliance with the case plan and an expectation of changed behavior. The agency was not and is seldom the focus here. The excuse is primarily the lack of resources - which is just an excuse. Children, including infants, remain in care here for six months without any expression of concern by the agency while parents struggle to find their footing. The only available resources are drug treatment, which takes six weeks to access, and the local mental health provider. When I came here fifteen years ago to attend the NCJFCJ training and we toured the local model court, it seemed much more proactive. I am surprised that reasonable efforts are not central to the court in the back yard of the Council and the National Judicial College. I would be very interested in seeing coordinated national work on making reasonable efforts meaningful. So many articles have been written by so many concerned people for so long, you would think that there would be action. I believe the prevailing value is child rescue and that CPS is chronically underfunded. My understanding is that ASFA was to be followed by ASFA 2.0 with funding that never materialized. It also appears that IVE reviews are not meaningful in terms of sanction.

Email from an attorney who regularly appears in Washoe County (Reno) dependency courts.

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## NEW HAMPSHIRE

**STATUTES:** N.H. Rev. Stat. Ann. § 169-C:24-a(III)(c) (West 2002) – In deciding “whether the state has made reasonable efforts...the district court shall consider whether services to the family have been accessible, available, and appropriate.” § 170-C:5(V)(b) (Supp. 1989); and 170-C:5(IV) -

## CASE LAW:

*In re Lisa H.*, 589 A.2d 1004, 1008 (N.H. 1991) TPR – Affirmed.

“[N]o action taken by the [mother] indicates ...that she wanted a continuing relationship with[her daughter]. Under these narrow circumstances, any further effort by [the agency] may very well have been futile....[The agency] fulfilled its statutory duty to use every effort available to work with [the mother].

Similar result in *In re Tricia H.*, 493 A.2d 1146 (1985).

*In re Jonathan T.*, 808 A.2d 82 (2002) – TPR – Affirmed.

The state is required to make reasonable efforts given available resources to reunify the parents and children. The case plan in this case recognized parents’ disabilities. The parents were unwilling to cooperate with service providers. DCYF provided counseling services and changed service provider when appropriate as original provider was short-term. Parent aides helped with checklists. Reasonable efforts can include stress management services and nutritional guidance (at p. 88). The agency need not make “every effort,” only “reasonable efforts.” (87-88). “the State’s ability to provide adequate services is constrained by its staff and dollar limitations. In short, therefore, the State must put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child.” (88)

*In re Juvenile*, 2006-833, 937 A.2d 297 (N.H. 2007) – Child removed permanently. Affirmed.

The efforts made to help the mother to obtain financial assistance to pay for her psychiatric medications were reasonable under RSA 169-C:24-a and RSA 170-C:5(III). DCYF provided the mother with information and contact numbers for three agencies that could help pay for her medications, a prescription card that provided a discount on medications, and a list of pharmacies that accepted the card. The mother had to make her own effort in conjunction with DCYF’s efforts. The court must assess the state’s efforts at reunification before filing a petition to TPR. The court must consider whether those services have been accessible, available, and appropriate. Taking into consideration DCYF’s limitations, regarding both its staff and finances, the efforts made by DCYF in helping the respondent to obtain financial assistance to pay for her medications were reasonable. *See In re Juvenile 2003-195*, 150 N.H. at 648.

*In re Angel N.* 679 A.3d 1136 (N.H. 1996) – TPR – Affirmed.

Child was removed because of domestic violence four times within her first three years. Termination of Parental Rights did not occur until she was five. The fact that an older child remained with the

mother was not dispositive.

*In re Kristopher B.*, 125 N.H. 678, 486 A.1d 277 (1984) – TPR – Affirmed.

The agency relied upon another agency to treat a mentally ill parent rather than provide the service itself. The mother was being treated for undifferentiated schizophrenia in a mental hospital, this was sufficient to provide services.

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“In delinquency cases the issue of RE is not raised by juvenile counsel. DJJS will most times ask for finding of RE and juvenile’s counsel usually takes no position or does not object. I admit that I have *sua sponte* raised RE when removal is requested. In dependency cases RE issue does get raised more often, usually at permanency hearings when adoption is the permanent plan. RE is sometimes, not often, raised at review hearings.

“In terms of trainings, we developed for release in June 2010 the attached standard order for Contrary to the Welfare and RE in CHINS and delinquency cases. Since that time, it has been used as a training tool. These same findings are also included in the standard court orders that judges use for all abuse and neglect court hearings. The language on all of these orders was reviewed by judges and agency representatives as well as the New Hampshire Court Improvement Project’s federal representative.”

Email from Judge John Emery, Manchester, N.H. Circuit Court. The court form referred to in Judge Emery’s email is found in Appendix C.

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## **NEW JERSEY**

**STATUTES:** N.J. Stat. Ann. § 30:4C-15.1(a) & (c); (West, 2003); N.J. Admin. Code Tit. 10, § 133 I-4.2 (2004) – these provide specific steps in the agency’s reunification efforts including referrals to community service providers. The agency must monitor the effectiveness of services and assess the outcomes of services and identify the barriers to service provision and utilization and develop strategies to overcome barriers. This includes working with family and facilitating appropriate visitation. (c) (4). R/E defined as “Attempts by an agency ...to assist the parents in remedying the circumstances and conditions that led to the placement of the child and in reinforcing the family structure.” § 9:6-8.84 – (aggravated circumstances – § 30:4C-11.3 and § 9:6-8.87)

New Jersey employs a 4 prong test to determine whether TPR is appropriate. Step 3 is “The Division has made diligent efforts to provide services to help the parent correct the circumstances which led to the child’s placement outside the home and the court has considered alternatives to termination of parental rights.” § 30:4C-15.1(a).

## **CASE LAW:**

*In re Guardianship of D.M.H.*, 736 A.2d 1261, 8 (N.J. 1999) – TPR – Affirmed.

The father had no contact with the child for three years. The trial court terminated father’s rights on an

abandonment theory. The appellate court reversed, but the Supreme Court reversed and reinstated the termination. “[T]he attention and concern of a caring family is ‘the most precious of all resources’.... A parent’s withdrawal of that solicitude, nurture, and care for an extended period of time is in itself a harm that endangers the health and development of the child.” “On the federal level, the recent trend has been to limit the reasonable efforts social services must undertake to reunite families.” (at 1273) “[A]n evaluation of the efforts undertaken by [the agency] to reunite a particular family must be done on an individualized basis. Services that may address one family’s needs will not be helpful to another. Whether particular services are necessary in order to comply with the [reasonable] efforts requirement must therefore be decided with reference to the circumstances of the individual case before the court, including the parent’s active participation in the reunification effort.” (at 1274). R/E can include day care, domestic violence counseling, financial management services and referrals to medical care (at 1274-5). Denying visitation when visitation is possible is incompatible with encouraging and strengthening the parent-child relationship.” (at 1274). The parent-child bond that must serve as the foundation for reunification, and visitation is a part of strengthening and maintaining that bond. Thus [c]onsistent efforts to maintain and support the parent-child bond are central to [a] court’s determination” of whether the agency made reasonable reunification efforts. (at 1276). Father did not visit for 6 months – that was persuasive to the court. The Supreme Court considers the “parent’s active participation” in determining whether the agency has fulfilled its responsibility to attempt to reunite the parent and child. (at 1274). Reasonable efforts by agency affirmed in part that the father “consistently failed to seek or take meaningful measures to enable him to [care for his children], and often frustrated [the] caseworkers’ attempts to help him.” (at 1275).

*D.Y.F.S. v I.S.*, 996 A.2d 986, 202 N.J. 145 (New Jersey Supreme Court, 2010 – TPR – Reversed. The child was born of an extra-marital affair. The father was identified several months after dependency established. Father at first did not want custody. Agency did not offer him timely visitation and then 1x a week. No other services. The appellate court reversed for several reasons including a lack of reasonable efforts. There was drug use by the mother. The re-married father did not want custody at first. Agency failed to “consult and cooperate with [father] in developing a plan for appropriate services,” and it never “provid[ed] services that [it] agreed upon [with father] in order to further the goal of family reunification.” Offered “irrelevant” parenting classes to a 56 year old man with 4 successfully reared children. No visits ever facilitated by agency. The agency must exercise reasonable efforts to eliminate the harm and reunite the family. The father was not given a meaningful opportunity to establish a relationship with the child and reunite with the child.

*N.J. D.Y.F.S. v M.M.*, 914 A.2d 1265; 189 N.J. 261 (N.J. Supreme Court, 2007) – TPR of father – Affirmed.

Father could not protect the child against mother with whom he resided. Mother was the danger to the children. Court stated that reasonable efforts must be particularized to the facts of the case. “An evaluation of the efforts undertaken by DYFS to reunite a particular family must be done on an individualized basis....Whether particular services are necessary in order to comply with the diligent efforts requirement must therefore be decided with reference to the circumstances of the individual case before the court, including the parent’s active participation in the reunification effort.” “Reasonable efforts may include consultation with the parent, developing a plan for reunification, providing services essential to the realization of the reunification plan, informing the family of the child’s progress, and facilitating visitation.” (at 1281). In this case the father did not provide safe and

stable home despite services including home visits, referrals to counseling and parenting classes, clinically observed visitation and case work. Reasonable efforts found.

*New Jersey Division of Youth and Family Services v. F.H.*, 914 A. 2d 318 (N.J. Super. Ct. App. Div., 2007) – TPR – Affirmed.

The appellate court held that DYFS made reasonable efforts including homemaker services, supervised visitation and transportation services, psychological and bonding evaluations for parents and children, medical evaluation for one child and therapeutic daycare for the oldest child.

*New Jersey Division of Youth and Family Services v. F.M.*, 211 N.J. 420; 48 A.3d 1075 (2012) -TPR – Affirmed.

Mother's parental rights were properly terminated under N.J.S.A. § 30:4C-15.1(a)(1) through (4), as the evidence supported the trial court's findings that 1) she was unable and unwilling to protect her children from the dangers posed by their father, who was addicted to drugs and had a severe, untreated mental illness; 2) she was unable or unwilling to provide the children a safe and stable home, and a delay of permanent placement would add to the harm; 3) DYFS provided her with services to correct the circumstances that led to the placement of the children outside the home; and 4) based on a psychologist's bonding and psychological evaluations, termination would not do more harm than good.

*State, Division of Youth & Family Services v. S.A.*, 388 N.J. Super. 324, 908 A. 2d 244 (Ch. Civ.2005) – TPR – Affirmed.

The State is not required to provide transportation for visits when father moves out of the state (Georgia) during the reunification period.

### **Mental Health Issues**

*In Matter of Guardianship of D.M.*, 190 N.J. Super 648, 464 A. 2d 1221 (1983) – TPR – Affirmed. Mentally ill couple could not acquire the skills necessary to parent their child even with extensive services. The services included tutors in the home to teach the parents skills.

*New Jersey Div. of Youth & Family Servs. v A.G.*, 782 A.2d 458 (N.J. Super. Ct. App. Div. 2001) – TPR – Affirmed.

The mother had a mental illness and emotional problems, for which she received treatment several times. She also had some physical problems. She attempted to have a relationship with the child. The appellate court concluded that “[no] treatment would assist [the parents] in becoming better parents because they lack the necessary insight and skill.” The agency made genuine efforts to reunite the family through programs, classes, and seminars. There was not much more the agency should be required to do.

### **Aggravated Circumstances**

*In re Guardianship of B.L.A.*, 332 N.J. Super. 392, 753 A.2d 770 (Ch. Div. 2000) – Reasonable efforts were not required where father had sexually abused another child, that the mother repeatedly rejected services and failed to disassociate herself from the father, that the parents relationship included a continuing history of physical abuse, substance abuse, and domestic violence and that the

mother did not have the capacity to make decisions in the best interests of another child, especially when those interests might be threatened by the father's conduct.

*N.J. Div. of Youth & Family Services. v A.R.G.*, 824 A.2d 213, 179 N.J. 264 (N.J. Super. Ct. App. Div. 2003): "Essentially, ASFA makes it clear that a child need not be forced to remain in or be returned to an unsafe home and allows the States to place the safety and welfare of the child before the interest of abusive parents." Aggravated circumstances can result in bypass of reunification services. The "aggravated circumstances bypass provision of ASFA, as embodied in [the New Jersey statute], gives the court discretion to identify the most egregious cases at the early stages of the child protective process without providing fruitless reunification services." "... the child protection system should not be required to expend its limited resources on attempting to reunify children with their abusive parents where aggravated circumstances...exist...." (233).

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"Regarding reasonable efforts, it seems that most of the discussion in New Jersey is at the initial hearing (I think that is commonly referred to as a shelter hearing in other jurisdictions) and at the TPR trial. This is because our agency - the Division of Youth and Family Services ("DYFS")- is generally pretty good at providing services and front loading the case with those services. However, there are times when the agency has not met the reasonable services requirement."

Partial email from Judge David Katz, 7/7/11. A copy is available from the author.

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"In NJ, I feel we still have a lot of work to do on this exact issue (that a removal is harm in itself and every reasonable effort should be attempted to prevent that removal). What we have on the domestic violence/reasonable efforts issue is a 2009 statewide directive and an appellate division published opinion. We have seen a decrease in removals of children from victims of domestic violence since the directive. There is now a DV liaison in each agency office. Also, there has been an increase in DV trainings statewide as to this issue. Attached are copies of the directive and app. div. case.

"In general, removals have decreased in NJ and there is a greater emphasis on case-planning and removal prevention. So when a removal does occur and a complaint is filed, the court tends to find that the agency satisfied its statutory reasonable efforts requirements. With that said, we do have 2-3 cases that examine the reasonable efforts requirements in a parental termination context or in an abuse or neglect context that you may find helpful. I have listed their case summaries below with links to the opinions or have attached a copy of the opinion."

Partial email from Jeyanthi Rajaraman, a practicing attorney in New Jersey's juvenile courts. A copy is available from the author.

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## **NEW MEXICO**

**STATUTES:** N.M. STAT. ANN. §32-1-1-34 (1989); No services before TPR necessary if any effort

to assist parent would be futile. N.M. Stat. Ann. § 32A-4-21 & 22; § 32A-4-28(B)(2) (Michie Supp. 1998)

No reasonable efforts are necessary if sibling abused. N.M. STAT. ANN. § 32A-4-28(B)(2).

## CASE LAW:

*In re Eventyr J.*, 902 P.2d 1066 (N.M. Ct. App. 1995) – TPR – Affirmed.

The child welfare agency was involved with the mother and children for over 5 years. The agency removed and returned children twice. Finally TPR. Repeated returns to and removals from mother over a five year period indicated reasonable efforts had been provided and justified TPR.

*State ex rel. Children, Youth, & Family Services. v Amy B.*, 61 P.3d 845, 847-8 (N.M. Ct. App. 2002) – TPR – Affirmed.

Reasonable efforts can be over-ridden by ASFA's concern for a child's health and safety first. "There seems to be almost universal agreement that adoption is preferable to foster care and that the nation's children would be well served by a policy that increases adoption rates.... [T] here seems to be a growing belief that Federal statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents. As a result, too many children are subjected to long spells of foster care...." At p. 847-8. "Also, particularly in these economic times [2000], it bears remembering that government resources are limited, and the state 'has a legitimate interest in making the best use of its limited resources.' If difficult decisions regarding allocation of scarce resources must be made, the Legislature's determination that a prior involuntary termination is a factor to be considered is both reasonable and legitimate."

*State of New Mexico v Joseph M.*, 130 P.3d 198 (New Mexico, 2006) – TPR – Reversed.

Father made progress during family reunification – mother did not. Father incarcerated during part of family reunification period. Father argued insufficient reasonable efforts pursuant to §32A-4-28(B)(2). "...termination based on neglect requires the court to find that 'the conditions and causes of the neglect and abuse are unlikely to change in the foreseeable future despite reasonable efforts by the department or other appropriate agency to assist the parent in adjusting the conditions that render the parent unable to properly care for the child.'" Held: Because of incarceration "foreseeable future" is expanded. No reasonable efforts found by appellate court. Agency should have reevaluated father after his release from prison. Agency should have had new plan for father upon release from custody. The Department also should have alerted father to the consequences of his staying with the mother.

*State ex rel. Dep't of Human Servs. v Natural Mother*, 634 P.2d 699 (N.M. Ct. App. 1981) – TPR – Reversed and Remanded to return the children to the mother.

She substantially complied with the reunification plan. "CYFD is charged with making 'reasonable efforts to assist the parent in adjusting the conditions which render that parent unable to properly care for the child.'" (at 702).

*State ex rel. Children Youth & Families Dep't v Patricia H.*, 47 P.3d 859 – (N.M. Ct. of App., 2002) TPR – Affirmed.

The appellate court noted problems with agency's performance in this case. "What constitutes reasonable efforts may vary with a number of factors, such as the level of cooperation demonstrated

by the parent and the recalcitrance of the problems that render the parent unable to provide adequate parenting.” (at 864). The court expressed some “reservations about [the agency’s] performance citing ending services too soon and delay in providing an expert’s report, but held it was enough for a positive reasonable efforts finding. 2 additional factors: The health of the child and the length of time in foster care. “Circumstances matter” (at 863). “[T]he duration of what constitutes reasonable efforts ha[d] changed considerably over the past several years.” (863) and that the state’s child protection agency had shortened the amount of time it would give parental assistance. The court cited cases a few years earlier where reasonable efforts went on for 5 and 6 years, but now the agency is providing services for one and one 1/2 years. The court looked to ASFA and the 15 month period as a guideline for the length of time services should be offered. (at 864). In this case 2 1/2 years was long enough to qualify for reasonable efforts. (at 865-6). “In effect [the agency] appears to have simply let events take their course until termination was inevitable.” (at 866) “Our job is not to determine whether [the agency] did everything possible.” (at 865). The court noted that the parental behaviors “are unlikely to change in the foreseeable future.” (at 862).

*State ex rel. Children, Youth & Families Dep’t v Athena H.*, 142 P.3d 978, 140 N.M. 390 (N.M. Ct. of App. 2006) – TPR – Affirmed.

The children were sexually abused by the stepfather and mother acted inappropriately. Mother also had mental health problems. “CYFD must provide reasonable efforts to assist the parent to change the conditions that gave rise to the neglect..., and the district court must consider the results of CYFD’s efforts.” (at 982) – “the treatment plan approved by the district court also involved Mother’s attending relationship counseling, obtaining mental health treatment, attending parenting classes, and receiving a GED. Mother’s social worker testified, and Mother does not contest, that CYFD made proper referrals, facilitated Mother’s visits, and made diligent efforts to obtain information from Dr. Fields.” Visitation stopped, but mother does not contest that visitation had detrimental effects on children.

*State of N.M. ex rel. Children, Youth and Families Dep’t v Hector C.*, 185 P.3d 1072 (N.M. Ct. of App., 2008) – TPR – Affirmed.

Father was in custody for part of family reunification period – agency gave adequate services. 2 visits in prison, but visits were stopped as they were too traumatic for children. Father did not participate in services while incarcerated. Upon release father participated in programs (argued that he would improve in the foreseeable future). The treatment plan for the parents included counseling, mental health services, parenting classes, obtain a GED, and visitation. Reasonable efforts made by dept. Presumptive abandonment while in prison.

*State ex rel. Children Youth & Families Dept.*, 132 N.M. 299 – TPR – Affirmed.

The mother asked for removal as she could not control child’s behavior (4 ½ years old). Early services were good, but later they were not. “Mother has a point that CYFD might have done more to help her during the latter period, particularly with the kind of interactive treatment with her child that she needed.” Reasonable efforts affirmed – compliance was minimal, but adequate.

*State of N.M. ex. Rel. CYFD v Benjamin O.*, – TPR – Affirmed.

The agency implemented a transition plan to attempt to return child to father and made reasonable efforts to assist father obtain housing, but this was unsuccessful. The trial court was affirmed on



appeal.

*State ex. Rel. Children Youth, & Families Dep't*, 47 P.3d 859, 866 (N.M. Ct. App. 2002) – TPR – Affirmed.

The trial court could have concluded that CYFD made reasonable efforts to assist the mother, notwithstanding the trial court's refusal to make a futility finding at a second permanency hearing and the lack of any CYFD assistance to the mother after that time. The trial court did not act unreasonably in finding that change was unlikely in the foreseeable future. However, the court of appeals faulted the CYFD with the way that it handled the case. The CYFD simply let events take their course until termination was inevitable. The statute required in addition to a showing of abuse or neglect, a showing that despite reasonable efforts, the "causes of the neglect or abuse are unlikely to change in the foreseeable future." At 862.

*State ex rel. Children, Youth & Families Dept., (In the Matter of Elizabeth H.)*, 47 P.3d 859; 132 N.M. 299 (N. M. Ct. App. 2002) – TPR – Affirmed.

Mother's appeal asked for more than 15 months of services. The appellate court ruled that ASFA has changed the law and the time for family reunification services is limited. The "fifteen-month period described in ASFA for 'time-limited reunification services' provides us some guidance in how we assess the duration of reasonable efforts under state law."

## **MENTAL HEALTH ISSUES**

*State of New Mexico v John D.*, 934 P.2d 308, 315 (N.M. App. 1997) – TPR – Affirmed.

The court found that the child was removed from the mother's custody based on her conduct towards the child and that therefore the mother's conduct was the reason the child was removed. Thus § 32A-4-28(B)(2), which required reasonable efforts to assist in reunification of mother and child before termination, was not applicable and the trial court did not err in termination of the mother's parental rights. The court noted that the ADA might be applicable to a termination under § 32A-4-28(B)(3), but found it was not applicable here because the mother failed to rebut the presumption of abandonment.

## **ICWA**

*In re Esther V.*, 2011-NMSC-005, 248 P.3d 863 (N.M. 2011). In a contested adjudication of abuse or neglect to which the Indian Child Welfare Act (ICWA) applied, the trial court was required make the findings of fact required under ICWA's "active efforts to prevent the breakup of the Indian family" requirement and "likely to result in serious damage" requirement at the adjudication stage, founded either on evidence of record or admissions supported by a factual basis; adjudicatory hearing was the procedural phase that afforded the Indian parent and tribe the most procedural due process protection and best accommodated the requirements of ICWA, state's *ex parte* and custody hearing stages were ill-suited for making findings because they were emergency proceedings that did not provide sufficient due process protections, and dispositional hearing occurred later in proceedings and rules of evidence did not apply.

*State, ex rel. Children Youth and Families Dept. v Arthur C.*, 251 P.3d 729 (N.M. Ct. App. 2011) – TPR – Affirmed.

The child was injured in a domestic violence incident. Neither parent followed the court ordered service plan. Sufficient evidence supported a finding of active efforts to provide remedial services and rehabilitative programs under § 1912(d).

**Aggravated Circumstances**

*State ex re. Children, Youth, and Families Dept. v. Browind C.*, 152 P.3d 153 (N.M. Ct. App. 2006) – TPR – Affirmed.

The department was not required to provide reunification services upon reinstatement and revival of original abuse and neglect petition (following revocation of guardianship). In light of mother’s incarceration, prior refusal to undergo treatment, and unresolved drug addiction.

*In re Kenny F.*, 109 N.M. 472, 786 P.2d 699, 703(1990) – TPR – Affirmed. The federal requirement of reasonable efforts (§ 671(a)(15)(B) is enforceable in proceedings to terminate parental rights. However, reasonable efforts are not required where such efforts would be futile.

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In a New Mexico judicial survey of 9 juvenile court judges, 2 said the reasonable efforts issue is raised frequently. One of those said at every hearing. The other 7 judges said only occasionally, infrequently or not very often. Attorney comments were similar. One attorney and one judge said “If one waits until TPR to raise the issue, you have not been doing your job as a respondent’s attorney.” The issue is rarely raised at the shelter care hearing. “Rare to never” are “No reasonable efforts findings” made. One finding was based on inadequate search for relatives.

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**NEW YORK**

**STATUTES:** N.Y. Soc. Serv. Law § 384-b(7)(f) (McKinney 1983 & Supp. 1986) – The law calls for “diligent efforts” defined as “reasonable attempts” by the agency to “assist, develop and encourage a meaningful relationship between the parent and the child.” The obligation includes consultation and cooperation with the parents in developing a plan for appropriate services and making suitable arrangements for visitation. The court may order diligent efforts to include assistance “in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment.” [§ 392(8).]; § 358-a, N.Y. FAM CT. ACT §§ 352.2, 754 (McKinney Supp. 1990), including incarcerated parents “unless indicated otherwise” N.Y. Soc. Serv. Law § 384-b(2)(b), (7) (f) (McKinney, 1992); FCA § 1027(b)(ii) requires that the court determine whether the state made reasonable efforts to prevent or eliminate the need for removal of the child from the home and, if the child was removed from his or her home prior to the date of the hearing held under...this section, where appropriate, that reasonable efforts were made to make it possible for the child to safely return home.” See also FCA § 1028. R/E must be offered to effect the child’s permanency plan. Family Court Act § 1089(d)(2)(iii). R/E to effectuate return of child. FCA §1089(d)(2)(iii)(A). § 1039-b is the bypass statute.

**CASE LAW:**

**Reasonable Efforts to Prevent Removal**

*In re Nicholson*, 181 F.Supp.2d 182 (E.D. NY 2002) and *Nicholson v Scopetta*, 3 N.Y.3d 357, 820 N.E.2d 840 (2004): This was a federal class action alleging ACS removed children from mothers improperly by not offering reasonable efforts to prevent removal when mother was victim of domestic abuse. The trial court held that the city “may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them sins of their mother’s batterer.” HELD (1) The definition of “neglected child” does not include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child’s care allows the child to witness domestic abuse against the caretaker. (2) Can the injury or possible injury be so serious as to justify removal of the child from the family home? Not in every case – must be more nexus. “A court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal.” (at 852). Emergency removal is always possible if circumstances demand. § 1024. (3) Does witnessing domestic violence suffice for removal? No – There are no ‘blanket presumptions’. These certified questions were returned to the USCA (2nd Circuit). That court held: (1) witnessing domestic violence does not by itself constitute “neglected child” under N.Y. law. (2) Nor does witnessing constitute danger or risk to the child’s life or health as defined by N.Y. law. (3) Removal not necessary because of witnessing – CPS must offer additional, particularized evidence to justify removal. These findings were affirmed by the New York state courts.

*Matter of Raymond A.*, 26 Misc. 3d 394 (N.Y. Fam. Ct. 2009) – Removal of child – Reversed. The child was born to a mentally deficient mother who had lost one child to the system and other in court proceedings. At the §1028 hearing the child was placed in “parole” to the mother. A Family Group Conference resulted in a return to the mother who was not free of medications. The court found, inter alia, that ACS failed to establish imminent risk to the child, failed to make reasonable efforts to prevent the removal of the child from his mother, and failed to even follow its own protocol. The child’s removal significantly outweighed any risk to the child being in the mother’s care and custody. As a result, it was in the child’s best interests to be returned to his mother’s care pursuant to §1028

*In re David G.*, 29 Misc.3d 1178, 909 N.Y.S.2d 891 (N.Y. Fam. Ct. 2010): Removal of child from mother’s care – Reversed.

The existence of a restraining order was sufficient to protect the child from being exposed to domestic violence (the father beating the mother). Further harm to the child was too speculative.

*Grant v Cuomo*, 130 A.D.2d 154, 518 N.Y.S.2d 105 (N.Y. App. Div, 1987) *affirmed* 73 N.Y.2d 820 (1988) – Class action asking for services prior to removal. Since agency received federal funding for child welfare programs, they were bound by federal mandates including making reasonable efforts to keep children with their families prior to placing them in foster care and implementing a service plan for children in foster care with services and how they will be delivered.

*Martin A. v Gross*, 138 Misc. 2d 212 (N.Y. Sup. Ct. 1987), *affirmed* N.Y.L.J. Sept. 29, 1989 at p. 21, col. 1 (App. Div. 1<sup>st</sup> Dept.) and 72 N.Y. 2d 1041. Class Action by homeless parents whose children were removed alleging that housing assistance would prevent the removal of their children. The families insisted on housing services guaranteed in state law as well as ending the 90 day limit on emergency shelter services. Court granted their request.

*In the Matter of Jamie C.*, 26 Misc. 3d 580, 889 N.Y.S.2d 437 (N.Y Slip Op. 229458, 2009) – Trial Court found no reasonable efforts to prevent removal. Affirmed.

The children were removed by ACS on neglect allegations. Mental illness alleged. Not taking meds. One child has Downs syndrome. At 1027 hearing (next day) the court approved of the removal, but did not make a reasonable efforts finding. One appeal was denied. This appeal affirms the original trial court finding. Cites ASFA & § 101(a)(5) (§ 671(a)(15)). “Here, ACS did not provide this mother with sufficient services or referrals in response to her significant psychiatric needs.” (at 443). The social worker had many contacts with the family, but no services addressed the family’s unique needs. “The condition that a judicial determination that reasonable efforts to prevent a child from entering into foster care were made before the State can be eligible for foster care maintenance reimbursement was enacted to punish the State and hold it accountable when its social services agencies fail to do what the federal law mandates.” (at 446).

*In re Amanda Lynn B.*, 60 A.D.3d 939, 877 N.Y.S.2d 104 (2009) – The child was removal from grandmother – At the §1027(a) proceeding the removal decision was Reversed. Reasonable efforts were not provided prior to removal from grandmother’s home and placement with mother pursuant to Family Ct. Act section 1027 (b)(iii). The child had resided with grandmother 12 years.

## **Reasonable Efforts to Effect the Safe Reunification of the Child and Family**

### **Reasonable Efforts**

*Matter of Matthew C.*, 627 N.Y.S.2d 822 (N.Y. 1995) – TPR – Affirmed.

Mother’s problems included an alcoholic husband, domestic violence and a lack of parenting skills. The agency provided services to strengthen parental relationship, maintained contact with mother, offered day treatment programs, counseling, parenting skills classes, codependency counseling and program designed to help victims of violence, plus visitation. Mother’s participation was superficial.

*In re Suzanne N Y*, 423 N.Y.S.2d 394 (Fam. Ct. 1979) – TPR – Reversed at 2nd trial and remanded to terminate the mentally ill mother’s parental rights.

The child had never lived with the mother and had lived with foster parents for 8 years. In the new trial, the agency’s petition was dismissed, and the court held that the agency failed to prove by a preponderance of the evidence that the parent failed to plan for the future of her child despite diligent efforts of the agency to encourage and strengthen the parental relationship. The court found that the agency failed to meet its obligations to use diligent efforts to help the parent develop a plan for the child, and to advise the parent of how her parental rights might be terminated. “The requirement of diligent efforts stems from both the nature of the proceedings and the relative positions of agency and parent. The proceeding constitutes and interference by the State in the parent-child relationship. In this setting the parent is severely disadvantaged, being burdened with economic, emotional, mental, and physical problems. On the other hand, the agency is vested with expertise, experience, capital, manpower [sic] and prestige. Agency efforts correlative to their superiority is obligatory.” (at 397) The agency also must explain the consequences of non-compliance with the service plan.

*In the Matter of Blanca QQ*, 80 A.D.3d 809, 914 N.Y.S.2d 402 (N.Y. Supreme Court, 2011) – At a permanency hearing the trial court ruled the agency had not provided reasonable efforts to eliminate

the need for placement of the children and to enable the children to return safely to their mother. The appellate court reversed that finding – pointing out the agency arranged for individual counseling, placed mother on a waiting list for group anger therapy sessions, provided financial assistance to facilitate mother’s attendance at appointments and referred her to parenting classes. Finding of no reasonable efforts modified.

*In the Matter of Robert F.* 195 A.D.2d 715; 600 N.Y.S.2d 307; 1993 N.Y. App. Div. LEXIS 7083, Petition to TPR – Denied. Denial Affirmed on appeal.

The department relied on evidence that the mother failed to obtain mandated counseling and made few visits or telephone calls to the children. The court affirmed a family court order dismissing the petition. The department had an obligation to assess the mother’s needs and then take meaningful affirmative steps necessary to remove obstacles that stood in the way of effecting reunification of the family. The department did not take steps to inform her of available transportation services, or to inquire whether she could use those services or whether a shift in the place or day of visitation would facilitate more regular attendance. Thus, the evidence provided ample support for the determination that the department did not make suitable arrangements to assure that respondent could carry out the visitation provisions of her service plan, that the mother did not frustrate the department’s efforts to fulfill its statutory obligations, and that termination of parental rights was not warranted.

*In re Ja-Nathan F.*, 752 N.Y.S.2d 573 (N.Y. 2002) – TPR – Affirmed.

Diligent efforts included a plan for return, visitation, housing and transportation assistance, counseling on domestic violence issues, treatment for drug and alcohol addiction and parenting classes. Mother failed to make progress in treatment.

*In re Charmaine T.*, 173 A.D. 2d 625, 570 N.Y.S.2d 209 (1991) – TPR – Reversed.

The court found the agency did not provide diligent efforts. The agency failed to determine the reasons the mother discontinued her parenting program, this despite the fact that the child had been in foster care for 7 years and the agency’s prior efforts to arrange parental therapy

*Matter of Loretta*, 114 A.D.2d 648, 494 N.Y.S.2d 232 (N.Y.App.Div. (1985) – TPR – Reversed.

3 siblings had been in foster care most of their lives. The case plan provided for weekly visits and individual and family counseling. Mother only attended 20 of 66 counseling sessions over an 18 month period and did not regularly visit. The case was reversed for other reasons, but the court stated that the agency’s arrangements for counseling and visits, transportation to and from these meetings were “not only extensive but consistent with the statute” requiring “diligent efforts to encourage and strengthen the parental relationship.”

## **Mental Health Issues**

*Matter of Kimberly J.*, 629 N.Y.S.2d 142 (N.Y. 1995) – TPR – Affirmed.

The child was removed because of father’s mental illness and mother’s mental retardation resulting in inability to care for child. Agency developed service plan, provided services, set up visitation. Parents did not cooperate and were hostile towards department.

*In re Shaneek Christal W.*, 122 A.D.2d 215, 504 N.Y.S.2d 748 (2d Dep’t 1986) – TPR – Dismissed.

The court held that where medical testimony could not rule out the possibility that if the mildly retarded, schizophrenic mother cooperated with treatment she could be rehabilitated to the point that she would be able to adequately care for her children, her parental rights could not be terminated. Without discussing whether there were any statutory requirements for rehabilitation, the court implied that in the instant case the state was obligated to initiate rehabilitative services. It noted that in the event the mother failed to cooperate with all rehabilitative efforts and failed to show a very substantial improvement in her ability to care for the children, another proceeding to terminate her parental rights on the ground of inability to care for them because of mental illness or disability would be warranted. The court also noted that at that time, the state might also choose to pursue termination on the basis of permanent neglect.

*In re W.W. Children*, 190 Misc. 2d 258, 736 N.Y.S.2d 567, 110 A.L.R.5th 769 (Fam. Ct. 2001) – TPR – Dismissed.

The court rejected a social service agency's position that it had no obligation to provide reunification services to a mentally retarded parent because N.Y. Soc. Serv. Law § 384-b(4) (c) did not require it to show it has made diligent efforts to do so in such cases. Criticizing the agency's position that it could determine that a parent could not care for her children in the foreseeable future and thereby forgo efforts toward reunification simply because she was retarded, the court noted that although the statute did not require agencies to make diligent efforts to reunify mentally ill or retarded parents with their children, agencies nevertheless had this obligation under the Adoption and Safe Families Act (ASFA) (1999) and the Child Welfare Reform Act (1979). The court held that the guidelines of these acts required authorized agencies to plan for reunification of all natural parents with their children and did not make exceptions for mentally retarded or mentally ill parents. Moreover, the court stated, the language of N.Y. Soc. Serv. Law § 384-b(4)(c) didn't preclude an agency from helping effectuate reunification.

*Matter of L. Children*, 131 Misc.2d 81, 499 N.Y.S.2d 587 (Fam. Ct. 1986) – TPR – Petitions dismissed.

The court held that in certain situations, the agency had a statutory obligation to provide remedial or therapeutic supportive services designed towards the special needs of parents diagnosed as "mildly mentally retarded." The agency had provided mother with housing, finances, and visitation, but not psychiatric or psychological services, specialized mental retardation services or remedial help. Without such services the court could not determine whether the parent cannot in the future take satisfactory care of her children.

*In the Matter of Candie Lee "W"*, 458 N.Y.S.2d 347 (App. Div. 1983) – TPR – Affirmed.

Child was removed because of the mother's mental retardation and inability to care for the child. Social services provided access to several programs including Literacy Volunteers, the Association for Retarded Children, The Pelican Club (for new parents), the Capable and Loving Mothers program, Parents Anonymous, and the Mental Health Clinic. Transportation services for the mother made it possible for her to participate in each. Held: The agency had met its duty to provide diligent efforts.

*In the Matter of Shantelle W.*, 587 N.Y.S.2d 935 (N.Y. 1992) – TPR – Reversed.

Mother's mental illness led to removal of child. The appellate court held that the agency did not

provide reasonable (diligent) efforts, did not review mother's psychiatric records, never brought mother's alleged recalcitrance to the attention of the psychiatrist, and never made a definite appointment for mother to meet with the psychiatrist. The caseworker never looked at the file until the time of the TPR hearing. The appellate court remanded the case with instructions that the state refer the mother for psychiatric therapy, take other steps to assist her, and review her progress.

*In Matter of Catholic Guardian Society*, 131 Misc. 2d 81, 499 N.Y.S.2d 587 (N.Y. Fam. Ct. 1986) – TPR – Reversed.

The mother was classified as mentally retarded and appealed a termination of her 4 children. The appellate court held the agency had not made diligent efforts required by statute, and mother's mental condition did not preclude her caring for her children in the foreseeable future. No general psychiatric or psychological services or specialized services for mental retardation. Present incapacity to care for children because of mental retardation (quiet during visits) does not demonstrate a future incapacity.

*In Matter of Star A.*, 55 N.Y.2d 560, 450 N.Y.S.2d 465, 435 N.E.2d 1080 (N.Y. 1982) – TPR – Reversed.

The mother was hospitalized for mental illness and her children were removed. The agency tried to arrange for psychiatric counseling, it did not work out and the agency gave up calling the situation "hopeless". The appellate court said the agency must perform "diligent efforts". It is not an excuse to assert that efforts would have been "futile" or "difficult and burdensome". Dissent said "no chance for return" and TPR should have gone ahead.

*Matter of Erica J.*, 154 A.D.2d 595, 546 N.Y.S.2d 423 (2d Dep't 1989) – TPR Dismissed – Affirmed.

An appellate court affirmed an order dismissing a petition to terminate parental rights because the petitioner, a family services agency, had failed to demonstrate that it had made diligent efforts to effectuate reunification. The agency had filed a petition for termination based on permanent neglect. The petition alleged that the mentally ill and retarded mother refused to cooperate with supervised home visitation and thereby failed to plan for her daughter's return, but the appellate court found that the evidence showed that agency caseworkers failed to adequately help the mother plan for the child's return. Despite the lack of agency help, the mother took significant steps on her own accord. With the help of her therapists, she participated in psychotherapy and educational and vocational programs to improve her ability to parent. The court rejected the agency's claim that because of the mother's lack of cooperation, it could be excused from making further diligent efforts toward reunification, holding that an agency may only discontinue its efforts to reunite parent and child under extreme circumstances, where the child's welfare would be jeopardized. It found that the agency had failed to meet the threshold consideration in proceedings to terminate parental rights based on permanent neglect – i.e., whether the agency has discharged its statutory obligation to exercise diligent efforts to encourage and strengthen the parental relationship.

*In the Matter of DSS on Behalf of Viana Children*, 124 Misc. 2d 543, 476 N.Y.S.2d 750 (Family Court, 1984) – TPR – Petitions Dismissed – Affirmed.

The state has an obligation to provide diligent efforts to rehabilitate a parent charged with neglect when TPR is sought on grounds of the parent's mental retardation.

*In re Sara B.*, 203 App. Div. 2d 747, 610 N.Y.S.2d 403 (3rd Dep't 1994) – TPR – Affirmed. The appellate court found that the agency had taken into account the parent's mental condition in fashioning services designed to help the parent reunify. The agency worked with the mother for two years, encouraged her to obtain mental health and sex abuse counseling that she declined to pursue, and provided her with financial assistance, supervised visitation, and parenting classes. Diligent efforts affirmed.

*In re Jason Anthony S.*, 277 A.D. 2d 389, 717 N.Y.S. 2d 197 (2d. Dep't 2000) – TPR – Affirmed. The appellate court noted that New York law does not require the state to make a reasonable effort to effectuate reunification when the ground for termination is mental illness, but it is required to make such efforts in cases based on parental neglect, even though the parent is mentally ill. *Accord* – *Matter of Caroline*, 218 A.D.2d 388, 638 N.Y.S.2d 997 (4<sup>th</sup> Dep't 1996) & *Matter of Jaime YY*, 176 A.D.2d 1004, 575 N.Y.S.2d 172 (3<sup>rd</sup> Dep't 1991).

*Matter of Joseph ZZ*, 245 A.D. 2d 881, 666 N.Y.S.2d 827 (3d Dep't 1997) – TPR – Affirmed. The mentally ill mother completed some services, but the court found that she did not gain the ability to plan for and care for her child. She cancelled a number of visits, changed living arrangements and personal relationships, and was hostile to agency workers.

*Behalf of Natasha C. v. Nereida C.*, 199 A.D. 2d 500, 606 N.Y.S. 2d 35 (2d Dep't 1993) – TPR – Affirmed.

The court found that the mentally ill mother was not motivated to improve her parenting abilities. She was treatable, but did not have the desire or motivation to participate in the consistent therapy she required in order to properly care for her child.

## **Housing**

*In the Matter of Enrique R.*, 129 Misc. 2d 956, 494 N.Y.S.2d 800 (N.Y. Fam. Ct. 1985) – Placement appeal. Reversed. The trial court did not authorize the child to be released to the care of the grandmother solely because of lack of housing. She was a fit person for placement. The court, finding a lack of diligent efforts, ordered the agency to assist with housing (specifically: phone calls, letters, legal action).

*In the Matter of Jason S.*, 117 A.D.2d 605, 498 N.Y.S.2d 71 (N.Y. App. Div. 1986) – TPR – dismissed termination at trial court. Affirmed on appeal.

Housing was the main issue. The appellate court affirmed saying the agency had not provided reasonable efforts to obtain housing. The agency also failed to work with the mother to improve relationship with the child as the mother seemed indifferent to her relationship with the child.

*In re Cory N.*, 2013 WL 6096762 (N.Y. App. Div.) – TPR – Affirmed.

The children had been in care for 2 years and mother failed to show she could provide a safe home for them despite intensive services. Her failure to secure a residence for the 3 children was a sufficient basis for termination.

## **Uncooperative Parents**



*Matter of St. Christopher O.*, 611 N.Y.S. 2d 930 (N.Y. 1996) – TPR – Affirmed.

The court held that where an agency's reasonable attempts to nurture the parent-child relationship were opposed or met with indifference by uncooperative and recalcitrant parents, the agency was deemed to have met its statutory duty.

*In the Matter of Nicole M.*, 466 N.Y.S. 2d 235 (Fam. Ct. 1983) –TPR – Affirmed.

Failure of the parents to keep the agency apprised of their whereabouts for a significant period excuses the agency from its duty to make diligent efforts

*In re Lisa L.*, 117 A.D.2d 931, 499 N.Y.S.2d 237 (N.Y. App. Div. 1986) – TPR – Affirmed.

In reviewing a reunification plan, the appellate court held that the agency "should be sensitive to the particular needs and capabilities of the parents...and should not be unrealistic in light of the financial circumstances of the parents." These "responsibilities are not one-sided, for the parents are obligated to cooperate with the [agency]. However in this case the agency provided reasonable efforts by counseling the alcoholic parent who, in turn, refused treatment.

*In re D'Anna KK*, 751 N.Y.S.2d 326 (N.Y. 2002) – TPR – Affirmed.

The child was removed for parental neglect and sexual abuse by father. Services offered to parents included supervised visits, parent aide services, mental health counseling, and offer of transportation. Mother and father failed to make required initial contact and failed to comply with plan.

*Matter of Michael U.*, 639 N.Y.S.2d 1021 (N.Y. 1996) – TPR – Affirmed.

Agency made efforts to strengthen relationship between the parents and children, encouraged visitation, arranged for transportation, apprised parents of progress in foster home, offered training regarding children with special needs and attempted to refer parents to several services – parents refused to cooperate and refused to execute releases necessary for referrals.

*In re Brooke Louise H.*, 158 A.D. 2d 425 (1st Dept. 1990) – TPR – Affirmed.

Respondent contends that petitioner's failure to make diligent efforts to unite her and her daughter precludes a finding of permanent neglect. However, the evidence demonstrated that petitioner arranged visitation and attempted to assist respondent in obtaining housing but respondent kept only 4 of 36 scheduled visits between March 1986 and August 1987 and refused assistance in obtaining housing. Her failure to maintain contact with a child or infrequent or insubstantial contact constitutes grounds for a finding of permanent neglect. Further, where an agency's efforts are frustrated by "an utterly un-co-operative or indifferent parent", the agency has fulfilled its duty by making reasonable efforts under the circumstances.

*In re Byron Christopher Malik*, 309 N.Y. 2d 669 (1st Dept. 2003) – TPR – Affirmed.

While an agency has a statutory obligation to exert diligent efforts to encourage and strengthen the parental relationship, the parent must assume a measure of initiative and responsibility. An agency's statutory duty is fulfilled when it embarks upon a diligent course, but nevertheless faces an utterly uncooperative or indifferent parent. Here, the agency attempted to remain in contact with appellant, to schedule conferences, to refer appellant to drug rehabilitation and parenting skills programs and to implement visitation. Appellant, however, did not respond to the agency's letters, did not attend or reschedule conferences, refused to attend a drug treatment strengthen the parental relationship

program, claiming that she no longer had a drug problem, and refused to attend parenting skills classes, claiming that she did not need any assistance. Even crediting appellant's assertions that she visited her son three or four times over the course of 20 months, these infrequent contacts fall woefully short of consistent and adequate visitation.

*In re Guardianship of Star Leslie W.*, 63 N.Y.2d 136 (1984) – TPR – Affirmed.

The mother left her infant with a foster home and over several years visited now and then. The Family Court found that, although respondent had maintained contact with Star notwithstanding her extended absences, she had failed to plan for Star's future, despite the agency's diligent efforts, and granted the petition.

### **Incarcerated Parent**

*In the Matter of Sharu K.*, 20 Misc.3d 479, 860 N.Y.S.2d 806 (N.Y. 2007) – TPR – Reversed.

Though father was incarcerated, the agency did not provide diligent efforts. Father had an excellent relationship with child. Services offered to father, but not available in jail. Some violence reduction services in jail (anger management). Father's release date was 6 months away and definite release date in 21 months. Department did not exercise diligent efforts. Visitation was sporadic. Services shifted over time. Father had planned for child's future.

*In re Jayson M.*, 576 N.Y.S. 2d 396 (N.Y. 1991) – TPR – Affirmed.

While incarceration is not ground in and of itself for termination of parental rights, an incarcerated parent is not excused from the requirement that he or she realistically plan for the child's future. Where agency efforts to reunite separated family are frustrated by uncooperative or indifferent parent, the agency fulfills its duty to attempt to reunite the family by making reasonable efforts under the circumstances.

### **Supporting the Parent-Child Relationship**

*In re Verona Jonice N.*, 581 N.Y.S.2d 11 (1992) – TPR – Reversed.

The court held that permanent neglect could not be inferred from the record and that the mother's desire to be with and to care for the children had been well established. The court also held the mother's period of non-communication had fallen short of the statutory one-year period. Moreover, the court held the agency had failed in its burden of establishing by clear and convincing evidence that it had exercised diligent efforts to strengthen the parental relationship or that the mother, during the 11 month absence, had been financially or physically capable of maintaining contact with the children. The case worker by his own admission failed to do anything to help mother obtain housing despite her request for letter that would assist her in getting Section B housing.

*In re Tiffany V.*, 607 N.Y.S.2d 45 (N.Y. 1994) – TPR – Affirmed.

Agency exerted diligent efforts to strengthen the parent child relationship. Kept father informed about the child's special needs, progress and medical condition, arranged visitation, provided referrals to parenting skills class and counseling and urged father to learn child's problems.

*In re Guardianship of Jason LeBron*, 528 N.Y.S. 2d 572 (N.Y. 1988) – Guardianship appeal – Affirmed.

The agency fulfilled its duty of diligence in attempting to strengthen parental relationship. Social workers arranged regular visitation schedule, kept parents informed of child's progress in foster care, and met frequently with parent to encourage them to play realistically for child's future. Parents could not overcome their addiction to hard drugs.

*In re Shane I.*, 751 N.Y.S.2d 127 (N.Y. 2002) – TPR – Affirmed.

Father failed to participate in programs planned by the agency as a result of lack of motivation. The county tried to strengthen the father/child relationship by providing a parenting aid, weekly supervised visits, substance abuse evaluations and long term counseling. The agency also offered parenting education, literacy training and regular meetings with the social worker. Held: Reasonable efforts were provided

*In the Matter of Joyce Ann R.*, 371 N.Y.S.2d 607 (Fam. Ct. 1974) – The child was voluntarily in foster care for 6 years. When the foster parents tried to adopt the child, the agency tried to prove that the mother was neglectful. The court held that it is insufficient for an agency merely to give the parents an ultimatum. (at 609) The parent should be given an opportunity for counterproposals to the agency's service plan. The court held that the agency's petition was subject to dismissal because the agency failed to prove, as required by N.Y. Fam. Ct. Act §614(1)(c), that it had made diligent efforts to encourage and strengthen the mother's relationship with the child. The court found that: (1) its evaluation of the mother's parental performance as occasionally equivocal and more negative than positive were tempered by the mother's regular and affirmative contacts and expression of interest; (2) such factors, combined with knowledge of the mother's mental history, should have heightened the agency's awareness of its challenge to diligence; and (3) examination of the agency's records indicated only routine dealings with the mother.

*In the Matter of Ronald "YY"*, 475 N.Y.S.2d 597 (App. Div. 1984) – Finding of neglect. Affirmed. The court found that the department had made diligent efforts to encourage and strengthen the parental relationship, as required by N.Y. Soc. Serv. Law § 384-b(7)(a), (f). Mother abandoned the alcohol treatment program recommended by the agency. The agency can prioritize the parents' problems addressing the most important problems first.

### **Incorrect Services**

*In re Amber "W"*, 481 N.Y. S. 2d 886, 888-89 (App. Div. 1984) – TPR – Reversed.

The agency removed a child from a 16 year old mother. Services included transportation and information on housing including referral to WIC (Women, Infants and Children Program). However the agency refused to allow mother to visit on Christmas day and failed to tailor the services to the needs of the family. Specifically the mother was young, had been raped several times, lost her father to suicide and was experiencing a difficult pregnancy. This was a failure of reasonable efforts.

*In re Sheila G.*, 462 N.E. 2d 1139, 474 N.Y.S.2d 421 (N.Y. 1984) – TPR – Reversed.

The father had to prove paternity and when the mother gave the child to be adopted, the TPR was premature because the agency had not provided diligent efforts. The case was remanded to give the opportunity to reunite with the child. "When a child-care agency has custody of a child and brings a proceeding to terminate parental rights on the ground of permanent neglect, it must affirmatively plead

in detail and prove by clear and convincing evidence that it has fulfilled its statutory duty to exercise diligent efforts to strengthen the parent-child relationship and to reunite the family; that only when this duty has been deemed satisfied may a court consider and determine whether the parent has fulfilled his or her duties to maintain contact with and plan for the future of the child; "...the parent is by definition saddled with problems: economic, physical, sociological, psychiatric or any combination thereof. The agency in contrast, is vested with expertise, experience, capital, manpower and prestige." (at 1145). Yet the agency is not charged with a guarantee that the parents succeed in overcoming their problems. (at 1148) "Diligent efforts" are "affirmative, repeated, and meaningful efforts" to assist the parents in overcoming their problems. (at p. 1148).

*Matter of Charlene TT.*, 634 N.Y.S. 2d 807 (N.Y. 1995) – TPR – Reversed.

An abuse and neglect petition was filed alleging physical and sexual abuse by the father and inadequate guardianship by the mother. The family court held that both the mother and the father had neglected the oldest daughter and made a derivative finding of neglect with respect to the other three children. The family court did not find that the father had sexually abused the daughter but nonetheless ordered the father to follow a sex offender program. In a subsequent proceeding, the family court found that the mother and father had permanently neglected their children and their parental rights were terminated. On appeal, the court reversed, dismissed the petitions, and remitted the matter to family court for further proceedings. Where the rehabilitation plan primarily focused on alleged sexual abuse although there had not been a finding of sexual abuse, petitioner Department of Social Services did not fulfill its duty to exercise diligent efforts to encourage and strengthen the parental relationship. Following the father's unsuccessful completion of the program, the department should have undertaken further efforts at counseling.

### **Employment Assistance**

*In re Jamie M.*, 63 N.Y.2d 388, 472 N.E.2d 311, 482 N.Y.S.2d 461 (1984) – TPR – Reversed.

A special needs child was removed because of inadequate housing and income. The case plan included referrals to the state employment agency and a local housing council. No attempts to secure public assistance were made. Held: No diligent efforts. The agency is not required to be a "24 hour babysitter" for the parents. (at p. 313) If there is no proof of services offered, the agency has not met its burden. The termination was found to be improper because the agency failed to address the parents' unemployment and financial hardship which were the presenting problems.

### **Reasonable Efforts to Finalize a Permanency Placement**

*In re Taylor EE*, 80 A.D.3d 822; 914 N.Y.S.2d 404 (N.Y. Supreme Court, 2011) – This was an appeal from a trial court finding that agency did not make reasonable efforts to finalize the permanency plan for minor. The child had developmental disabilities and was freed for adoption and placed at a residential facility. The agency suggested to the facility that one of their teachers become Taylor's adult resource, but that violated facility policies. At the hearing, the social worker suggested that the relative caretaker of a sibling accept Taylor. The trial court found these efforts were not reasonable. Social worker did not ask relatives if they would be a resource person for Taylor, nor did the worker enquire about others in the community who might be a resource person for him. Further, the social worker's negative views of Taylor "infected" the report.

*In the Matter of Michael WW*, 45 A.D.3d 1227, 846 N.Y.S.2d 739 (N.Y. Supreme Court, 2007) – After the permanent plan for adoption, there was a delay for over six months. The trial court found that the agency did not make reasonable efforts to finalize a Family Court Act Article 10-A permanency plan for adoption. The appellate court reversed, noting the agency investigated all agencies in N.Y. and two most continuous states. The agency listed the child in the photo-list of children available for adoption and maintained contact with the child’s uncle as well as giving the court reports every two weeks. Trial court finding of no reasonable efforts reversed.

### **Aggravated Circumstances**

*In re Keith M.*, 181 Misc. 2d 1012, 697 N.Y.S. 2d 823 (Fam. Ct. 1999) – ASFA applies to this case. Diligent efforts are not required when the child has suffered aggravated circumstances as defined in N.Y. law. In this case the child was tied up and on numerous occasions whipped and beaten.

*In re Marino S.*, 100 N.Y. 2d 361, 763 N.Y.S. 2d 796, 795 N.E.2d 21 (2003) – TPR and Bypass of services – Affirmed.

ASFA permits reasonable efforts to be bypassed as does N.Y. law. The children were severely abused. The mother knowingly allowed one child to be raped by the father of two of the mother’s other 2 children.

*In re June S.*, 183 Misc. 2d 679, 704 N.Y.S. 2d 450 (Fam. Ct. 2000) – State made motion to have court order that reasonable efforts are no longer required in the instant case because the mother had rights terminated with regards to a sibling. The court held that the court must address whether reasonable efforts were provided before the motion was filed. Citing N.Y. Fam. Ct. Act section 1052(b)(i)(A)

*In re Jammie CC.*, 540 N.Y.S.2d 27, 28 (App. Div. 1989) – TPR – without reasonable efforts because the parents were found to be mentally ill under a New York statute. Affirmed. New York courts have consistently decided not to read the reasonable efforts requirement into the part of the statute governing cases of mental illness. But the appellate court stated that the state was still required to prove that the parents were presently and for the foreseeable future unable to properly provide for their child.

*In re Marilyn H.*, 436 N.Y.S.2d 814 (N.Y. Family Court 1981) – TPR – Affirmed. The mother had no contact with the child for over a year. New York’s “diligent efforts” requirement was aimed only at averting the agency’s deliberate discouragement of the parent.” (at pp 821-22).

*In re Jaime S.*, 9 Misc. 3d 460, 798 N.Y.S. 2d 667 (Fam. Ct. 2005) – Where the state is seeking to bypass reunification services because of a prior termination of parental rights of a sibling, the state must prove both the prior termination and the additional elements required by the statute and the proof must be by clear and convincing evidence. The court in *In re Carl D.*, 195 Misc.2d 741, 762 N.Y.S. 2d 226 (Fam.Ct. 2003) reached a contrary conclusion on the burden of proof issue.

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A Kings County Family Court Judge now sitting in a dependency calendar agreed that § 1028 hearings

are an ideal opportunity for the judge to evaluate the efforts expended by the child protection agency. The judge noted that he has often made “no reasonable efforts” findings, but that the subordinate judicial officers (referees) are reluctant to do so because of their status as court employees. He said “that the reasonable efforts issue is not often litigated at the § 1027 (initial) hearing because the removal is often sought in the context of an unforeseen emergency where there was no prior opportunity for reasonable efforts to have been exercised. In addition, parents frequently forgo the § 1027 hearing in favor of a § 1028 hearing at a later time, when they have had a greater opportunity to prepare their case and their substantive position may be stronger. He also said that the most difficult issues facing the court are (1) a lack of resources for the court and for the families and (2) overwhelming case loads exacerbated by the curtailment of court hours caused by the financial crisis.”

Telephone call and emails from Judge Daniel Turbow, Family Court Judge, Kings County Family Court, Brooklyn, New York.

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In New York City’s family courts the question of whether reasonable efforts have been made is “very rarely addressed.” Judges admit they often routinely approve requests to take away children even when they don’t really believe the child savers have made an adequate case. “Such practice...comes frighteningly close to abdicating the Court’s basis responsibility to protect the rights of children and families.” “Special Child Welfare Advisory Panel, Advisory Report on Front Line and Supervisory Practice,” March 9, 2000, pp 47-48.

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## **NORTH CAROLINA**

**STATUTES:** N. C. Gen. Stat. §§ 7A-289.32(3), 517(25a) (Supp. 1997) “The diligent use of preventive or reunification services by a department of social services when a juvenile remaining at home or returning home is consistent with achieving a safe, *permanent* home for the juvenile within a reasonable period of time.” N.C.G.S. § 7B-507(a)(a) & 7B-905; § 7B-101 R/E “the diligent use of preventive or reunification services by a department of social services when a juvenile’s remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. §7B-101(18) - If a court determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile. Court may “direct that reasonable efforts ...shall not be required or shall cease if the court...[finds that such] efforts clearly would be futile....” NCGS § 7B-507(b) (1)(2003). Definition of Reasonable Efforts N.C. Gen. Stat. § 7B-100 (18); Quality of services -§7B-300.

## **CASE LAW:**

*In re H.D.F. v H.C., A.F.*, 677 S.E.2d 877 (N.C. Ct. App. 2009); Appeal of adjudication – Affirmed and reversed in part.

On appeal the mother contended that numerous findings of fact within the adjudication and disposition

orders were unsupported by the evidence. The appellate court concluded that the findings to which the mother objected did support the conclusion that the children were neglected under N.C. Gen. Stat. § 7B-101(15). Among other things, the facts established that one child was locked outside his home for a substantial period, even though the mother was inside, and the child required the assistance of a neighbor, his father, and the police to regain access to his home. In addition, two children frequently missed school and the third had not obtained routine immunizations, had a yeast infection and cradle cap. Contrary to the mother's contention, the appellate court found that the trial court complied with N.C. Gen. Stat. § 7B-507(a)(a) when it ordered DSS to supervise the mother's visitation and to aid her in her substance abuse assessment and psychological evaluation, the functional equivalent of making reasonable efforts. The adjudication of neglect as to the father was error, where it was based in large part on his failure to appear and the father failed to receive several relevant documents.

*In re K.S.*, 646 S.E.2d 541 (N.C. Ct. App. 2007) – Appeal from a trial court order ending reunification services for the mother. Affirmed.

The mother failed to complete a number of services offered to her. The reasonable efforts were held to be adequate.

*In re Rholetter*, 162 N.C. App. 653 – Placement with mother. Affirmed.

The evidence supported the finding that the county department of social services made reasonable efforts to prevent the need for the placement of children and to reunify children with father. The department prepared two case plans for father that outlined what needed to be done to reunify with the children, they provided for supervised visitation for father and the children, and they provided family counseling.

*In re A.R.H.B.*, 651 S.E. 2d 247,186 N.C. App. 211 (N.C. Ct. App. 2007) – TPR – Affirmed.

The mother left the children with their grandmother. There was domestic violence and alcohol abuse in mother's home. Reasonable efforts included foster care, Medicaid, parenting, and substance abuse treatment. It was not reasonable to require agency to provide housing aid and permanent transportation.

*In re M.J.G.*, 168 N.C.App. 638 – TPR – Affirmed.

Held that reasonable efforts were provided. Mother was using drugs at the birth of the child. The mother left the child at the hospital. The court terminated reunification efforts. The mother was homeless, drug using, did not attend assessments, and made no progress on her mental health.

*In re D.M.*, 2011 WL 1474411 – Reasonable Efforts not provided.

This was a custody mediation between parents that failed and the child was moved to the maternal grandmother. After moving the child from mother to father's home, the agency did not provide support services for him in parenting. "DSS did not make any "use of preventive or reunification services" in regard to respondent-father."

*In re R.A.H.*, 641 S.E. 2d 404 (N. C. Ct. App. 2007) – The TPR was reversed and a guardianship put in place. No services offered – Mother appealed - Affirmed.

Efforts to reunify the mother and child would be futile or inconsistent with the child's health, safety, and need for safe, permanent home within a reasonable period of time. There were risks associated

with a return to the parents' home, earlier attempts at home placement had failed, and mother failed to contact social worker since the last review.

*In re JKH*, 562 S.E.2d 303 (N.C. Ct. App. 2002) – TPR – Affirmed.

The children were removed because of neglect and sexual abuse by father. Services included sexual abuse therapy for father. He did not make sufficient progress. DSS has a responsibility to reasonably promulgate plans which could support reunification efforts. When there is substantial compliance with these plans by the parents, reunification should take place.

*In re Dula*, 544 S.E.2d 591 (N. C. Ct. App. 2001) – The appellate court ordered trial court to stop reunification services and implement permanent plan of termination and adoption. If the county department has made unsuccessful reasonable efforts during the 15 months the child has been in placement, the efforts of the department and the courts must be redirected to developing a permanent plan, not parent-child reunification.

*Matter of Harris*, 360 S.E.2d 485 (N.C. Ct. App. 1987) – TPR – Reversed.

In order to TPR petitioner must prove the parent has “willfully left the child in foster care for more than two consecutive years” without showing “substantial progress” to the diligent efforts of DSS to encourage the parents to strengthen the parental relationship or plan for the child’s future. The court determined that there could be no finding that the fathers failed to show positive response to the diligent efforts of the department of social services where the department of social services had done essentially nothing to attempt to provide services to the fathers.

*In re Leftwich*, 518 S.E.2d 799 (N.C. Ct. App. 2002) – TPR – Affirmed.

The children were removed because of mother’s alcoholism. She agreed to address alcohol abuse and parenting skills. AA and counseling were insufficient as she continued to abuse alcohol. Reasonable efforts provided.

*In re Mitchell M.*, 559 S.E.2d 237 (N.C. Ct. App. 2002) – TPR – Affirmed.

The children were removed because of domestic violence and drug abuse in the home. Services included counseling, anger management, and substance abuse treatment. The mother continued to test positive and did not make reasonable progress. Reasonable efforts provided.

*In re Blackburn*, 543 S.E.2d 906 (N.C. Ct. App. 2001) – TPR – Affirmed.

Incarcerated mother placed child in a crack house. Mother tried to rehabilitate in prison and wrote to daughter. No visits permitted. Court concluded that mother did not show an improvement in her lifestyle and demonstrated no evidence that she could adequately care for daughter. Reasonable efforts provided.

*In re Hensley*, 580 S.E.2d 97 (N.C. Ct. App. 2003) – TPR – Affirmed.

Children removed because of neglect including substance abuse, domestic violence and unsafe living conditions. Reunification plan included child support, stable housing, parenting classes, therapy, and substance abuse services. Mother failed to make reasonable progress in spite of reasonable efforts from department.



*Matter of Tate*, 312 S.E.2d 535 (N.C. App. 1984) – TPR – Affirmed.

The child was removed because of mother's substance abuse, instability and mental health issues. Services included a number of programs, housing assistance, Salvation Army, cleaning of apartment, but mother gradually abandoned her initial efforts to comply and improve herself. She willfully left the child in foster care for two years without showing positive response to DSS efforts. Reasonable efforts were provided. Although she had made some efforts to work with her child, "substantial progress" requires a positive result from these efforts. The court found that the parents' behavior while visiting their children did not demonstrate an adequate parental relationship. The child did not cry when visits ended, the parent did not complete entire visits, and the parent had only completed seven visits in the past year.

*Matter of Allred*, 471 S.E.2d 84 (N.C. Ct. App. 1996) – TPR – Affirmed.

Child born with myotonic dystrophy – was removed because mother did not care for child's needs. Services directed towards mother learning how to care for child's special needs. Mother failed to follow social worker's advice. Reasonable efforts provided.

*In re Helms*, 127 N.C. App., 505, 491 S.E. 2d 672 (N.C. Ct. App. 1997) – Child adjudicated dependent and removed. Affirmed.

The mother, 16 years old, was given 4 separate case plans, but could not end her relationship with the child's violent and abusive father. She appealed the order adjudicating her daughter a neglected child and granting continued custody to the department of social services. The North Carolina Court of Appeals noted that any order "authorizing DSS's continued custody of a neglected juvenile 'shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody.'" The trial court found that the department of social services had made reasonable efforts. On appeal, the appellate court considered whether the trial court's finding that reasonable efforts at reunification had been made constituted a legal or factual question. The court reasoned that, "as a general rule, ... any determination requiring the exercise of judgment, or the application of legal principles, is more properly classified as a conclusion of law." But, it then concluded that "any determination reached through 'logical reasoning from the evidentiary facts' is more properly classified as a finding of fact." Based upon these principles, the court concluded that "the reasonable efforts... determination [is a] conclusion of law because [it] requires the exercise of judgment." Still, because the legislature had not defined the term "reasonable efforts," the court concluded that "the district courts are given great discretion in determining what efforts are reasonable in each case and whether those efforts have been made by DSS."

## **Mental Health Issues**

*In re C.M.S.*, 184 N.C. App. 488 – TPR – Affirmed.

Reasonable efforts found – Mother mentally retarded. Americans with Disabilities Act did not prevent state from terminating parental rights. Agency made efforts to eliminate the need for placement.

*Matter of Montgomery*, 316 S.E.2d 246 (N.C. 1984) – TPR – Affirmed.

The children were removed from mentally retarded parents. Services included homemaking skill development, counseling, medication, training in budgeting, psychological evaluations, and visits.

Insufficient progress let to termination. Reasonable efforts provided.

*In re Brim*, 535 S.E.2d 367 (N.C. Ct. App. 2000) – TPR – Affirmed.

The children were removed because of mother’s borderline personality disorder and poor parenting. Many services were provided to her (and boyfriend), but the mother failed to demonstrate she could adequately provide for the needs of her child. Reasonable efforts provided.

*In re C.M.*, 644 S.E. 2d 588 (N.C. Ct. App. 2007) – TPR - Affirmed.

The trial court found reunification efforts would be futile. Parents were mildly retarded, the mother failed to comply with terms of the case plan regarding the child’s sibling, the father was required to supervise the mother, but there was concern that father could not be the primary caretaker, the father failed to seek necessary medical care despite being prompted and there was not a person available to supervise the parents if the child was placed in their home or the home of a relative.

## **ICWA**

*In re E.G.M.*, 750 S.E.2d 857 (N.C. Ct. App. 2013) - Trial court orders inconsistent with state and federal law. Proceedings vacated. A trial court may order the cessation of reunification efforts in Indian Child Welfare Act. “We join our sister states in concluding that the court may order the cessation of reunification efforts in ICWA cases if it finds that “[s]uch efforts clearly would be futile.” N.C.G.S. § 7B-507(b)(1). Moreover, we do not believe the ICWA requires reunification efforts to persist if they are “clearly... inconsistent with the juvenile’s health, safety, and need for a safe, permanent home within a reasonable period of time.” WA) cases if the court finds that such efforts would clearly be futile. However, “the court made no specific findings regarding why continued reasonable efforts (or active efforts) were futile.” We agree. The father was in custody and could not visit.

## **Aggravated Circumstances**

*In re R.B.B.*, 654 S.E. 2d 514 (N.C. Ct. App. 2007) – No services offered to mother – Affirmed. In light of the immediate threat of harm to the child, no abuse of discretion to find that reunification was not in the best interests of the child.

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“Reasonable Efforts comes up much more frequently than in years past. This is true especially since we began to use the bench cards, which require an inquiry about RE at the preliminary protective hearing. You are also correct in that most of the appeals in NC are also TPR hearings (for RE and across the board).”

Email from Judge Louis A. Trosch, Jr., District Court Judge, 26th Judicial District in Mecklenburg County (Charlotte), North Carolina. A copy is available from the author. Copies of the bench cards are contained in Appendix H.

## **NORTH DAKOTA**

**STATUTES:** N.D. Cent. Code Ann. § 27-20-32.2(1) (Michie Supp. 2001) – defines reasonable efforts as “the exercise of due diligence, by the agency granted authority over the child...to use

appropriate and available services to meet the needs of the child and the child's family." Section also requires the state to make reasonable efforts to preserve and reunify families. Reasonable efforts means that "after removal, [the State] use[s] ... (see above). "The State, however, is not required to 'exhaust every potential solution before seeking termination of parental rights.'" Citing *In re A.B.*, 792 N.W.2d 539 (2009)

## **CASE LAW:**

*In the Interest of T.T.*, 798 N.W.2d 678 (N.D. Supreme Court, 2011) – TPR – Affirmed.

The State offered Reasonable efforts and father refused to participate or cooperate. Services included foster care case management, child protection, child & family team meetings, drug and alcohol evaluations, psychiatric examination, parenting assessment, programming available through CVIC, visitation, GAL, and wraparound case management.

*In the Interest of N.H. and B.H.*, 632 N.W.2d 451 (N.D. Supreme Court, 2001) – TPR – Affirmed.

Services were offered, but not taken advantage of. DSS made reasonable efforts throughout the case even though there was concurrent planning. That was not unconstitutional. Incarcerated mother – It was the mother's 'violation of parole [and resulting incarceration] that limited her ability to meet the requirements [of the reunification plan]'. (at 457)

*In the Interest of K.N.H., B.S.H., and L.I.H.*, 704 N.W.2d 573, (Ct. App. N.D., 2005) – TPR – Affirmed.

Reasonable efforts offered, but serious parental abuse does not justify further services.

*In the Interest of A.B.*, 767 N.W.2d 817 (N.D. Supreme Court, 2009) – TPR – Affirmed.

The mother disregarded child's safety, emotional, nutritional and basic needs. Reasonable efforts were offered, but not taken advantage of. State must prove by clear and convincing evidence that it offered reasonable efforts. "The State is not required to provide long-term and intensive treatment to assist Amy in establishing an adequate environment for Allison if it cannot be undertaken in a reasonable time frame."

*In re K.J.*, 2010 ND 46, 779 N.W. 2d 635 (N.D. 2010) – TPR – Affirmed.

It is not enough for parent to indicate a desire to improve behavior – rather the parent must be able to demonstrate present capacity or capacity in the near future to be a adequate parent.

## **ICWA**

*In re T.F.*, 681 N.W.2d 786 (N.D. 2004) – TPR – Affirmed.

The children were removed because of physical abuse. The father regained custody, but then was involved in criminal activity. The court affirmed the trial court finding that the father's past conduct created doubt as to his ability to parent the children upon his release from prison. The Indian Child Welfare Act was satisfied given evidence that efforts were made to preserve the family, but the father failed to cooperate.

*In re J.P.*, 674 N. W.2d. 273 (N.D. 2004) – TPR – Affirmed.

The appellate court found that there was evidence about the mother's conduct and incarceration, about existing harm sustained by the children and their present needs, prognostic evidence relevant to determining the likelihood of the children's continuing deprivation in the mother's care, prognostic evidence about the children's future treatment needs, evidence about unsuccessful efforts to provide remedial services and rehabilitative programs designed to prevent the breakup of this family, and evidence about the likelihood of serious emotional or physical harm to the children with continued custody by the mother.

*In re M.S.*, 624 N.W.2d 678 (N.D. 2001) – TPR – Affirmed.

The appellate court concluded there was clear and convincing evidence warranting termination of appellant's parental rights and there was evidence beyond a reasonable doubt that appellant's continued custody of her daughter was likely to result in serious emotional or physical damage to the daughter. A county social services agency had for an extended period of time undertaken active efforts to provide remedial services and rehabilitative programs for appellant to prevent permanent removal of the daughter from appellant's home but those efforts were proved unsuccessful.

### **Mental Health Issues**

*Interest of J.H.*, 484 N.W.2d 482 (N.D. 1992), TPR – Affirmed.

The appellate court held that the trial court was justified in finding that termination was warranted because the mentally ill mother's rehabilitation was unlikely to occur. The court observed that N.D. Cent. Code § 27-20-44(1)(b) permitted termination of parental rights of a deprived child when the conditions or causes of deprivation would not be remedied and the child was suffering or would suffer serious physical, mental, emotional, or moral harm. The court found that although the mother belatedly stated a desire to cooperate with authorities, she had repeatedly failed to do so in the past and the trial court properly considered her history when it determined that the deprivation to her children was likely to continue. The children were suffering from posttraumatic stress disorder because of the mother's chaotic life.

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“We are looking into our cases a little to see if the reasonable efforts issue is used to prevent removal at the trial level. As for training, we encourage our judges and judicial referees to attend the Annual ICWA Conference held in Bismarck that we co-sponsor. We also offer online training for our judicial referees, which includes child welfare issues. In addition, every other year we co-sponsor the North Dakota Children's Justice Symposium with Children and Family Services and include an ICWA track in that event.”

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“As you know, a finding of reasonable efforts is required in every deprivation order and we have found that reasonable efforts are not often challenged at the trial level. It is rare that a deprivation case is appealed. When the case moves to TPR it is filed as a new case and that is typically where they are challenged. “We did find two cases that were appealed on deprivation. In both cases the state Supreme Court found that reasonable efforts had been made.

“In addition to the training I mentioned previously, our judges also have a guidelines within their

bench book and a hard card with all the federal requirements. We have also had judicial officers participate as reviewers in the federal Children and Family Services reviews”.

Two separate emails from Lee Ann Barnhardt, Education and Special Programs Coordinator, North Dakota Supreme Court

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## **OHIO**

**STATUTES:** Ohio Rev. Code Ann. § 2151.419(A)(1) (Anderson 2002) §(2) permits no R/E in certain circumstances. Aggravated circumstances – The “agency shall have the burden of proving that it has made those reasonable efforts.” The court must make a written reasonable efforts finding at any hearing in which the court is removing a child from parental care or continuing a child in such care. Other sections: R.C. § 2151.402 (agency must prepare and maintain a case plan) § 2151.414 (agency must make reasonable case planning and diligent efforts to assist parents to remedy the problems that caused removal of the child.) § 2151.414(E)(1) – child may be placed with agency when, notwithstanding reasonable case planning and diligent efforts by the agency, parents fail to remedy problems that caused removal of child. §2151.419 “The agency shall have the burden of proving that it has made [the required] reasonable efforts” to prevent the child’s removal or to return the child. Ohio Admin Code 5102:2-39-05. However, there is no definition of reasonable efforts. For example, R.C. § 2151.412 requires the agency to prepare and maintain a case plan for children in temporary custody with the goal to eliminate with all due speed the need for the out-of-home placement so that the child can safely return home. Under R.C. § 2151.413(D)(3)(b), an agency may not file for permanent custody under § 2151.413(D) – the “12 months out of 22” rule – if reasonable efforts to return the child to the child’s home are required under R.C. § 2151.419 and the agency has not provided the services required by the case plan. Ohio’s Department of Job and Family Services has promulgated regulations that describe reasonable efforts in great detail. Ohio Administrative Code 5101:2-39-05. In addition, the Ohio Rules of Juvenile Procedure require that “[i]n any proceeding involving abuse, neglect, or dependency at which the court removes a child from the child’s home or continues the removal of a child from the child’s home, \* \* \* the court shall determine whether the person who filed the complaint in the case and removed the child from the child’s home \* \* \* has made reasonable efforts to do any of the following:

- (a) Prevent the removal of the child from the child’s home;
- (b) Eliminate the continued removal of the child from the child’s home;
- (c) Make it possible for the child to return home.” Juv.R. 27(B)(1).

## **CASE LAW:**

*In re C.F.*, 862 N.E. 2d 816 (Ohio Supreme Court, 2007) – TPR – Affirmed.

The father was incarcerated during some of the reunification period. “Except in certain narrow circumstances, the state must make reasonable efforts to reunify the family before termination of

parental rights.” The mother was an alcoholic and the child was exposed to some domestic violence in the home. Separate visits for parents. The father was incarcerated and out-of-touch for several months. The trial court found successful family reunification was not possible in a reasonable time – Ct. Appeal reversed – Supreme Court reversed holding that the trial court has the responsibility of determining whether the agency has provided reasonable efforts (at p. 822). Held: A no reasonable efforts finding is necessary at a permanency hearing, unless that finding has not been made at a prior hearing. It was in this case at 2 hearings. **DISSENT** filed on the reasonable efforts issue.

*In re Brown*, 648 N.E.2d 576, 580 (Ohio Ct. App. 1994) – TPR – Reversed.

The trial court was reversed on several issues including reasonable efforts. The trial court did not make a reasonable efforts finding. The services offered were of the most general type. There were no scheduled regular visits, no offer of counseling for parents. Further, the juvenile court’s permanent custody determination made under Ohio Rev. Code Ann. § 2151.414 was not supported by clear and convincing evidence. The juvenile court failed to make the requisite determinations of what was in the child’s best interest and that the Board was diligent in its attempt to reunite the child with either of her parents. The failure to notify the mother of the initial dependency determination rendered the juvenile court’s ensuing judgments void. It was error to admit medical evidence about the mother over her claim of privilege.

*In the Matter of V.D.-S.*, 2013 Ohio 5448, 2013 Ohio LEXIS 5692 (Ohio App. Ct.) – Permanent custody to agency – Affirmed.

The evidence supported the conclusion that the agency’s actions were genuine attempts to facilitate a reunification of the child with the mother. It provided ongoing counseling services to both of them but, despite having told the mother that he would meet with her again, the child refused to get into the car to travel to subsequently scheduled visits; The caseworker’s testimony, which was current at the time of the hearing, suggested that adoption of the child was, in fact, likely and the child indicated that he desired to be adopted by his foster parents.

*In the Matter of A.K. and J.D.*, 2009 Ohio App. LEXIS 4501; WL 3208697 (Ohio App. 2009) – Child placed with relatives - Affirmed.

The mother argued that the state did not provide reasonable efforts to reunite her with her children, and only a short period (2 months) to reunify. Mother, an alcoholic, did almost nothing on the case plan, missed appointments, failed to locate stable housing, and arrests.

*In re K.L.*, 10th Dist. No. 13AP-218, 2013-Ohio-3499 – TPR – Affirmed.

The mother argued no reasonable efforts. The appellate court stated: In fact, at various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time. Held that it did so in this case.

*In re Weaver*, 606 N.E. 2d 1011 (Ohio Ct. App. 1992) – The trial court awarded permanent custody to the state. Affirmed.

The parents were offered services, but mother was unsuccessful in completing a psychological evaluation and father was re-incarcerated several times. “[A] good faith effort to implement a

reunification plan means an honest, purposeful effort, free of malice and the design to defraud or to seek unconscionable advantage..” In contrast, [a] lack of good faith effort is defined as importing a dishonest purpose, conscious wrongdoing or breach of a known duty based on some ulterior motive or ill will in the nature of fraud.” (1014).

*In re A.K.*, 2009 WL 3208697 – TPR – Affirmed.

The children were removed and placed with relatives. Mother appealed claiming no reasonable efforts were provided. The appellate court held that the agency followed the case plan which included parenting classes, referral for psychological evaluation and follow-up plus alcohol treatment.

*In re Hatfield Children*, 2003-Ohio-2798, 2003 WL 21260016 (Ohio Ct. App. 5th Dist. Stark County 2003) – TPR – Affirmed.

The appellate court held that the evidence supported the finding that the county department of job and family services put forth good faith and diligent efforts to rehabilitate the family situation, in the child dependency proceeding; the mother admitted that she terminated contact with her caseworker, the mother’s visitation with her children was terminated due to the mother’s behavior, and the mother refused to follow her medication regime for her mental illness.

### **Aggravated Circumstances**

*In re Norris*, 2000 WL 33226187 (2000) – No services for father (beat mother in front of the children) because they would be futile. Reasonable efforts finding affirmed, but “be cautious in finding that reasonable efforts would have been futile where an agency ignores a natural parent.” Father was incarcerated, violent, no communication for over 2 years.

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“It is my experience that in Ohio reasonable efforts test (criteria) are only raised during PC (termination of parental rights) cases. I don’t recall the RE issue being raised at any earlier time, especially at the shelter care hearing.”

Email from Judge Anthony Capizzi, Dayton, Ohio

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“As you know, in Lucas County we have magistrates as well as 2 judges. Generally speaking, the magistrates are assigned to cases and we follow one judge/one family philosophy. When a request for termination of parental rights is made (by motion or complaint) the matter is assigned and placed the respective judge’s docket.

“In Lucas County, the issue of reasonable efforts is addressed at ALL hearings from shelter care until completion of the case. In addition, the State of Ohio requires an annual reasonable efforts hearing. In Lucas County, we have a reasonable efforts hearing every six months. It is a common question answered in every hearing whether through testimony or be inquiry of the court. “I would say that in Lucas County, attorneys are aware of the fact and are not shy to address/pursue the details of reasonable efforts as they deem necessary. Consequently, in practice, there will be occasions that



attorneys bring reasonable efforts up, but generally the agency, guardians, and opposing counsel are attune to being certain reasonable efforts are being made in a particular case and expect the inquiry during the hearings.

“Although Lucas County is not currently a model court site, as you know, once a model court, always a model court. From our Court’s perspective we instituted and institutionalized this ongoing query into reasonable efforts as a necessary step to insure that: all parties has a clear and ongoing understanding of the reasons for the removal; what efforts are being made toward reunification and permanency; whether the efforts are productive as well are realistic based upon the circumstances of a particular case. One of the goals is to be sure that all parties have the same understanding of the progress or lack of progress being made and what the goals of the case are. Finally, it keeps the case on a time line.

Email from Judge Denise Navarre Cubbon, Administrative Judge, Lucas County Juvenile Court.

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“[T]he answer to any question about how things occur in Ohio’s dependency courts is “yes, sometimes, and no.” We have 88 jurisdictions of diverse characteristics, each with a locally elected judiciary. Resources, community standards and practices vary accordingly. That said, in answer to your questions, I would say in a brush stroke response:

“Is the reasonable efforts issue litigated in court proceedings?”

“Yes, but probably not frequently.”

“Do the attorneys raise the issue of “reasonable efforts to prevent removal” at the shelter care hearing?”

“Generally not, but it might come up. A fair number of these hearings are telephonic and/or considered emergency and the family may not be represented at this stage.”

“Do you have judicial and attorney trainings relating to the reasonable efforts issue?”

“Yes, this is an ongoing topic of instruction. You may wish to contact Judges Anthony Capizzi (Dayton) and Denise Navarre Cubbon (Toledo), both of whom are NCJFCJ trustees. They were very involved in the development of a curriculum for new judges through the Supreme Court of Ohio’s Judicial College. There is content specific to reasonable efforts in this “Child Welfare 101” course.

“All of that said, this is a topic that we will, as a state, be revisiting. A lack of specificity and documentation in judicial orders as related to reasonable effort determination was an issue raised in Ohio’s recent Title IV-E federal review.”

Email from Kristin Gilbert, Administrator, Justice Services, Ohio Department of Job and Family Services.

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# OKLAHOMA

**STATUTES:** OKLA. STAT. ANN. Tit. 10 § 1104.1 (1987); Tit. 10 § 7003-5.3(D)(6)(d)(Supp. 2006) – what case plan must include. 10 O.S. § 7003-5.3(J) – the state is obligated to make R/E to reunify the family. § 7003-5.5(I)(1) (West 2004) states parents are to be allowed a minimum of three months to correct the situation that led to agency involvement. Annot. Stat. Tit. 10A §§1-4-202 & 809.

## CASE LAW:

*In the Matter of BTW*, 241 P.3d 199 (Oklahoma Supreme Court, 2010) – Child placed in foster care. Affirmed.

Mother complained of a lack of services, but did not identify the services she believed necessary. DHS provided visits, work with providers, transportation for visits, counseling with child. The trial court found reasonable efforts were provided and the Supreme Court agreed. The child was voluntarily placed by mother in foster care as mother had health issues. Mother complained about supervised visits. Dependency resulted and the trial court ordered long term care. A termination of parental rights was attempted and failed. Family reunification was then provided. Child wanted to end visits. The trial court modified the permanent plan and Supreme Court agreed it was proper. Mother complained that she did not have a legitimate opportunity for reunification because of a poor foster placement and delays by DHS – all she gets are foster care and visitation. The trial court acknowledged visitation was difficult, but mother did not identify what could have been done. Counseling was provided.

*In re B.C. v Deborah*, 15 P.3d 8 (Okla. Civ. App. 2000) – TPR – Affirmed. The mother was incarcerated. The jury found by clear and convincing evidence that the child was in foster care for 15 out of the most recent 22 months and that it would be in the best interests of the child to terminate her parental rights.

## Mental Health Issues

*In the Matter of C.R.T.*, 66 P.3d 1004 (Okla. Ct. App. 2003) – TPR – Reversed.

The mother suffered from paranoid schizophrenia. The trial court terminated parental rights based upon a failure to remedy the condition that precipitated court involvement. The appellate court held this was a violation of due process. The mental illness itself is not the reason for state involvement – it is the conduct of the parent that impacts the child negatively. The doctor testified that the mother's failure to complete the treatment plan was a manifestation of her mental illness.

## ICWA

*In re State In Interest of K.P.*, 2012 OK CIV APP 32, 2012 WL 1232084 (Div. 2 2012). Evidence supported finding that the State made active efforts to reunite mother with her Indian children; child welfare specialist for Indian tribe and Department of Human Services (DHS) caseworker both testified as to the services offered to mother, and the dates the services were offered was documented in the record. Indian Child Welfare Act of 1978, § 102(d), 25 U.S.C.A. § 1912(d)

*In re H.J.* 149 P.3d 1073 (Okla. Civ. App. 2003) – TPR – Affirmed.

On review, the mother contended the State and the Tribe failed to prove, beyond a reasonable doubt, that they performed “active efforts” to reunite the mother and child, as required by 25 U.S.C.S. § 1912(d). The appellate court found that Oklahoma had not adopted an evidentiary standard for § 1912(d), but concluded that its review of the findings were to be governed by the equitable standard of review. An essential part of the mother’s treatment plan was to arrange housing for herself and the child away from the uncle, whether by finding new housing or having the uncle move. However, neither of these events occurred, and the child remained in foster care.

*In re J.S.*, 2008 Ok. Civ. App. 15, 177 P.3d 590 (Okla. Civ. App. 2008) – TPR – Reversed. The trial court used the incorrect standard for judging whether the agency provided active efforts. The trial court terminated the mother’s parental rights to her two Indian children based on her failure to correct the conditions that led to the children’s deprived adjudication and their placement in foster care. On appeal, the mother argued that the trial court improperly evaluated the evidence presented by the State in making its determination that “active efforts,” as provided in the federal Indian Child Welfare Act (ICWA), 25 U.S.C.S. § 1912(d), were made to provide remedial services and rehabilitative programs to her. The court agreed with the mother. The court held that the “active efforts” standard required more effort than the “reasonable effort” standard in non-ICWA cases considering the plain language of § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) and the policy behind the ICWA – especially Congress’ intent to achieve uniformity among the states where the interests of Indian children, parents, and tribes are concerned, held that it would join the majority of state courts that have interpreted the ICWA and determined that the active efforts standard requires more effort than the reasonable efforts standard in non-ICWA cases. The appellate court rejected the trial court’s reference to the adage “you can lead a horse to water, but you can’t make the horse drink” as well as the trial court’s statement that it was not even necessary to lead the parent to the water, and held that – in terms of the trial court’s metaphor – active efforts require leading the horse to water. The court said the trial court’s view was contrary to the plain and ordinary language of § 1912(d) and thereby undermined congressional policy.

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“The attorneys make reasonable efforts requests frequently in court. The agency attorneys argue (incorrectly) that “No Reasonable Efforts” findings will mean loss of \$ and foster home placement. Know that the judge in Rogers County makes No Reasonable Efforts findings. The legislature modified the state statutes regarding children’s services deleting the definition of reasonable efforts.”

Note from Gwendolyn Clegg Esq., attorney practicing in Tulsa.

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“From my experience in a small jurisdiction the issue of reasonable efforts has not been litigated.”  
Email from Judge F. Pat VerSteege, Associate District Judge, Cheyenne, Oklahoma

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“I have generally made a finding of no reasonable efforts if DHS has not prepared a report for my review prior to the hearing, or if DHS fails to follow my order from a previous hearing.”

“I don’t know, without research, that there are any cases that define “reasonable efforts.” However, in Tulsa County, “reasonable efforts” issue is litigated/argued in our courtrooms quite a bit – especially lately when the work of DHS permanency has not been stellar. The issue is raised or at least reviewed by the court at each court hearing. The issue is particularly important at permanency hearings when court must determine whether reunification plan should come to an end. We have asked our permanency workers to add an extra paragraph to their reports that list the reasonable efforts made.

“Recently I have been making “no reasonable efforts” in permanent custody cases where nothing has been done to further the plan of adoption.

“We do not have attorneys present at emergency custody hearings....unless privately retained. Very rare are “reasonable efforts” argued. I would dare say that our investigative units of DHS have no idea what “reasonable efforts” mean.

“Training? Not really. Mark Hardin had some outstanding written materials out there regarding examples of reasonable efforts in each category of permanency....that helped me a lot.”

Email from Doris L. Fransein, District Judge, Juvenile Division, Tulsa County District Court, Tulsa, Oklahoma

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“First, the issue of “reasonable efforts” applies to the State’s efforts at preventing removal of the child, or the State’s efforts toward reuniting the child with the parents. Reasonable efforts does not measure the parents’ efforts toward reunification with the child. The State, through OKDHS, is required to, in every case other than an Indian case, make “reasonable efforts” to prevent the need to remove the child, or to try to make reasonable efforts of assistance to the parents to regain custody of the child. In an Indian case, the OKDHS is required to make “active efforts” to prevent the need to remove the child, or make “active efforts” to assist the parents to regain custody.

“The parents are not measured at any hearing whether or not they have made “reasonable efforts”, or “active efforts” to correct conditions that resulted in removal. They are measured by whether or not they have worked to comply with the Individualized Service Plan (ISP), and whether or not their compliance with the ISP is correcting the conditions that caused the removal in the first place.

“In the case *‘In The Matter of BTW*, the Oklahoma Supreme Court specifically mentions the State’s requirement (rather than the parents’), at achieving “Reasonable Efforts”, in the last sentence of Paragraph 22.

“We do have training regarding compliance with the ISP. And, we do teach that it is the State, rather than the parents, that must exercise “reasonable efforts.” We utilize a form at each hearing that addresses whether or not the State has exercised ‘reasonable efforts’ or, in the case of an Indian child, ‘active efforts.’”

## OREGON

**STATUTES:** OR. REV. STAT. § 419B.340(2) & (5) (2001) – Asks reviewing courts to “enter a brief description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family.” §§ 419.576 & -577(3) (b)(B) (1989) 419.523(2) (1989); ORS 419A.200(6)(b): “If the case plan at the time of the hearing is to reunify the family,[the court shall] determine whether [DHS] has made reasonable efforts\*\*\*and whether the parent has made sufficient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward’s health and safety the paramount concerns.” ORS 419B.476(2)(a) “If the case plan at the time of the hearing is to reunify the family,” at the permanency hearing, the court shall “determine whether the Department of Human Services has made reasonable efforts...and whether the parent has made sufficient progress to make it possible for the ward to safely return home.” ORS 419B.090(5) – Policy of Oregon “to offer appropriate reunification services” ... § 419B.340(5)(a) (2003) – aggravated circumstances section of Oregon Code, § 419B.502. Services described: §419B.100 §413-070-0160(2) – Active efforts includes early participation and consultation with the child’s tribe in all case planning decisions; §419B.185; 419B.340(1) – DHS must provide active efforts prior to adjudication.

## CASE LAW:

*State ex rel Juvenile Department of Coos County v Williams*, 130 P.3d 801, 204 Or. 96 (Or. App., 2006) –The reunification plan was changed to adoption. Reversed.  
Held: No reasonable efforts were provided to the incarcerated father. Incarceration without more does not constitute an aggravated circumstance that may excuse DHS from making reasonable efforts. While in custody father did all he could and was due to be released soon. DHS did not connect with father, having only 2 contacts with father outside of the courtroom. “It is the policy of the State of Oregon to offer ‘appropriate reunification services’ to parents when a child has entered protective custody and a dependency petition has been filed.” ORS 419B.090(4). “Pursuant to that policy, DHS generally is required to make ‘REASONABLE EFFORTS’ to make possible a child’s safe return home while the dependency case is pending.” ORS 419B.340(1); ORS419B.475(2)(a). “To ensure compliance, the juvenile court is required to determine whether DHS has satisfied that mandate at both the dispositional hearing, which generally occurs 60 days after the petition is filed, and the permanency hearing, which generally occurs 12 months after the petition is filed. ORS 419B.305(1); ORS 419B.340(1); ORS 419B.470(2); ORS 419B.476(2)(a). There are exceptions. ORS 419B.340(5) (aggravated circumstances – long list). DHS says it is father’s fault. But it falls within the statute only if father was convicted of one of the crimes listed in the statute. The state’s involvement with father was nonexistent. DHS could have engaged in any number of activities that might constitute reasonable effort. Examples offered in the opinion.

*In the Matter of S.F.K.*, 214 P.3d 39 (Or. App., 2008) – Mother appeals juvenile court modification of permanent plan from reunification to adoption (for 3 children) and planned permanent living

arrangement (for one). Affirmed.

The mother claims inadequate reasonable efforts and safe return of the children was possible. 6 children were removed because of an unsafe home. The parents were prosecuted. Additionally there was improper home schooling. There was at least one return of the children and a subsequent removal. The mother had mental problems, children also. DHS arranged for counseling, classes, referrals for in-home services, visitation, and special services for the children. The trial court found reasonable efforts. DHS expended extensive efforts. The assistance offered after the children's removal, including evaluations, education assistance, counseling, in-home services, parent training, and visitations, were all directed at preparing either mother or the children, or both, for reunification. The Department's efforts were reasonable and for the proper amount of time. To the extent that the mother was making progress, that progress was insufficient. Nothing supported the finding that the mother's progress would have continued to have allowed the children to return to her home within a reasonable time, for purposes of Or. Rev. Stat. §419B.090(5). An assessment did not provide support for the conclusion that mother would be a minimally adequate parent with all children in the home.

*State v Risland*, 51 P.3d 697 (Or.2002) – TPR – Affirmed.

The child suffered serious psychological and social damage including PTSD, ODD, and parent-child relational disorder. The mother was offered family counseling with child, parenting classes and parenting group meetings. The father was offered anger management and drug and alcohol treatment program and domestic violence classes. Although there was some progress, it was insufficient. Reasonable efforts provided.

*In re R.W.*, 2013 WL 3353999 (Or. Ct. App) – Reasonable efforts finding – Reversed.

A non-respondent father had been incarcerated on abuse charges regarding his relationship with a 15 year old when he was 25, trial court erred in finding that the agency made reasonable efforts to reunify when it did not require the agency to pay for a psychosexual evaluation due to its elevated cost due to father's incarceration. While the court may consider the cost in determining which services should be provided, it also must consider the potential benefits to the considered service, and no such analysis was conducted on the record.

*In re D.D.*, 255 Or.App. 742 (Or. Ct. App. 2013) – The court found reasonable efforts were made to prevent removal – Reversed.

The appellate court held that the evidence did not support a determination under Or. Rev. Stat. §419B.340 that reasonable efforts were made, as to a father, to eliminate the need for the removal of a child or to make it possible for the child to return home safely, because no services were provided to the father other than requesting that Kentucky officials complete a home study. The Department of Human Services adduced no evidence to suggest that it followed up to determine whether the home study actually took place. Reasonable efforts determinations must be made individually as to each parent.

*State ex.rel. DHS v H.S.C.*, 218 Or.App. 415 – TPR – Reversed.

The father was taken into custody for possible deportation. Held: the agency did not provide reasonable services, did not inquire regarding available services in ICE facility..

*In the Matter of R.D.*, A151701 (Or. Ct. App. 2013) – TPR – Affirmed.

The child was removed from home because of parental sexual abuse of another child. Mother had previously had three children adopted by a relative. The parents were offered sexual abuse treatment, but did not complete the program. The father participated successfully in substance abuse services, but the agency did not provide the mother with services for her substance abuse problems. Sexual abuse treatment was the critical service, but because of delays in services, the mother had only 2 sessions by the time of the hearing. The trial court concluded the agency had not provided reasonable efforts on this issue. The court ordered the parents to participate in further services and continued the case for another year. The child appealed this order, arguing that the mother will never be able to adequately parent the child. The appellate court agreed with the trial court that “further efforts can and will make it possible for the child to safely return home within a reasonable period of time.”

*State ex.rel.Juv.Dept. v. Geist*, 796 P.2d 1193 (Or. Ct. App. 2000) – TPR – Affirmed.

Where a parent is unable or unwilling to rehabilitate himself or herself within a reasonable time so as to provide a wholesome and healthful environment, the best interests of the child(ren) generally will require termination of that parent’s parental rights.

*State ex.rel. SOSCF v. Frazier*, 955 P.2d 272 (Or. Ct. App. 1998) – TPR – Affirmed.

The court held that the state proved by clear and convincing evidence that the father was unfit on the ground that he suffered from mental deficiencies that rendered him incapable of providing proper care for the children. Furthermore, because of the father’s lack of desire and cooperation, no lasting adjustment could be made that would enable the father to care for the children. Additionally, the state established that the mother was unfit due to her mental deficiencies, her physical and emotional neglect, and her inability to adjust her circumstances to make return of the children possible within a reasonable amount of time. The state provided services to the mother, but her parenting skills did not improve. The state is required to make reasonable efforts to assist parents in making the adjustments necessary to enable them to become minimally adequate parents. When a court evaluates whether the state has made reasonable efforts, the court considers those services that were provided before the state took custody, as well as those services provided immediately after the removal of the child. The court also considers whether a parent attempted to make appropriate changes in his or her life after the state decides to seek termination. Also pertinent is whether the parents ignored or refused to participate in plans suggested by the state. Whether the state has made reasonable efforts to provide services depends on the particular circumstances.

*State ex.rel. State Office for Services to Children and Families v Farish*, 49 P.3d 811 (Or. Ct. App.2002) – TPR – Affirmed.

Reasonable efforts to the mother included a 21-day inpatient dependency treatment program followed by an intensive outpatient program. These services were unsuccessful in rehabilitating the mother.

*State ex rel State Office for Services to Children and Families v Hammons*, 12 P.3d 983 (Or. Ct. App. 2000) – TPR – Affirmed.

Services to father included referral to alcohol and drug treatment, parent training, anger management, and career guidance. The father made progress, but he failed to make a lasting adjustment.

*State ex.rel State Office for Services to Children and Families v. Burke*, 990 P.2d 922 (Or. Ct.App.1999) – TPR – Reversed.

Children removed because father was a prior sex offender. He asked for treatment, but agency denied him resources for that. He and mother repeatedly asked for help, wanting to become good parents. The appellate court found the reasonable efforts were not provided.

*State ex. rel. State Office for Services to Children and Families v. Frier*, 28 P. 3d 1246 (Or. Ct. App. 2001) – TPR – Affirmed.

The children removed from “unfit” mother. The court concluded that mother’s problems were so serious that reunification would not be possible within a reasonable time. Two years already and an estimate of 1-5 years before mother might be ready.

*Matter of Chapman*, 53 Or. App. 268, 631 P.2d 831 (1981) – TPR – Reversed.

The appellate court held that the termination of their rights was precipitous. The court noted that the state had not offered any services, suggestions, encouragement, training, or advice of any kind to the parents to enable them to develop skills to care for their child properly after she was removed from their home. At trial, the state did not offer any testimony about the parents’ current mental conditions but instead relied on the results of psychiatric evaluations that were 30 years old as well as the testimony of seven witnesses. The state took the position that the father’s mental retardation and the mother’s previously diagnosed hebephrenic schizophrenia were unlikely to change and that the mental, emotional and psychological impairment the parents suffered 17 years earlier continued to the time of the instant termination hearing. The court emphasized that Or. Rev. Stat. § 419.523 required both a showing of a present failure to properly perform the parenting role because of conduct or conditions seriously detrimental to the child, and a finding that the conduct or conditions were not likely to change. The court continued that in determining that the harmful conduct could be corrected, the termination statute provided that the court should consider any lack of **effort** or failure on the part of the parents to make a lasting adjustment after reasonable **efforts** by available social agencies for an extended duration of time. This provision, the court noted, required the state to provide the parents with extensive, ongoing social services. The court was not willing to concede that the parent’s conduct and home conditions had been harmful to the child when she was removed from her parents, but held that even if they had been harmful, since the state did not even attempt to provide the parents with rehabilitative services, termination of their rights was premature.

*State ex. rel. Services Div. v Brady*, 889 P.2d 691 (Or. Ct. App. 1995) – TPR – Reversed.

The child was born with serious medical problems and spent weeks in the hospital and then was moved directly to a foster home. Mother on her own began individual counseling and parenting classes including infant CPR, took steps to terminate her relationship with father (including a restraining order), pursued a course of study for a GED and provided volunteer services at a senior center. The agency offered only two one hour visits each week and no “hands on” experience with child. The court found mother’s love and commitment were sufficient not to terminate her parental rights.

### **Aggravated Circumstances**

*State ex rel. Juvenile Dep’t v. Williams*, 204 Ore. App. 496, 130 P.3d 801 (2006) – Services terminated and adoption ordered. Reversed.

The father was serving a four month jail sentence. The trial court ordered adoption for his child. The



appellate court found that DHS's involvement with the father was virtually nonexistent. Given the father's relatively short incarceration, the lack of any information about his relationship with the child, and his apparently imminent release from jail within four months of the permanency hearing, the court concluded that DHS's efforts to make possible the child's safe return home were not reasonable. The incarceration of the father, without more, was not an aggravated circumstance under Or. Rev. Stat. § 419B.340(5) that could serve as a basis for excusing DHS from making reasonable efforts.

## **Mental Health Issues**

*State, ex rel. Dept of Human Services v E.K.*, 230 Or. App. 63, 214 P.3d 58, (2009); – The child removed because of dirty home, mother had mental health problems and could not control children. The agency provided sufficient services to reunify. The assistance offered included evaluations, education assistance, counseling, in-home services, parent training, and visitations – all were directed at preparing either mother or the children or both for reunification.

*State ex rel. Juv. Dept. of Multnomah County v Habas*, 700 P. 2d 225 (Or. Supreme Court, 1985) – TPR – Reversed.

The child was in care because of mother's periodic bouts of manic depression requiring medication and hospitalization. She completed parenting classes and child was returned on condition that services would support her. Had a relapse of depression 16 days after return and the child was removed again. The Supreme Court reversed finding no reasonable efforts were offered. The agency did not provide promised services through bureaucratic problems and that what was the cause of the relapse.

*State ex rel. State Office for Serv. To Children & Families v Mellor*, 181 Or. App., 47 P.3d 19, 30 (Or. Ct. App. 2002) – TPR dismissed – Reversed on appeal.

Parents with significant emotional deficiencies received extensive social services over an extended period of time with little or no improvement. There was evidence of a lack of skills to parent a young child. The services included a marriage and family therapist conducting a couples' evaluation, psychological evaluation of mother and father, anger management assessments of both parents. The evaluations concluded father was unlikely to change. "Whether the state has made reasonable efforts to provide services depends on the particular circumstances."

## **ICWA CASES**

*In Re A.W.*, 251 Or. App. 787, as modified, 253 Or. App. 600 (Or. App. 2012) – Termination of Services – Reversed.

In a dependency matter, a juvenile court changed the permanency plan of parents' children from reunification to adoption upon determining that the Department of Human Services (DHS) had made reasonable efforts at reunification. On appeal, the court found that DHS failed to make active efforts to reunify one child with the father for purposes of 25 U.S.C.S. § 1912(d) of the Indian Child Welfare Act and Or. Rev. Stat. § 419B.476(2)(a). Although it made an effort to establish a parental relationship between them, DHS failed to show the father how to act appropriately as a parent.

*Department of Human Services v. D.L.H.*, 251 Or. App. 787, 284 P.3d 1233 (2012) – TPR – Reversed.

In a dependency matter, a juvenile court changed the permanency plan of parents' children from reunification to adoption upon determining that the Department of Human Services (DHS) had made reasonable efforts at reunification. On appeal, the court found that DHS failed to make active efforts to reunify one child with the father for purposes of 25 U.S.C.S. § 1912(d) of the Indian Child Welfare Act and Or. Rev. Stat. § 419B.476(2)(a). Although it made an effort to establish a parental relationship between them, DHS failed to show the father how to act appropriately as a parent. Under the Indian Child Welfare Act (ICWA), "active efforts" to reunify the family means that the Department of Human Services (DHS) must assist the client through the steps of a reunification; the type and sufficiency of effort that DHS is required to make depends on the particular circumstances of the case.

*State ex rel. Juvenile Dept. of Multnomah County v. T.N.*, 226 Or. App. 121, 203 P.3d 262 (2009) – TPR – Affirmed.

The mother contended that she should have been offered therapeutic visits with the older child, family counseling, and additional housing options after a first program was unsuccessful due to the mother's behavior, and that the services that were offered were not provided for a sufficient length of time. The court found that the State had, for at least two years, engaged in reasonable and active efforts to provide services to the mother, directed at both her housing situation and the treatment of her mental illness. The mother was hostile, resistant, and uncooperative. She was evicted from housing due to intoxication and violence. The court further held that the "active efforts" standard under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) is understood to impose on the agency an obligation greater than simply creating a reunification plan and requiring the client to execute it independently. Active effort, the court added, means that the agency must assist the client through the steps of a reunification.

*In re Woodruff*, 816 P.2d 623 (Or. Ct. App. 1991) – TPR – Affirmed.

The court held that even if the children's foster care placement violated 25 U.S.C.S. § 1915(b) of the Indian Child Welfare Act, the violation was not a basis, pursuant to 25 U.S.C.S. § 1914, for invalidating a court order terminating parental rights. Further, the remedial services provided by the CSD complied with the requirements set forth in 25 U.S.C.S. § 1913(a)

*In re Charles*, 688 P.2d 1354 (Or. Ct. App. 1984) – TPR – Reversed.

On appeal, the court reversed, holding that the county juvenile department failed to make a showing that remedial efforts to prevent the breakup of the Indian family had proven unsuccessful and that it failed to prove by clear and convincing evidence that foster placement was necessary to prevent the child from suffering serious emotional and physical damage as required under 25 U.S.C.S. § 1912(e), a provision of the Indian Child Welfare Act.

*Dep't of Human Services v K.C.J.*, 228 Ore. App. 70, 207 P.3d 423 (Or. Ct. App. 2009) – TPR – Affirmed.

The father had psychological issues and criminal behavior. He had received 6 years of services from his tribe. DHS also proved beyond a reasonable doubt that it expended active efforts to reunite the father with the children and that those efforts were unsuccessful. The court held that "active efforts" under § 102(d) of the ICWA (25 U.S.C.A. § 1912(d)) entails more than reasonable efforts under state law.

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“I think the reasonable efforts issue comes up most often in termination cases because it is usually about THE ONLY DEFENSE available to parents. Furthermore, it is the most practical place to appeal decisions given the usual course of these things.

“We make a lot of findings related to reasonable efforts at time of removal – but I don’t think those get appealed. Frankly, I think those aren’t appealed simply because of the procedural stage of the case – and the fact that the length of even an expedited appeal process puts the case a year down the road before an appellate determination. Frankly, I wish there was more law on the subject because all of operate out of some sense of what the law IS, but without a lot of caselaw, we really don’t know, do we?

“Reasonable efforts is also something that is litigated during review hearings between jurisdiction and permanency – but it really only becomes a hotly contested issue when 1) child welfare has done NOTHING – attributed to caseworker turnover, etc or 2) there is a necessary service either not readily available or expensive (with no clear payment source). At that point, we may get into it. When I was a lawyer and representing a sex offender, I really got into a reasonable efforts argument because child welfare hadn’t provided my client with treatment or even a referral. The judge ruled that reasonable efforts was a totality argument and in the totality child welfare had done everything else so a reasonable efforts finding was made. For a while there right after ASFA was enacted, we were being VERY specific about time periods of reasonable efforts, but I notice we aren’t as specific as we used to be. Not sure why.”

Email from Judge Katherine Tennyson, Multnomah County Circuit Court

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“What is so discouraging is how long it has taken to get movement on Reasonable Efforts. Much of the foot-dragging has been because there has been no money to implement it as it should have been implemented, either at the agency or judicial level. Many good foot soldier social workers and judges have expressed utter frustration at the lack of funding for the kind of services and judicial docket time needed to make reasonable efforts the blockbuster it should have become. But resistance has been strong all across the board and, cloaked in passive-aggression, that hostility became a Sisyphian force against which we still push.”

Partial email from Hon. Katharine English (ret.) former Commissioner in the Multnomah County Circuit Court and Chief Judge

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## **PENNSYLVANIA**

**STATUTES:** Cons. Stat. Tit. 23, § 6373 & Tit. 42 §§6351 & 6302; 62 PS § 701 et. seq. Prior to removal is the requirement that the agency make R/E to prevent removal. Periodic monitoring and case plans designed to improve conditions in the home 55 Pa Code § 3130.67. No statute for reasonable efforts to permanently place the child. Focused more in aggravated circumstances – no requirement that reasonable efforts be given prior to TPR. 23 Pa.Const. Stat. § 2511(a) – TPR after

R/E have failed. Aggravated circumstances – section 6302(2).

## **CASE LAW:**

### **Reasonable Efforts to Prevent Removal**

*In re S.A.D.*, 555 A.2d 123, (PA. Super. Ct. 1989). Agency refusal to return child to mother who voluntarily placed child with agency who declared the child a dependent. Reversed. A mother turned to the agency for housing assistance, received minimal help (bus passes and a motel room through the Salvation Army), and her child was removed. The appellate court expressed great concern with the agency's failure to make reasonable efforts to keep the 18 year old mother together with her 14 month old daughter. The mother had sought help from the agency without money or housing. She was told the only alternative was to place the baby "voluntarily" with the agency. She asked for the child back and the agency refused saying she needed "her own place to live." No neglect or abuse. Citing *In Interest of Pernishek*, 268 Pa. Super 447, 408 A. 2d 872 (1979). Case remanded to trial court with instructions.

### **Reasonable Efforts to Effect Safe Reunification of Child and Family**

*In the Interest of Lilly*, 719 A. 2d 327 (1998) – TPR – Affirmed.

But the appellate court acknowledged the state had "some obligation" to make a "reasonable good faith effort" over "a realistic period of time" The court faces a "double disparity": the "inability of welfare services to provide essential rehabilitative services and the general failure of seriously dysfunctional parents to take advantage of those services within a reasonable time." (at p. 329). The child's health and safety are the most important considerations in a TPR proceeding. (at p.332). Case involved a well-intentioned mother who was not capable of caring for her child. The mother did not ask for custody, but resisted TPR. She asked that the child be placed in long term foster care so she could continue to be a mother. The court held the child's best interests would not be served by the mother's proposal. Quoting Amanda Spake, *Adoption Gridlock*, the court discussed the harm from long term foster care: "Children who have stable, predictable care 'can overcome great adversity,' ....Conversely, adults who grow up in temporary homes often suffer.... The majority hold low-skilled jobs; up to 50 percent spend some time on public assistance. Drug use is common. Nearly one third of males commit crimes as adults. Among the homeless, as many as 39 percent spent years in foster care as kids" (at p. 335). "If a parent fails to cooperate[with]...reasonable efforts supplied over a realistic period of time, the agency has fulfilled its mandate..." (at 332). Court also mentioned resource limitations: "the provisions of the best resources available through Bradford County [Children and Youth Services]" when discussing reasonable efforts. (331).

*In the Interest of G.C.*, 673 A.2d 932 (1996); Placement with a relative. Reversed.

The court removed the child from parental care and placed with grandfather. The appellate court set aside the relative placement because the trial court did not assess whether the agency provided reasonable efforts. The appellate court held that "reasonable efforts" requires at least some minimal level of services. "To fulfill its mandate to return the child to its parents or family, the agency must take affirmative action to counsel the caretakers in parenting and resolving personal problems which underlie and precipitated the abuse." (at p. 944)

*In re R.T.*, 778 A.2d 670 (2001), Removal – Affirmed.

A child was removed from a filthy home cared for by a mother with various mental and psychological disorders and at least 20 animals. On appeal held: the agency had provided adequate services to help the mother clean up a filthy, animal feces infected home. Services provided prior to removal were considered adequate. 8 years of services were enough. Reasonable efforts finding affirmed.

*In re I.R.A.*, 410 A.2d 755 (1980) – TPR – Affirmed.

“Proof of rehabilitative aid having been offered is not a prerequisite to termination of parental right under the statutory scheme.” (at p. 757).

*In re I.L.G.*, 424 A. 2d 1306 (1981) –TPR – Denial at trial court - Reversed.

The court held that § 311 did not contain a requirement that appellant offer rehabilitative services to the mother prior to termination of her rights, and the lower court erred by trying to impose this duty. The Supreme Court held that PA law assigns affirmative duties to the parents rather than to the state agency.

*In Interest of Feidler*, 392 Pa. Super. 524 – Truant child removed from home. Reversed.

Reasonable efforts not found. Agency must not only provide preventive and reunification services, but can be required to provide services that are the province of other agencies.

*In re Diaz*, 669 A.2d 372, (Pa. Super. Ct. 1995) – TPR – Affirmed.

A 16 year old mother was residing with her parents. Her baby was removed because of “unsafe and unsanitary conditions.” Appellate court found adequate reasonable efforts were offered including AOD counseling, GED classes, employment training, parenting program, transportation, housing help, visits, coordination with another state. The parent refused to cooperate. The agency was not required to place the mother in a foster home with her infant since mother was not a dependent child.

*In re J.W.*, 578 A.2d 952, (Pa. Super. Ct. 1990) – TPR – Affirmed.

The father sexually abused the children then committed suicide. The mother had her own mental health problems. The court found reasonable efforts had been provided. The court further found that the record fully sustained the trial court’s conclusion that appellant has neither the capacity nor the inclination to take the remedial steps required to attain the irreducible minimum parenting skills necessary to perform parenting functions for her children. “On the other hand, a court may properly terminate parental bonds which exist *in form* but not *in substance* when preservation of the parental bond would consign a child to an indefinite, unhappy, and unstable future devoid of the irreducible minimum parental care to which that child is entitled.”

## **Mental Health Issues**

*In re M.L.W.*, 307 Pa. Super. 29, 452 A.2d 1021 (1982) – TPR – Reversed.

The agency “manipulated” a mentally retarded teenage mother into giving up custody of her child and then providing her with only a few parenting classes. The mother had sought help in controlling her 4 year old. The mother visited regularly, but the agency did nothing more to reunify the family. The social worker and a psychologist both testified that the mother had improved only slightly and that the mother could not effectively parent at this time. The appellate court reversed stating that there was

insufficient evidence that the causes of the mother's inability could not be remedied.

*In re G.D.G.*, 392 Pa. Super. 575, 573 A.2d 612 (1990) – TPR – Affirmed.

The appellate court held that a mentally retarded mother's parental rights were properly terminated based on her documented failure to perform affirmative parental duties and her inability to acquire those skills. Testimony revealed that the mother was so profoundly limited in intellectual functioning that there were serious doubts that she could ever acquire the parenting skills necessary to justify reuniting her with her daughter. The mother had attended a sheltered workshop and received counseling provided by a program for the mentally retarded, but she could not handle money, take public transportation unescorted, or function independently at any level, and had never been to school and was totally illiterate.

### **Aggravated Circumstances**

*In re C.B.*, 2004 Pa. Super 402, 861 A.2d 287 (2004) – Reunification efforts were suspended and that order was affirmed on appeal. The aggravating circumstances included the father sexually abusing his daughter in front of his biological son and mother knew of the abuse.

*In re A.H.*, 2000 PA Super 357, 763 A.2d 873 (2000) – Trial court determined reasonable efforts were not required because of aggravated circumstances. In this case, the mother inflicted serious bodily injury on the child.

*In re G.P.R.*, 2004 PA Super 205, 851 A.2d 967 (2004) – Aggravated circumstances found justifying changing placement goal from reunification to adoption. Father was incarcerated, failed to maintain any substantial and meaningful contact with the child.

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“The best approach to dealing with the issues of the reasonable efforts requirement is to make the judiciary a key agent in assuring its proper implementation. It would be interesting to see what could be accomplished in this regard by engaging one of the many foundations interested in alleviating social problems to undertake an intensive effort in a targeted state to train the judiciary for this role. Perhaps federal funding or a grant could accomplish this same purpose. In my many years of experience in working with and administering family court programs, I have learned that more money thrown at the problem may not be as effective as more intelligent application of existing resources. This is an area where that approach can bear substantial results.” Tamilia, Honorable Patrick, “A Response to Elimination of the Reasonable Efforts Required Prior to Termination of Parental Rights Status,” *U. of Pittsburgh Law Review*, Vol. 54, Fall, 1992, pp. 211-228, 228.

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“Reasonable efforts to prevent removal is addressed at the shelter care hearing. See Pa.R.J.C.P.1242 (relating to shelter care hearing) also 42 Pa.C.S. § 6332(relating to informal hearing).

“Attorneys are appointed and ready to proceed at that hearing? Pa.R.J.C.P. 1151 (relating to assignment of guardian ad litem & counsel).

“Reasonable efforts issues are usually raised at a termination of parental rights hearing, but also at the dispositional hearing see Pa.R.J.C.P. 1512 (relating to dispositional hearing) and 1514 (relating to dispositional finding before removal from home). And at every permanency hearing. See Pa.R.J.C.P. 1608 (relating to permanency hearing) See also 42 Pa.C.S. § 6351 (relating to disposition of dependent child), particularly subsection (b) relating to preplacement findings) and (f) (relating to matters determined at permanency hearing.”

Email from James Anderson, Executive Director, Pennsylvania Juvenile Court Judges’ Commission.

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“Perhaps I was unclear but there is no hesitancy on our part to raise the reasonable efforts issue before hearing officers. In fact the two primary areas “of attack” if you will are 1) that reasonable efforts were not made and 2) that there are appropriate safety plans that can be instituted such that the children may safely return home.

“I also agree that there is plenty of evidence both research based and anecdotally that what occurs at shelter hearings has significant impact on case outcomes. That is why we have in fact taken appeals from shelters but, so far, never on the issue of reasonable efforts.”

Excerpts from an Email from Catherine Volponi, Esq, Director of the Allegheny County Bar Foundation, Juvenile Court Project.

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“The issue of reasonable efforts does come up from time to time. Generally speaking, it is most often raised by a parent or child attorney, but sometime it will be raised by me. We usually engage in what I believe is a proactive approach. If something is ordered and the agency has not complied with the order, the attorney will generally present a motion to enforce compliance with the order. The filing of the motion usually results in quick compliance and so we don’t reach the issue of reasonable efforts (or lack thereof). Additionally, we have pretty strict requirements in our juvenile rules, that require the judge to state reasons, findings, and orders on the record AND in the written order. I think this provides clear direction to the caseworkers and the parties of the court’s expectations. We also have frequent review of our cases (at least every 3 months). This enables us to resolve any issues that could potentially lead to the finding of no reasonable efforts.”

Excerpt from an Email from Judge Kimberly Clark, Allegheny County, Pennsylvania.

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“...[E]ach county must conduct a permanency review on each case every three months—each county might handle the review differently but one of the questions on the standard order is—did the agency use reasonable efforts to finalize the permanency plan in effect at that time—in addition at the shelter care hearing the judge must determine if the agency made reasonable efforts to prevent removal of the child—

“So reasonable efforts determination must be made at the shelter care hearing but must be revisited at

each subsequent hearing the agency attorney address the issue at each hearing

“[O]ur state supreme ct has done a very nice job with our dependency system—in all aspects”

Excerpt from an email to the author from Judge Chester Harhut, Lakawanna County, Pennsylvania.

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“In sum, as a case progresses from status hearings to termination proceedings, a dramatic change takes place in the state’s burden to show it has made reasonable efforts. Prior to petitioning for termination of parental rights, the state must show it has made a good faith effort to make services available to the parent. Yet, at the termination proceeding, the state’s failure to take such good faith steps carries no consequence. The refusal to enforce reasonable efforts at the termination proceeding reduces the obligation to provide services to no obligation at all.”<sup>550</sup>

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## **RHODE ISLAND**

**STATUTES:** R.I. Gen. Laws § 40-11-12.2(b)-(d); (Michie Supp. 2002); No services needed if termination is based on parental conduct “of a cruel or abusive nature.” § 15-7-7(a)(2)(ii), (3), (b)(1) (1996); R.I. Gen. Laws § 42-72-2 = state policy of responsibility to help parents meet their obligations to their children and to provide services designed to prevent the unnecessary removal of children from their homes. §15-7-7(a)(3) – reunification services must be offered. § 15-7-7(a)(2) (i) – reasonable efforts must be offered to encourage and strengthen the parental relationship.

### **CASE LAW:**

*In re Kathleen*, 460 A.2d 12 (R.I. 1983) – TPR – Affirmed. This was a voluntary placement. Services were offered. The mother did them all except for counseling. The trial court found reasonable efforts and terminated parental rights. The appellate court stated “this court adopted the test earlier enunciated by the Legislature of the State of New York to judge agency compliance with the reasonable-efforts requirement of § 15-7-7. The agency must demonstrate by clear and convincing evidence that it (1) has cooperated with parents to design an appropriate program; (2) has made suitable arrangements for visitation; (3) has provided services and other assistance so that the problems preventing discharge from foster care may be resolved or ameliorated; and (4) has informed the parents about the child’s health, progress, and development. We find more than adequate evidence of the agency’s performance in these regards, particularly in its repeated efforts to inform Marie of the vital necessity of her accepting counseling services. The agency devised reunification plans, arranged and facilitated visits, and provided transportation for those visits even though Marie often had access to public transportation. The visits were increased in frequency and length even though there continued to be periods in which Marie would not faithfully keep the visits. Marie appears never to have accepted the seriousness of her problems.

*In re Kristina L.*, 520 A.2d 574 (R.I. 1987) – TPR - Reversed.

After dependency was established, parent-child visits only began 3 months after placement and only



when the mother requested them. The visits were one hour every other week. The termination was based on “bonding” with the foster parents. The appellate court reversed noting that there was no finding that the parent was unfit. There was a failure to find any detriment if returned; the parents cooperated with the agency and the agency failed to make any reasonable efforts to reunite. This was a totally inadequate visitation schedule. Supreme Court said the agency’s reasons for keeping the child away from the family for 6 years for reasons were as insignificant as dirty dishes and laundry and awkwardness between mother and child.

*In re Manuel P.*, 889 A.2d 192, 196 (R.I. 2006) – Petition to TPR – Not Granted.

The trial court found no reasonable efforts. The appellate court agreed noting that although the department had provided the mother with psychological evaluations and parent education classes, it failed to follow up in providing the services that were indicated by the evaluations.

*In re Natasha M.*, 800 A.2d 430, 431 (R.I. 2002) – TPR – Affirmed.

The mother lived in a violent environment. She claimed the agency did not assist her. The appellate court affirmed the trial court finding by clear and convincing evidence that reasonable efforts had been offered. “The record, however, is clear. The department made three separate attempts to provide mother with safe transitional housing. Although the department is responsible for making these reasonable efforts, DCYF does not guarantee success and should not be burdened “with the additional responsibility of holding the hand of a recalcitrant parent.” (431).

*In re Nicole G.*, 577 A.2d 248 (R.I. Supreme Court, 1990) – TPR – Reversed.

Do Reasonable Efforts include housing assistance? Yes held the Rhode Island Supreme Court. §15-7-7(2)(a) requires that before TPR the trial court must find that the DCF made reasonable efforts to encourage and strengthen the family relationship. “The Legislature intended for the court to provide a check on DCF’s powers, to protect families from hasty and routine terminations by ensuring that adequate services have been provided prior to termination. Without the power to remedy inadequacies, this check would be illusory.” (at p. 252) The court went on to explain that a series of services are necessary including visitation, work with parents, providing services, and keeping parents informed about child. “We believe that in cases in which homelessness is found to be the primary factor preventing reunification of a family, it is rational for the Family Court to find that reasonable efforts have not been made unless and until DCF provides some type of housing assistance.” (at 249) “We find no reason to require the Family Court to sit idly by until a termination petition is filed.” “We believe the more reasoned approach is to allow the Family Court to order DCF to provide housing assistance prior to the filing of a termination petition as long as it first finds that a lack of adequate housing is the primary factor preventing reunification.” (249-250) “given the cost of subsidizing foster care for multiple children, it seems likely that cash disbursements for housing assistance will be more cost effective in the long run.” (at 250);

*In re Shaylon J.*, 782 A.2d 1140 (R.I. 2001) – TPR – Affirmed.

The incarcerated father complained about “woefully inadequate” visitation. The Supreme Court said the statute required the department to make “suitable arrangements for visitation,” acknowledged that the department’s efforts “were hampered by the father’s incarceration,” and described the visits as few. Still the court affirmed the trial court holding it is the parent’s responsibility, not that of the agency, to carry on contact with the children while incarcerated.” “The state must demonstrate that the

department has... ‘made suitable arrangements for visitation...’” (at 1142)

*In re Jason L.*, 810 A.2d 765, 767 (R.I. 2002) – TPR – Affirmed.

Mother had numerous children. – An analysis of an agency’s efforts for reasonableness must consider “the conduct and cooperation of the parents.” The record reveals that DCYF offered a variety of services to respondent to help her resolve the number of problems plaguing her family, including domestic violence, child protection, steady housing and employment, and general parenting skills. DCYF prepared case plans for respondent in both Spanish and English. The plans provided specific tasks for respondent to complete that would have provided her with the tools necessary to properly care for her children.

*In re Amanda B.*, 626 A.2d 1277 (1993) – Removal from mother. Affirmed.

Neglect and sexual abuse allegation by mother’s boyfriend led to removal of two children. The trial court ordered DCYF to make rental payments for the mother. The 2 children were placed with grandmother after sexual abuse allegation against mother’s boyfriend. DCYF assisted mother obtain housing and funded first and last month’s rent. But mother couldn’t remain drug and alcohol free and resumed relationship with boyfriend. One child placed back with grandmother. Mother asked for one month’s rent. The trial court order to do so was reversed by the appellate court as the problem was not homelessness, but mother’s addiction. Reasonable efforts affirmed.

*In re Kristin B.*, 558 A.2d 200 (R.I. 1989) – TPR – Affirmed.

This was a sexual abuse case in which the parents failed to participate in therapy. The appellate court found reasonable efforts where the agency provided therapy, offered to replace a counselor at its own expense when the father complained, drove the parents to meetings, and offered child care while mother attended counseling.

*In re Antonio G.*, 703 A.2d 612 (R.I. 1997) – TPR – Affirmed.

The appellate court found that reasonable efforts had been provided even though the agency did not provide housing to the mother because that was not the primary barrier to reunification. Substance abuse was the main issue.

## **Mental Health Issues**

*In re William*, 448 A.2d 1250 (R.I. 1982) – TPR – Reversed.

Developmentally disabled parents lost their children to the agency, were not successful during reunification period and their rights were terminated. On appeal the Supreme Court stated that “an evaluation of [the agency’s] efforts to strengthen the bond between the parents and the child is best achieved through a ‘totality of circumstances’ approach.” (at 1255). The court held that the agency is required to take every conceivable step to insure that reasonable services have been provided. (at 1255). Efforts to strengthen the relationship between the parents and the child may be adequate for average parents, but should be specialized for an intellectually limited parent. The “particular needs” of cognitively impaired parents must be considered and that “efforts to encourage and strengthen the parental relationship with respect to an average parent are not necessarily reasonable to an intellectually limited one.” (at 1256)

*In re Rachon W.*, 750 A.2d 963 (R.I. 2000) – TPR – Affirmed.

After 11 case plans that were drawn up over five years had failed to help a mother achieve the objective of stopping alcohol abuse and acquiring parenting skills, the court upheld the termination of her rights on the ground that she had failed to improve in a reasonable period of time. The state Supreme Court noted that in the five years the state had been involved with the mother, she repeatedly failed to comply with treatment plans, relapsed, and was incarcerated. It held that given the mother's past failures and relapses and the fact that she would need treatment for at least another year, with no guarantee that she would be ready to assume parenting responsibilities thereafter, it was not likely that she could gain custody of her son within the reasonable time required under state law. Her psychological problems were revealed shortly before the trial.

*In re Nathan F.*, 762 A.2d 1193 (R.I. 2000) – TPR – Affirmed.

Mentally ill mother continued to fail to complete four separate case plans each designed to address her mental illness and substance abuse. Her therapist testified it would be years before she would achieve her goals and be able to parent successfully.

*In re Natalya C.*, 946 A. 2d 198, 203 (R.I. 2008) – TPR – Reversed.

The Supreme Court held that the family court erred in terminating the mother's parental rights because DCYF did not prove, by clear and convincing evidence, that it made reasonable efforts to achieve reunification between the mother and daughter before it filed the petition. Because the mother received substance-abuse treatment from the time her daughter initially was removed from her care until the filing of the petition, DCYF was not required to offer any additional drug counseling. However, it was wholly unreasonable for DCYF not to include any mental-health treatment in the mother's case plans when her mental illness was one of the primary barriers to her reunification with the daughter. DCYF's complete failure to address the mother's depression made it highly unlikely that reunification would be successful. The agency should have been proactive where the mother was unable to complete substance abuse treatment due to depression. The parents' fundamental right to the custody of their children does not permit parental rights to be terminated unless the state exercises reasonable efforts to avoid that result.

*In re Jennifer G.*, 767 A.2d 682 (R.I. 2000) – TPR – Affirmed.

The mentally ill mother rejected most of the provisions of the state's three health plans, which provided for parent aid, financial assistance, counseling, housing assistance, shelter referrals, case management, and visitation housing. Held: Reasonable efforts were provided by the agency.

*In re Christopher B.*, 823 A.2d 301 (R.I. 2003) – TPR – Affirmed.

The mother was developmentally disabled and suffered domestic violence from several men. The children were removed when found living in a dirty home. Visitation started in a few months and mother received several evaluations, one of which indicated mother's mental retardation. Special services were recommended without knowing if she would be successful. Those services were not offered – only domestic violence counseling. The reasonable efforts prior to TPR based on mental illness or deficiency should be assessed for reasonableness without regard to the likelihood of success. The Supreme Court indicated that the department failed to offer proper reunification services. The Supreme Court indicated, however, that truly "futile" situations may be exempt. "We have held previously that when [the agency] is required by statute to pursue reasonable efforts before

filing for termination, it is required to do so “[r]egardless of the unlikelihood of success,” (*In re Joseph S.*, 788 A.2d 475, 477 – R.I. 2002). However, the trial judge found he was “compelled” to terminate mother’s parental right despite the agency’s failure to offer her the recommended or proper services. Instead the termination was affirmed on other grounds (child in state custody for a year).

*In re Joseph S.*, 788 A.2d 475, 477 – (R.I. 2002) – TPR – Affirmed.

The mother had significant mental health problems. She was offered services, but showed no improvement. She claimed the services were inadequate. The court noted that the mother was in a pattern of committing a crime, going to jail or in an emergency care facility, taking her medications, obtaining a release, going off medication and beginning the pattern again.

*In re Gabrielle D.*, 39 A.3d 655 (R.I. 2013) – TPR – Affirmed.

In a termination proceeding, the appellate court found reasonable mental health and substance abuse services had been provided because father had been receiving these services on his own. The agency is not required to provide for services that would be duplicative in order to meet the reasonable efforts requirement.

*In re Ryan S.*, 728 A.2d 454 (R.I. 1999) – TPR – Affirmed.

Our review of the record in this case indicates that legally competent evidence does exist to support the trial justice’s findings with respect to DCYF’s reasonable efforts. The evidence at trial indicated that DCYF developed numerous case plans and prepared many referrals for the mother to address her mental-health issues. However, the mother’s failure to cooperate fully repeatedly undermined these efforts. The mother also argues on appeal that DCYF failed to make reasonable efforts towards reunification because it neglected to arrange for adequate visitations with her son. The evidence presented to the court, however, supports the trial justice’s contrary conclusion. The mother’s own volatile conduct and her continued refusal to address her own mental-health problems disrupted several visitations between the mother and her son and eventually led to the suspension of all visitation.

*In re Michael B.*, 796 A.2d 467 (R.I. 2002) – TPR – Affirmed.

The children were removed because of parents’ domestic violence and mental deficiencies resulting in a poor environment. The parents refused to cooperate with services. “[M]entally impaired parents [can be found to be] *per se* incapable of parenting.” (at 469)

### **Aggravated Circumstances**

*In re Nicole B.*, 703 A.2d 612 (R.I. 1997) – TPR - Affirmed.

The child was removed after suffering serious harm (shaken baby). Held: No reasonable efforts are necessary when parents were cruel.

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Regarding ARRAIGNMENTS:

“Generally, when a DCYF petition is filed against a parent alleging dependency, neglect or abuse, the parents are served and appear in Family Court at the arraignment. They are not represented by counsel at that time. A denial is entered and a public defender is appointed, or RI legal Services,

otherwise a private attorney from the court appointed list. The child is ordered in the temporary custody of DCYF. An inquiry is made regarding placement and whether there are any suitable relatives or Kinship care available. The child is represented at the hearings by a CASA attorney. They will generally request that visitation be supervised or at the discretion of DCYF. If there are any special circumstances, the court may make specific orders regarding services for the child and or services for the parent. The DCYF case worker and legal counsel are both present. The parent is entitled to a probable cause hearing and may request a hearing date at the arraignment or later once the court appointed attorney is present. At that hearing, the court will determine whether there was a legal basis for removal of the child and whether DCYF made efforts to maintain the child in the home. Federal findings are also made at the trial or at any juncture when the child is committed to the state. Additionally permanency hearings are scheduled at the arraignment (1 year date) and federal findings are made regarding reasonable efforts. Obviously, at the TPR trial, reasonable efforts is a major legal factor considered by the court when determining whether to grant the TPR petition.”

#### TRAINING:

“There are generally many opportunities for training through our court conferences, the RI Bar Association, the Family Court Inn of Courts as well as the Family Court Bench Bar. Attorneys and judges are required to have 10 hours of legal training to maintain our legal status and license. I have personally conducted trainings regarding child welfare issues and reasonable efforts is always a topic. Court appointed attorneys require a special training to be include to be on the court appointed list.”

Email from Judge Lauren D’Ambra, Associate Justice, Rhode Island Family Court.

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“In general, however, the ‘reasonable efforts’ standard is ill-defined and inconsistently applied.... These efforts would be improved if the state were to enact formal guidelines that define with greater specificity what constitutes ‘reasonable efforts.’ Such guidelines could provide the Rhode Island courts with a better framework with which to measure the state’s burden in providing reunification services. These improved guidelines could be especially helpful in cases involving developmentally disabled parents like Mary Ann.”[551](#)

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## SOUTH CAROLINA

**STATUTES:** S. C. Code Ann. §§ 63-7-1680, 63-7-720, 63-7- 1640, 63-7-670 – providing services before removal. Identification of relatives = § 63-7-640. §63-7-2570(6); Aggravating circumstances - § 63-7-1640(C). §20-7-1572(2).

#### CASE LAW:

#### **Mental Health Issues**

*South Carolina Dept of Social Services v Broome*, 307 S.C. 48, 413 S.E.2d 835 (1992) – TPR – Affirmed.

The mother suffered from schizophrenia and could have stabilized her condition through medication. She did not obtain treatment or follow other requirements of her treatment plan or visit her children regularly. Her motion for a continuance was denied and the TPR upheld.

**Aggravated Circumstances**

*Orangeburg County DSS v Harley*, 302 S.C. 64, 393 S.E.2d 597 (Ct.App. 1990). TPR - Affirmed. The mentally retarded mother could not care for child or for herself. “There is no requirement that the agency removing the child provide rehabilitative services to mentally incompetent parents prior to seeking termination, unlike in cases with competent parents.”[T]he contention of the mother that the trial court erred in finding that DSS provided reasonable services to the mother in assisting her to provide acceptable care, as required by S.C. Code Ann. § 20-7-1572(2), needed not be considered as this provision was irrelevant when termination was sought under subsection (6).

*S.C. Dep’t of Soc. Servs. v. Smith*, 429 S.E.2d 807 (S.C. 1993) – TPR – Reversed. Evidence showed that parenting programs might help mildly mentally retarded parents successfully parent their child. While the state statute permitted TPR when a parent has a mental illness, but the appellate court found that there was proof that the parents could benefit from services and ordered services for a year.

*South Carolina Department of Social Services v Humphreys*, 297 S.C. 118, 374 S.E.2d 922 (Ct. App. 1988) – TPR – Affirmed. No reunification services were offered to the mentally retarded mother. The trial court and appellate court held that the statute did not require services when the diagnosable mental deficiency made the parent unlikely to provide minimally acceptable care for the child.

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“The reasonable efforts issue is not tried in the South Carolina courts. On occasion the attorney for DSS will explain to the court what the social worker has done to prevent removal or assist in reunification, but there are no hearings or trials on that legal issue.”

Summary of a telephone conversation with Attorney John Mersereau, a Charleston attorney who has represented agency, parents and children for over ten years.

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**SOUTH DAKOTA**

**STATUTES:** S.D. CODIFIED LAWS § 26-8A-21 & -26 (Michie 1999) – Reasonable efforts mean provision by the department of any assistance or services that:…[a]re available pursuant to the comprehensive plan of preventive services of the department: [or] [c]ould be made available without undue financial burden on the department....§ 26-8-35.2 (1989) (check update) Aggravated circumstances: § 26-8A-21.1

**CASE LAW:**

*In the Interest of T.H. and J.H.*, 396 N.W. 2d 145, 151 (S.D. 1986) – TPR – Affirmed.

The mother was extradited to Nebraska and imprisoned for two years. The children were removed. The court found they needed permanency. It is evident from the record that the trial court considered Mother's imprisonment as one, but not the *sole* factor in its ultimate disposition of this case. Nor can we find that the Department was remiss in its duties to her. The evidence shows that Anderson arranged phone calls and letters between Mother and her children when she was jailed in Nebraska. Anderson also facilitated visits between both parents and the children when Mother and Father were returned to Rapid City. These visits were discontinued only when Mother was transferred to Springfield. The trial court specifically found that due to the incarceration of the parents, the Department, at best, had limited access to the parents for the purpose of attempting to rehabilitate the family. We agree with the trial court's conclusion that the Department made reasonable efforts, under the circumstances, to facilitate contact between Mother and her sons. We make no attempt to propound a rule for the Department in establishing a required course of rehabilitation in every case where one or both parents are incarcerated. Each case will turn on its own peculiar facts, and compelling circumstances may require different courses of conduct."

*In the Interest of C.W.*, 697 N.W.2d 18 (2005 – S.D. Supreme Court) – TPR – Affirmed.

The child suffered broken bones. Services were offered to the mother. Mother cooperated, but her "heart" was not in the effort. She was faking her efforts. The psychologist's opinion that mother was very defensive and resistant to change. The appellate court affirmed the trial court's ruling stating that "[t]he Department of Social Services has made reasonable efforts to reunite and rehabilitate the family including but not limited to the following: Establishing a family service agreement and case plan, setting up visits, setting up a psychological evaluation and drug and alcohol evaluation for the mother, common sense parenting classes and bring star parenting classes, requesting a home study on Mother's parents." (at 23)

*In re J.B.*, 755 N.W.2d 496 – TPR – Affirmed.

The parents were offered and received adequate services, not just during this matter, but over the course of several years. These included case management, home-based counseling, psychological testing, parenting classes, residential care, family therapy and visitation. However, the parents refused to address their issues during family therapy and denied and minimized their conduct not only in regard to this child but also the events surrounding the removal of their five other children.

*In re People ex. Rel. South Dakota Dept. of Social Services*, 691 N.W. 2d 586 – TPR – Affirmed.

Mother left her child at a feed lot. Reasonable efforts found. Mother did not follow the case plan.

*People ex. Rel. P.K.*, 711 N.W.2d 248 (S.D.) – TPR – Affirmed.

The father was incarcerated when mother gave up the children to the state. The agency provided services to develop parenting skills and paid for psycho-sexual evaluation, costs at visitation center, motel, and gas expenses for the children's summer, visits and funding for anger management class. Reasonable Efforts upheld.

*In the Matter of Z.Z.*, 494 N.W.2d 608 (S.D. 1992) – TPR – Affirmed.

The parent was offered three years of services in South Dakota for a total of ten years of services from Minnesota, North Dakota, Colorado and South Dakota.

## **Mental Health Issues**

*People in Interest of M.K.*, 466 N.W.2d 177, 178, 185 (S.D. 1991) – TPR – Affirmed.

Social services removed a child from the custody of a mother, age 21, who was “borderline mentally retarded,” because of concerns of her ability to care for the child. After social services worked with the mother for two years without significant improvement, it recommended terminating the mother’s parental rights. The mother argued that, before terminating her parental rights, she “should have been afforded counseling through additional state programs; specifically, the Intensive Preventive Placement program (IPP) and Adult Foster Care.” In rejecting the mother’s argument, the Supreme Court of South Dakota explained that “there was no IPP counselor in her area,” and “[t]ermination of parental rights is not conditioned upon exhaustion of every possible form of assistance.”

DISSENT: Retarded or not - mother and/or child - a fundamental liberty issue is at stake; retarded people are entitled to procedural safeguards which assuredly includes a *medical* diagnosis so an intelligent cause of legal action may be pursued. These unfortunate, biologically deprived people need social help and love, not separation forever! Their rights simply do not “evaporate.” It is hazardous, however, to assume that moving a child from an imperfect home will benefit the child.”

*In re W.G.*, 597 N.W.2d 430, 433 (S.D. 1999) –TPR – Affirmed.

The children were removed because the mother had mental deficiencies and could not safely parent them while the father was an alcoholic and sexual offender and was not interested in caring for them. Department of Social Services had made reasonable efforts to reunite the family, as they had provided parenting instruction to appellants, but these efforts had been unsuccessful. Appellant mother had limited cognitive abilities, and appellant father had a history of alcohol abuse and use of authoritarian parenting techniques. Appellant father had a prior conviction for sexual abuse of a minor. “What is reasonable is defined by the individual circumstances of each case.”

*Matter of J.Y.*, 502 N.W.2d 860 (S.D. 1993) – TPR – Affirmed.

The children were removed from a borderline-intelligent, mentally ill mother who had received extensive services for the older child without progress. The services included supervised visits, parenting classes, individual case management services, individual therapy for the mother, medical care and advice, home based services including cleaning and child care and two case service plans.

## **ICWA**

*In Interest of J.S.B.*, 2005 SD 3, 691 N.W. 2d 611 (S.D. 2005) – TPR – Affirmed.

Investigation revealed occurrences of domestic violence and chemical dependency on the father’s part. The court held that ASFA did not override the requirements of ICWA. Thus, the trial court erred in ruling that the South Dakota Department of Social Services (DSS) was relieved of making active efforts for reunification. The court affirmed the termination of parental rights, however, because despite the erroneous ruling, DSS continued to provide active efforts to reunify the family, but such efforts were unsuccessful. Under ICWA, DSS had to make active efforts to reunite the child with the father, but it was not required to persist with futile efforts.

*Interest of J.S.B., Jr.*, 691 N.W.2d 611 (2005 S. D. Supreme Court) – TPR of father’s rights – Affirmed.

This was a case involving the ICWA. The court addressed the question: Does ASFA overrule ICWA?



No – aggravated circumstances do not apply to ICWA cases and active efforts. Yet, DSS continued to provide active efforts even though father disappeared for part of the reunification period.

*People ex rel. D.G.*, 2004 SD 54, 679 N.W.2d 497 (S.D. 2004) – TPR – Affirmed.

The court held that while a parent’s incarceration does not automatically excuse the State Department of Social Services (DSS) from exercising efforts to return the child, it was a matter of fact that a parent’s incarceration limits the DSS in its attempts to rehabilitate the family. The court explained that this acknowledges the reality that in determining a parent’s fitness, the fact of incarceration cannot be ignored. Likewise, the court added, when assessing what options are available to prepare the parent for the return of a child, incarceration narrows the available options.

*In re D.B.*, 670 N.W.2d 67 (N.D. 2003) – TPR- Affirmed.

The trial court found that reasonable and active efforts to prevent the breakup of an Indian family had been provided, but that those efforts were unsuccessful. The appellate court held that the mother had exposed the child to, and demonstrated an inability to protect the child from, substantial harm or the risk of substantial harm, that her parental rights to her two other children were voluntarily terminated; therefore, under state law, aggravating circumstances justified the termination of reasonable efforts toward reunification under the ASFA. The appellate court also held that the Indian Child Welfare Act, 25 U.S.C.S. § 1901 et seq., had been satisfied because reasonable and active efforts had been provided to prevent the breakup of the Indian family.

*People in the Interest of E.M.*, 466 N.W. 2d 168 (S.D. 1991) – TPR – Affirmed.

Prematurely born children needed special attention which the mother was unable to provide. On appeal, the court held that the record supported, beyond a reasonable doubt, the trial court’s conclusion that the evidence established that the department made reasonable efforts to prevent the breakup of this family by providing remedial and rehabilitative services appropriate under the circumstances, and that these efforts were unsuccessful.

*In re P.B.*, 371 N.W.2d 366 (N.D. 1985) – TPR – Affirmed.

The child was removed because of serious substance abuse by the mother. The appellate court affirmed holding that the evidence reflected beyond a reasonable doubt that the mother did not provide proper parental care to the child. The court held that termination of the mother’s parental rights was proper because the state had shown beyond a reasonable doubt that the child would be harmed by continued custody with the mother and that efforts to keep the family together were unsuccessful as required by 25 U.S.C.S. §§ 1912(f) and 1912(d) respectively

*In re S.D.*, 402 N.W.2d 346 (S.D. 1987) – TPR – Affirmed.

Serious substance abuse led to removal. The State attempted rehabilitation as required by the ICWA. The parents hindered rehabilitation by their constant moves. Next, the State sufficiently proved that the children would have suffered serious emotional or physical harm if the parents continued to have custody. Fourth, under the best interests of the children standard, termination of parental rights was the least restrictive alternative. The parents repeatedly failed at alcohol treatment programs.

*In re D.M (D.M.I.)*, 661 N.W.2d 768 (S.D. 2003) – TPR – Affirmed.

The appellate court further held that an agency made efforts to prevent the breakup of the family, as

required by 25 U.S.C.S. § 1912(d). The agency offered a wide range of services to the parents and attempted to work toward reunification of the family over a considerable period of time. The fact that the efforts were not successful did not mean they were not made.

*People in Interest of P.S.E.*, 2012 S.D. 49, 816 N.W. 2d 110 (S.D. 2012) – TPR – Affirmed. The court joined the majority of jurisdictions in holding that the active efforts requirement of 25 U.S.C.S. § 1912(d) imposed a higher standard than the reasonable efforts requirement of S.D. Codified Laws § 26-8A-21. In the instant case, the agency’s efforts to reunite the father and child were active where it paid for the father’s DUI classes, found an individual who could have provided the father with parenting classes, and made preparations with the child for future placement with the father. Those efforts were also reasonable given that the father lived in another state and was financially unable to travel to the forum state. The requirement under Indian Child Welfare Act (ICWA) of “active efforts” to prevent breakup of Indian family prior to termination of parental rights to an Indian child imposes a higher standard than “reasonable efforts” to return child to the parents, as required under state law in abuse and neglect proceedings in which the ICWA does not apply; insofar as purely passive efforts could satisfy the reasonable efforts standard of state law, they would not satisfy the “active efforts” required by ICWA

### **Aggravated Circumstances**

*In re D.B.*, 2003 S.D. 113, 670 N.W. 2d 67 (S.D. 2003) – Bypass of reunification services upheld on appeal as mother had exposed the child to and demonstrated an inability to protect the child from substantial harm or risk of substantial harm and two of the mother’s other children had been adjudicated abused and removed from her care.

*In re L.N.*, 689 N.W.2d 893, 2004 SD 126 (S.D. 2004) – TPR – Affirmed. ASFA as codified in S.D. Codified Laws section 26-8A-21.1 gives the court the discretion to bypass reunification services in cases of aggravated circumstances. The mother claimed she had a right to reunification services, but the court held it had the discretion to dispense with futile efforts toward reunification.

*In re I.H.*, 674 N.W.2d 809 (S.D. Supreme Court, 2004) – R/E not offered. Affirmed. ASFA permits aggravated circumstances to excuse the agency. Mother was offered services through the years. No obligation to continue. Mother was unable to protect the child from harm.

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“My review of South Dakota appellate law finds most of the R/E cases arise after a termination of parental rights – is that your experience?”

No, reasonable efforts are addressed immediately. Reasonable efforts are required to be made prior to the removal of the child in any effort to prevent or eliminate the need for removal of the child.

“Do the attorneys and judges get training on the R/E issue?”

Yes. There is training for both attorneys and judges in the form of CLEs and trainings at various meetings/conferences. We also provide procedural assistance, especially to rural attorneys who may

only have 1-2 cases of this type per year. However, because our state is rather diverse from very rural communities to a few metropolitan communities (metropolitan by SD standards!), “reasonable efforts” does mean different things to different judges/attorneys.

“Do the attorneys raise the issue at the shelter care hearing to your knowledge?”

I think you are referring to what we call the initial hearing (48 hour hearing) after removal of the children. We require that the Department of Social Services, prior to the removal of a child, use reasonable efforts to prevent or eliminate the need for removal of the child.

“Very rarely do we get an intermediary appeal on these cases. The overwhelmingly majority of appeals are after the termination of parental rights.”

Emails from Suzanne Kappes, (12/18/2013) Director of Policy and Legal Services, State Court Administrator’s Office, South Dakota

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## TENNESSEE

**STATUTES:** TENN. Code Ann. § 37-1-166(a)-(d), (g)(1)-(g)(3) (2001) = “[T]he department has the burden of demonstrating that reasonable efforts have been made...” “The exercise of reasonable care and diligence by the department to provide services related to the needs of the child and the family.” § 37-1-147(e)(2) (Supp. 1989); TCA § 36-1-113(g)(3)(A).

## CASE LAW:

*In re Tiffany B.*, 228 S.W.3d 148 (Tenn. Ct. App. 2007) – TPR – Reversed.

“While the Department’s efforts to assist parents need not be “herculean,” the Department must do more than simply provide the parents with a list of service providers and then leave the parents to obtain services on their own. The Department’s employees must bring their education and training to bear to assist the parents in a reasonable way to address the conditions that required removing their children from their custody and to complete the tasks imposed on them in the permanency plan. Factors to consider in evaluating DCS’s reasonable efforts: (1) the reasons for separating the parents from their children (2) the parents’ physical and mental abilities, (3) the resources available to the parents, (4) the parents’ efforts to remedy the conditions that required the removal of the children (5) the resources available to DCS. (6) the duration and extent of the parents’ efforts to address the problems that caused the children’s removal (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the efforts of DCS. In this case the Department did very little and expected the parents to ask them for assistance.

*In re A.J.H.*, 2005 Tenn. App. LEXIS 740 (Ct. App. Tenn. 2005) – TPR – Reversed.

The state would not pay for an evaluation of father so he could take advantage of services. The state did not show by Clear and Convincing evidence that it took reasonable steps to address the father’s admitted inability to comply with the parenting plan without assessment or treatment for the conditions identified in the psychological evaluations. DCS failed to meet its burden of showing by clear and convincing evidence that it took reasonable steps to address the father’s admitted inability

to comply with the parenting plan without assessment or treatment for the conditions identified in the psychological evaluations conducted at the State's behest.

*In re D.D.V.*, 2002 Tenn. App. LEXIS 126, 2002 WL 225891 – TPR – Reversed.

The Department did not provide reasonable efforts to assist the mother. “Reasonable efforts entail more than simply providing parents with a list of service providers and sending them on their way. The Department’s employees must use their superior insight and training to assist parents with the problems the Department has identified in the permanency plan, whether the parents ask for assistance or not.” (p.8). [T]he primary obstacle to [the mother and child’s] reunification has always been the lack of stable housing, followed closely by lack of stable employment. . . . [B]ut there is no evidence that [the agency] offered [the mother] any assistance at all with either of these needs prior to January of 2000.”

*In re Giorgianna H. et al.*, 205 S.W.3d 508 (Tenn. App. 2006) – TPR – Affirmed.

TDCS must prove by clear and convincing evidence that they provided reasonable efforts. The reasonableness of those services will be measured by (1) reasons for separation (2) parents’ physical and mental abilities (3) resources available to the parents (4) parents’ efforts to remedy the conditions leading to removal (5) the resources available to the Department (6) the duration and extent of the parent’s remedial efforts and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan and the Department’s efforts. The parents received years of services, but demonstrated little parental effort or changes. But this theory of persistence of conditions requires a reasonable efforts finding. (TCA § 36-1-113(g)(3) (A). “While the Department’s reunification efforts need not be ‘herculean,’ the Department must do more than simply provide the parents with a list of services and send them on their way.” The parents share responsibility for addressing these conditions as well. Reasonable efforts upheld as the department made almost continual efforts. As a general rule, a properly prepared and appropriately detailed affidavit meeting the requirements of Tenn. Code Ann. § 37-1-166(c) (2005) is sufficient to establish the extent and reasonableness of the Tennessee Department of Children’s Services’ reunification efforts. Thus, unless a parent takes issue with the adequacy of the Department’s efforts, the Department need not present additional evidence regarding its efforts to reunify the family. However, if a parent takes issue with the adequacy of the Department’s reunification efforts, the Department may be required to present additional evidence regarding its efforts and to make its employees and contractors involved with these efforts available for discovery or cross-examination at trial.

*In re Valentine*, 79 S.W.3d 539 (2002) – TPR – Reversed.

The mother participated in reunification services offered by the agency. The Supreme Court ruled that there was not clear and convincing evidence that the mother was not in substantial compliance with the service plan.

*In re C.M.M.*, 2004 Tenn. App. LEXIS 160 – TPR – Reversed.

The appellate court held that this was a failure of reasonable efforts by the department. The record contained only shadows of the efforts the state made to reunify the mother and her children. The only affidavit of reasonable efforts in the record was prepared in August 2001 and dealt only in the most general terms with the services provided before the children were removed. The affidavit did not

mention the services provided between September 2001 and November 2002. Likewise, the initial and revised permanency plans prepared in September 2001 and December 2001 identified the services only in the most general terms and, for the most part, failed to identify the persons responsible for seeing to it that the services were provided. Because of the shortcomings in case, the juvenile court was unable to compare the individualized services the mother needed with the state's efforts to provide her with the services. Accordingly, the juvenile court could not make the specific findings of fact and conclusions of law regarding the reasonableness of the state's efforts.

*In re M.E.*, 2004 Tenn. App. LEXIS 526 – TPR – Reversed.

Failure of reasonable efforts relating to mother's mental health needs. The State's failure to provide services of more than "little consequence" was aggravated by the fact that without the benefit of the effective assistance - reasonable efforts - of the State, the mother made numerous efforts to comply with the permanency plans, which efforts produced some successes, at least temporary successes. For example, she obtained housing, worked on a budget with her aunt's assistance, had a full-time job for a period of two years, completed non-offender abuse counseling, and continued to visit her children. While the State provided numerous services, the failure to provide the individualized psychological services, the need for which were most evident from a doctor's report, mitigated the beneficial value of the other services provided by the State and its service providers.

*In re A.R.*, 2008 Tenn.App. LEXIS 89 – TPR – Affirmed.

The court held that DCS made reasonable efforts to reunite the son with his mother as required under Tenn. Code Ann. § 37-1-166(a)(2), (g)(2) (2005) because it provided the mother parenting classes, counseling to address her bipolar and anger issues, case management services, medication management, supervised visitation with her son, the opportunity to live with her son in a foster home, and a trial home visit with her son. DCS initially set a goal target date of one year from the permanency plan but extended the date an additional two months. Despite the DCS's efforts, the mother failed to correct the conditions that had led to her son's removal.

*In re Askia K.B.*, 2011 Tenn.App. LEXIS 549 – TPR – Reversed.

Father was in custody when the child was placed in foster care. He did not visit the child because he thought the child would not enjoy jailhouse visits. From the evidence in the record, prior to the filing of the termination petition, DCS efforts to work with Father, to provide assistance to him in completing his responsibilities under the 2008 permanency plans, were perfunctory at best. Under these circumstances, the court concluded that the State failed to carry its burden of proving by clear and convincing evidence that it made reasonable efforts to assist Father and to reunify Father with his son. Therefore, we must reverse the trial court's finding that DCS's efforts in this case were reasonable.

## **Mental Health Issues**

*In re Shaolin P.*, 2011 Tenn.App. LEXIS 249 – TPR – Reversed.

The father had mental health problems and was a registered sex offender. As a part of the service plan he was to obtain housing. The court found that the DCS was required to do more than simply provide the father with a list of services. Considering his mental impairments and the fact that he was on the sex offender registry, the services provided by the DCS did not amount to reasonable efforts. The

DCS failed to establish by clear and convincing evidence that the father's failure to pay support was willful or that its efforts to help the father were reasonable.

*Department of Social Services v Riley*, 689 S.W.2d 164 (Tenn. Ct. App. 1984) – TPR – Affirmed. The children were removed from mentally retarded parents living in sub-standard, dangerous housing. Reunification services included housekeeping, weekly counseling, day care for the children, transportation for visits, and assistance securing government subsidies. The parents could not make progress. TPR and reasonable efforts affirmed.

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“Attorneys do litigate reasonable efforts. Of course, the practice varies significantly across the state. Anecdotally, the attorneys seem to litigate reasonable efforts to reunify the family or towards another permanent goal, rather than at the shelter/preliminary hearing. Though there are a few that do at the prelim. We do have judges that make “no reasonable efforts” findings, especially to reunify.”

Partial email from Leslie Barrett Kinhead, Court Improvement Program Coordinator, Administrative Office of the Courts, Tennessee.

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“The most significant aspect of the findings is that courts have less impact upon dependent and neglected children and their families in this state than do socioeconomic factors such as poverty, homelessness, and the availability of community resources. There are at least two responses to this finding. The first is to concede that courts do not have much impact and that judicial or even legal interventions are not the most effective way to address the underlying social problem of child maltreatment. Another response is to consider this low figure a challenge to judges to work harder to increase their positive impact on children and families. These findings suggest that reform is needed both in terms of process and content. With respect to the process, the findings strongly suggest that more well-trained, knowledgeable, and dedicated advocates for parents and children need to be involved throughout the proceedings.” Brooks, S., *op.cit.*, footnote 158 at p. 1045. (written in 1998).

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## TEXAS

**STATUTES:** Texas Family Code Ann. – Several sections require reasonable efforts findings. §§ 262.201(b), 262.001(b), 262.101, 262.102, 262.113, 262.2015(d) (Vernon 2002) - § 262.201(b) requires an adversary hearing within 2 weeks of removal when the court “shall order the return of the child...unless the court finds...(1) there was a danger to the physical health or safety of the child...; (2) the urgent need for protection required the immediate removal of the child...; and (3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.” § 263.202, concerning status hearings provides that the court “shall review the service plan that the department or other agency filed...for reasonableness, accuracy, and compliance with requirements of court orders and make findings as to whether...a plan that has the goal of returning the child to the child's parents adequately ensures that reasonable efforts are made to enable the child's parents to provide a safe environment for the child.”

Tex. Code Ann. §264.201 – Reasonable Efforts services designed to do the following. § 264.202 – statutory definition of reasonable efforts. §262.2015 – Reasonable Efforts not required. Reasonable efforts are required when a termination is based upon constructive abandonment. §161.001(1)(N).

## CASE LAW

*Holly v Adams*, 544 S.W.2d 367 (Tex. 1976) – TPR – Affirmed (before 96-272) – Supreme Court lays out standards for TPR.

*Edwards v Texas Dep't of Protective and Regulatory Services*, 946 S.W. 2d 130 (Texas Ct. App.1997) – TPR – Affirmed.

A positive toxicology baby was not picked up by the parents at the hospital, and neither parent showed an interest with the child or worked with social worker for rehabilitation. No proof of reasonable efforts required by the appellate court. Case law says the best interest of the child will be served by preserving the parent-child relationship. So long as the best interest of the child are met and clear and convincing evidence is present, no reasonable efforts are required at a termination of parental rights hearing. “We find no requirement, either in the Family Code or in case law, that adequate reunification efforts be proven before termination is appropriate.” (at 139).

*Jones v Dallas County Child Welfare Unit*, 761 S.W. 2d 103 (1988) – TPR – Affirmed.

Two children removed from the parents' home for dangerous home conditions. The parents were offered services, but were unsuccessful. Doctors testified that the mother had incurable mental illness. They complained they received no reasonable efforts. The court of appeals stated “Section 15.02 of the Texas Family Code sets out the requirements for involuntary termination of parental rights. Section 15.02 does not require any efforts toward reunification of the family. The statute requires only proof of one of the statutory acts and proof that termination is in the best interests of the child. The plaintiff in an involuntary termination case is not required to make any attempt to help the parents or to ensure that the children can return home. Providing services to reunify a family is not “a condition precedent to the involuntary termination of parental rights.” (at 109). The family was offered a service plan, but the parents refused to sign it.

*In the Interest of P.R.*, 994 S.W. 2d 411 (1999) – TPR – Affirmed.

The poor, almost homeless mother left the child voluntarily with an acquaintance. Healing fractures were discovered and the state intervened. 18 months later, parental rights were terminated. The state's theory was constructive abandonment. Reasonable efforts were required and affirmed. The mother complied with a portion of the case plan which included drug screenings, anger control classes, parenting classes, individualized counseling, obtain stable employment and housing for five months. The Agency filed TPR immediately indicating they had no interest in reunification given the severity of the injuries.

*In Interest of M.R.J.M.*, 280 S.W.3d 494 – TPR – Affirmed.

The child was removed from the mother due to physical abuse. The mother voluntarily relinquished her parental rights. This action had to do with father who appealed the termination of his parental rights. Held: State made reasonable efforts under Texas Family Code Sec. 161.001(1) (N) when it prepared several service plans for the father and made special arrangements for him to attend

parenting classes near his home and to transport him to his psychological assessment.

*Johnson v Texas Dept. of Family and Protective Services*, 2009 WL 2231698 – TPR – Affirmed. Parents left children with relatives. Trial court's reasonable efforts finding affirmed. The agency offered counseling and other educational services, scheduled visits, and placement with relative.

*In re J.J.W.*, 2009 W.L. 2432643, 2009 Tex. App. LEXIS 6216 (Tex. App. Texarkana, 2009) – TPR – Affirmed.

The father was incarcerated. The court held that implementation of a service plan is generally considered a reasonable effort to return a child to the parent. There was evidence that the agency implemented a plan is sufficient to affirm reasonable efforts. The father failed to comply with that plan. The fact that the caseworker did not meet with father does not raise a reasonable efforts issue.

*In re K.M.B.*, 91 S.W.3d 18 – TPR – Affirmed.

Filthy home and drug abuse by mother. State made reasonable efforts by creating service plans for mother and working with her on that plan. The Texas Family Code provides for termination if a child has been in the permanent or temporary managing conservatorship of an authorized agency for not less than six months, and (1) the department or authorized agency has made reasonable efforts to return the child to the parent; (2) the parent has not regularly visited or maintained significant contact with the child; and (3) the parent has demonstrated an inability to provide the child with a safe environment. Tex. Fam. Code Ann. § 161.001(1)(N).

*In re B.S.T.*, 977 S. W. 2d 481 – TPR - Affirmed.

The father was in prison at the outset of this case. The children were removed from mother because of a dirty home. He was told to visit, but made no further efforts. Reasonable efforts were affirmed on appeal.

*In the Interest of J.P., Minor Child*, No. 2-07-026 – not reported – TPR – Affirmed.

The case was based on endangerment plus best interest (Texas statute). Reasonable Efforts not found. The parent had mental health problems. Could have used another statute, but that would have required reasonable efforts – and those were not provided.

*In re M.V.G.*, 2010 WL 730366 (Tex. App. 2010) – TPR – Affirmed.

The state's theory was constructive abandonment. The child was in state custody for over six months, and the mother failed to regularly visit and provide a safe home. The department could have provided additional services while mother was incarcerated and could have explored additional relative options, but mother failed to follow through with visitation and the services she was offered. That was sufficient to show reasonable efforts.

*In re K.C.M.*, 4 S.W.3d 392 (Tex. App. 1999) – TPR – Reversed.

The child was returned to the mother. The child was removed at birth when it was discovered mother was using drugs during pregnancy. The child was returned with Paternal Grandmother supervising the situation. No improvement led to a second plan including no drugs at all and not to leave child unsupervised. Mother was incarcerated for possession of drugs. Mother completed services in jail. The appellate court found that return to mother was in child's best interests.



*In re J.T.G.*, 121 S.W.3d 117 (Tex. App. 2003) – TPR – Affirmed.

The children were removed because of exposure to domestic violence, both parents' substance abuse, and father's criminal conduct. Services included assessments and evaluations, testing, parenting classes, and counseling sessions for management, drug addiction, and domestic violence. Limited compliance with plans led to a TPR.

*In the Interest of D.T.*, 34 S.W. 3d 625 (Tex. App. Fort Worth 2000) – TPR – Reversed.

The evidence was factually insufficient to establish by clear and convincing evidence, under Tex. Fam. Code Ann. § 161.001, that appellant pursued a course of conduct that endangered the physical or emotional well-being of her son. As admitted by the caseworker, the state would not have taken the child but for the fact that appellant was incarcerated, and appellant did everything she could while in jail to comply with the department's service plan. Further, appellant's incarceration alone did not constitute constructive abandonment. There is no evidence to establish the third element of constructive abandonment. To the contrary, Appellant made numerous written requests asking for visitation while she was in jail.

*In re R.I.S.*, 120 S.W.3d 502 (Tex. App. 2003) – TPR – Affirmed.

Mother failed to cooperate with service plans for two years before the children's removal. Services included drug assessments and treatment, parenting classes, education course, keep a home for two months, and learn how to budget. Mother failed for almost two years to demonstrate either a desire or willingness to protect her children.

*Morales v Tex. Dep't of Family & Protective & Regulatory Serv.*, 2004 Tex.App. LEXIS 8752 (Tex. App. Austin, 2004) – TPR – Affirmed.

The child had serious medical issues requiring 24 hour a day care. The father claimed insufficient services were offered. The appellate court stated that the child was born prematurely with a prenatal drug addiction that resulted in severe disabilities and medical conditions. The father also described himself as 75 percent permanently disabled due to head injuries from a car accident, which caused him to suffer from short-term memory loss, seizures, damaged vision, and anger management problems. The father did not drive or work and had extreme difficulty reading. The Department introduced testimony to show that the father was offered parenting and vocational training classes but that his memory loss and other disabilities made it difficult for him to make any progress. The court found that the father lived with his mother, who worked full time, and would be unable to provide the 24 hour care the child needed.

*Robinson v. Texas Dept. of Protective and Regulatory Services*, 89 S.W.3d 679 (Tex. App. 2002) – TPR for mother – Affirmed.

The children were removed because of mother's drug abuse and children's special needs. Reunification plan focused on mother's drug problem, parenting classes, avoiding criminal behavior, counseling, get employment and a suitable home. The children's needs being met in foster care and social worker testified she did not believe parents could provide appropriate care for children.

## **Mental Health Issues**

*Salas v. Texas Dept. of Protective and Regulatory Services*, 71 S.W.3d 783 (Tex. App. El Paso 2002) – TPR – Affirmed.

The mother was mildly retarded and mentally ill mother. The court affirmed the TPR despite the fact that reunification services had not been provided to her. The mother had spent the past two years in an institution and, despite medication, made little or no progress in her treatment and had little likelihood of ever becoming capable of parenting her children. The court noted that given the mother's failure to cooperate with authorities before the state obtained custody of her children, her extended institutionalization, her own mother's unsuitability as a caretaker, and her remaining family's unwillingness to take care of the children, there was not anything the DPRS could do to facilitate family reunification. The court concluded that although the mother loved her children, she was not capable of caring for them at the present time or in the foreseeable future, and therefore the state was not required to provide her with rehabilitative services.

*In re B.L.M.*, 114 S.W.3d 641 (Tex. 2003) – TPR – Affirmed.

Father's mental illness rendered him unable to safely care for children. He was diagnosed as a paranoid schizophrenic. Father said he would never take medication in the future. Services included psychological evaluation, counseling, and parenting classes. Father did not comply with plan and had no ability to care for children due to his mental illness. The court also ruled that the father had waived his right to challenge the termination based upon a possible violation of the Americans With Disabilities Act.

*In re C.M.*, 996 S.W. 2d 269 (Tex. App. Houston 1<sup>st</sup> Dist. 1999) – TPR – Affirmed.

The mentally ill mother claimed the Americans with Disabilities Act precluded a termination of her parental rights. The appellate court held that she failed to follow the appropriate procedure and the court would not consider her argument.

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“I may have misspoken or not been clear in my earlier note re reasonable efforts because judges DO make findings at the 14 day hearing that reasonable efforts were made to PREVENT or ELIMINATE the need to remove, and that to remain in the home is contrary to the welfare of the child. What I might have said (or meant to say) is that few lawyers challenge the state's assertion that they made reasonable efforts because, again, parents don't always have lawyers at this point to make that challenge. So, unless the judge is ensuring the state is meeting it's burden, the finding of reasonable efforts to prevent or eliminate the need for removal can become pro forma and everyone knows it's critical for IV-E.”

Email to the author from Tina Amberboy, Executive Director, Texas Children's Commission.

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“Reasonable efforts are defined in Articles 262.001, 262.101, 262.102, 262.107 and 262.205, Texas Family Code. As a matter of local custom and practice, challenge to reasonable efforts at the shelter care hearing or 14 day hearing are very rarely made and if done, it is made by way of argument of counsel at those hearings. Please be reminded that appellate review in these said temporary hearings can only be done through mandamus review by the appellate court and I have not seen any appellate

opinion on mandamus review of reasonable efforts. There are appellate opinions on mandamus review on the sufficiency of the evidence for the justification and basis for removal of children through temporary orders.

“Yes. Bexar County has been one of the first counties in Texas to appoint attorneys prior to the 14 day hearing. Article 107.013 requires appointment of an *ad litem* for parents when an indigent parent of the child responds in opposition to the termination. We are one of the very few counties to appoint all parents upon the filing of the original petition for removal by CPS even if parents have not filed an affidavit of indigency and stand in opposition to termination. All parents who appear in our Children’s Court will have an attorney who has been appointed or retained by the initial hearing. Although this is a considerable expense to the County, we are of the opinion that cases are heard and resolved in a more efficient and effective way.”

Email from Judge Peter Sakai, Bexar County, Texas.

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“The Texas Family Code has codified Federal statutes that require the agency to make “reasonable efforts to avoid removal, to reunify the child with the parents, and to finalize the permanency plan for the child. See Tex. Fam. Code Sections 262.107(a)(3); 262.201(b)(3); 263.306(E); and 263.503 (a)(8). Funding for the child welfare agency is tied to these Reasonable Efforts findings.

“These findings are important because it holds the case worker and the child welfare agency accountable for the work done outside the courtroom to promote family stability, permanency, and the child’s well-being. However, a vast majority of the courts made no specific findings or ever mentioned reasonable efforts but rather included boilerplate language on reasonable efforts in the court orders. Judges should take the initiative to make specific reasonable efforts findings in court. This will help Texas courts to devote more effort to having a substantive discussion regarding the agency’s efforts with children and families at every point in the case. Almost every judge that participated in the study said that the absence and inadequate work done by case workers is the biggest problem they confront. Making reasonable efforts findings from the bench sends a message that there is a minimal acceptable level of case work in these important proceedings.

“In 2012, as part of the federal Title IV-E Audit, the U.S. Administration of Children and Families Children’s Bureau found certain audited Texas court orders to be deficient in language regarding child specificity and reasonable efforts related to finalizing a child’s permanency plan. Several court orders reviewed used boilerplate language and check boxes that either were incomplete or did not include the child’s name. Title IV-E deficiencies can cost the state thousands of dollars in disallowed federal foster care payments that must be repaid to the federal government from the state’s general fund.”

Supreme Court Children’s Commission *Hearing Quality Observation Project*, March 2014, at pp. 20-21.

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“Texas appellate courts have done little to guide reasonable efforts determinations” (Crossley, *op.cit.*, footnote 3 at p. 298).

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## UTAH

**STATUTES:** Utah Code Annotated §78-3a-311(6) (Supp. 1998) – Incarcerated parents entitled to reasonable services. Before TPR court must find R/E were provided: Utah Code § 78-3a-407(3)(a) (Supp. 2006). §78-3a-312(2)(d)(i)(A) requires DCFS to provide R/E for reunification. Definition: A Fair and Serious attempt to reunify a parent with a child prior to seeking to terminate parental rights.” 78-3a-312(2)(d)(ii)(A). § 62A-3a-407(3)(a) – requires the court to find that the state has made R/E before TPR. Utah Code Annotated §78A-6-512 (mandatory post termination reviews). §62A-4a-105 – Division responsibilities towards Indian family including definition of “active efforts.” Annot. Code §§ 78A-6-312 & 62A-4a-203.

### CASE LAW:

*State ex rel. A.C.*, 2004 UT App. 255, 97 P.3d 706 (Utah Ct. App. 2004) – TPR – Affirmed. The appellate court affirmed the trial court’s finding that the agency had provided reasonable efforts and that the father did not engage in services that included drug rehabilitation treatment, counseling, anger management, and housing assistance. The housing problem was partly father’s fault for not working.

*In re M.C.*, 2003 UT App. 429, 82 P. 3d 1159 – TPR – Affirmed. The father argued that the state did not provide reasonable efforts. The trial court’s findings made clear that the father was unresponsive to all efforts made to provide him services. For example, despite the State’s efforts to provide the father with supervised visitation with his children contingent upon clean urinalysis tests, the father was unable or unwilling to comply with even that limited portion of the service plan. Utah Code Annotated section 78-3a-407(3) (a) provides that “in any case in which the court has directed the division to provide reunification services to a parent, the court must find that the division made reasonable efforts to provide those services before the court may terminate the parent’s rights” pursuant to Utah Code Annotated sections 78-3a-407 (1)(b), (1)(c), (1) (d), (1)(e), (1)(f), or (1)(h).

*A.R. v State of Utah*, 2007 UT App. 39, 2007, (unpublished) – TPR – Affirmed. The mother appealed on a reasonable efforts theory. The appellate court defined “reasonable efforts” as a “fair and serious attempt.” The agency offered two service plans, meetings, drug treatment, counseling, drug testing, psychological evaluation, and more. “The Division provided A.R. ‘with a fair and serious means of remedying’ her situation and she ‘chose not to avail [herself] of the proffered opportunit[ies].”

*A.F. v State of Utah*, 2010 UT App 133, 2010 – unpublished – TPR – Affirmed. The mother appealed on reasonable efforts to reunify theory. Family therapy did not start for a year after removal. “Reasonable efforts has been defined as ‘a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights.’” The determination depends on the facts of

each case. In this case the facts show that the children weren't ready for therapy any sooner.

*A.O. v State of Utah*, 2009 UT 4 (2009 – Supreme Court) – TPR – Affirmed.

The permanency plan was changed from reunification to individualized permanency & guardianship. There were six issues on appeal, one of which was failure to provide reasonable efforts. The court held that DCFS made reasonable reunification efforts. There had been alcohol abuse and domestic violence resulting in two removals of the children. The mother did not comply with her service plan – family therapy was supposed to be weekly, but mother only made it monthly and then by telephone. DCFS provided reasonable efforts per statute. Therapy was provided and mother failed to appear – social worker set up schedule with mother. Mother moved out of state.

*State ex rel. K.F.* 2009 UT 4, 201 P.3d 985 (Utah 2009) – Termination of reunification services – Affirmed.

The children were removed because of parental drug abuse and domestic violence. Subsequently a sex-offender moved into the home. There was also maternal depression. Held: reasonable efforts provided, affirming the trial court. Family therapy offered (mother attended 3 sessions in 12 months). A reasonable effort is a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights; reasonableness in this context is an objective standard and depends upon a careful consideration of the facts of each individual case. Although plan did not specify a precise number of family therapy sessions mother was required to attend to be eligible to reunite with child, mother was aware that frequent family therapy was an important part of service plan but attended only 3 sessions in 12 months even though social worker and therapist worked to accommodate mother's schedule.

*In re K.S.*, 2011 WL 5593079 (Utah Ct. App. 2011) – TPR - Affirmed.

The agency provided services for mother's long-standing substance abuse problems including drug testing and a substance abuse program. Mother refused to participate in either.

*In re T.M.*, 73 P.3d 959 (Utah Ct. App. 2003) – TPR – Affirmed,

But remanded on the issue of incompetent counsel. The children were removed after a period of informal supervision failed. The parents argued that the state failed to provide reasonable efforts towards reunification. The appellate court held that the new statute requiring reasonable efforts was not retroactive to the time of the trial. [552](#)

## **Mental Health Issues**

*State v Salata*, 806 P.2d 1216, 1219 (Utah Ct. App. 1991) – TPR – Affirmed.

Father was mentally ill and did not cooperate with any of the three case plans offered by the agency. Even if a parent is unfit as a parent and his unfitness caused detriment to his child, his parental rights should not be terminated unless his conduct or condition cannot be corrected, after notice and opportunity, with reasonable efforts of assistance. However, efforts to improve parenting are not required where they would clearly be futile. Parental rehabilitation is a two-way street that requires commitment on the part of the parents, as well as the availability of services from the State. “[F]urther efforts would have been futile”

*In re V.H.*, 154 P.2d 867 (UT App.2007) – TPR – Affirmed.

The child was removed from the father because of abuse. The appellate court affirmed the termination stating it found sufficient active efforts were made toward reunification under 25 U.S.C.S. § 1912(d); the father did not show that the conditions that led to the children’s removal had been rectified. He failed to properly challenge the juvenile court’s findings on this issue by first marshaling the evidence to support them.

*State ex rel. C.D.*, 200 P.3d 194, 2008 UT App. 477 (Utah Ct. App. 2008) Placement issue – Reversed to follow the placement preferences in the ICWA.

The juvenile court did not abuse its discretion in determining that any further efforts with the grandfather would have been futile because the grandfather had received training for the seven years. Utah’s independent abuse, neglect, and dependency procedures, under Utah Code Ann. §§ 78A-6-301 to 78A-6-324 (Supp. 2008), provided a framework for placement. However, the court remanded to the juvenile court to place the children immediately in accordance with the preferences contained in the ICWA, 25 U.S.C.S. § 1915(e), or to demonstrate good cause for deviating from those preferences. The court also stated that it joined the majority of jurisdictions that have construed the phrase “active efforts” to connote a more involved and less passive standard than that of the reasonable efforts standard under many state child welfare statutes.

### **Aggravated Circumstances**

*Interest of P.H. v Harrison*, 783 P.2d 565 (Utah Ct. App. 1989) – TPR – Affirmed.

The court held that no services were necessary under the facts of the case. The mother suffered from a personality disorder and services were only required when the TPR theory was parental unfitness and no duty to provide services when such efforts would be futile. The parent had to be willing to acknowledge past deficiencies and exhibit a desire to improve as a parent and correct the abuses and neglect.

*In re N.R.*, 967 P.2d 951, 957 (Utah Ct. App. 1998) – TPR – Affirmed.

The state statute denying reunification services to a parent with a mental illness upheld. Two licensed experts must testify that the parent will be unable to capably care for the child within 12 months. (§ 78A-6-312(3)(d)(ii))

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“Reasonable efforts are raised often in Utah’s juvenile courts. Supreme Court has declared a definition of R/E that trial and appellate courts follow. Reasonable efforts are argued about 1 – 2 times a month (only sits 2 days a week). Most common situation is incarcerated parent.

“The issue is rarely raised at the shelter care hearing or at the disposition. In reviews it is raised in about one-third of the cases. DCFS may roll over and give more services if they think there is a good issue.”

Communication from Judge Sharon McCully, former Presiding Judge of the Salt Lake City Juvenile Court.

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## VERMONT

**STATUTES:** VSA 33 § 5308 (c) (1)(B) – if court makes a temporary care order. §§ 5113, 5114 – no obligation to find kinship placement. VSA 33 §4903(2) – family maintenance services. 33 §4911 – statutory definition. § 301 Policy regarding services. VSA Title 33 §§ 5102 & 5321.

### CASE LAW:

*In re S.W., L.F., T.B., K.F. & K.F., Juveniles*, 949 A.2d 442 (Vt. Supreme Court, 2008) – TPR – Affirmed.

The mother appealed stating the agency did not provide reasonable efforts. Physical and mental health problems plus housing issues led to removal of children. The appellate court found that DCF made reasonable efforts and that it was not their job to look for a placement in Massachusetts. DCF pursued both foster and kinship placements in Mass.

*In re J.B., C.B., and K.W., Juveniles*, (Supreme Court, 2009 – not reported in A.2d – WL 4573835 Vt.) – TPR – Affirmed.

The parent because of criminal behavior and incarceration was unable to resume parental duties in a timely fashion and children needed permanency. DCF not required to use due diligence to locate a kinship placement. The primary consideration is whether a parent will be able to resume her parental duties within a reasonable period of time, not merely whether there has been identifiable progress since the child was originally removed from the parent. And that must be measured from a child's perspective. The issue of reasonable efforts was raised by the mother – Tried to have children placed with her mother and sister – both placements rejected by DCF. "...[T]he trial court was not required to make specific findings on the potential parental fitness of mother's mother or mother's sister." The issue was whether there had been a substantial change in material circumstances and whether termination is in the children's best interests. Citing *In re S.W. (supra)*

*In re D.A.*, 772 A.2d 547 (Vt. 2001) – TPR – Reversed.

A medically needy child was removed from the mother. The mother lacked parenting skills, but showed that with assistance from father and relatives she could act as the child's primary caregiver. The mother recognized her deficiencies and had a plan and support group to permit her to be a good parent. The agency had only provided nursing support. "The law is not intended to place needy children in the best possible homes; rather it must be construed to preserve the family unit if it can be done within a reasonable time without physically or emotionally harming the child."

*In re E.B.*, 603 A.2d 373 (Vt. 1992) – TPR – Affirmed.

Parent agreed to find stable housing and employment and participate in parenting classes, alcohol counseling and other support programs, but did not follow through resulting in placement of children in foster care. The parent also did not have regular contact with the children.

*In re Cr.M.*, 163 Vt. 542, 659 A.2d 1159 (1995) – TPR – Affirmed.

The mother argued that the reunification plan did not take into account the fact that she was a battered woman. The Supreme Court held that she did not raise this issue during the trial, was represented by

counsel, and signed the service plan. The court further pointed out that the case plan acknowledged that she was a victim of abuse and took that into account by providing special services for her.

*In re S.W.*, 833 A.2d 879 (Vt. 2003) – TPR – Affirmed.

Father was incarcerated. The reunification plan was modified, but father did not complete services offered by the Department of Corrections. He demonstrated no improvement. Court concluded that father's progress had stagnated and even if he were released, he was likely to be re-incarcerated. Also father lacked any parenting skills or parent-child bond.

*In re J.J.P.*, 719 A.2d. 394 (Vt. 1998) – TPR – Affirmed.

Assault on child resulted in removal from mother, who had lost 7 children previously. Extensive services for other children over a long period of time produced no progress. No child had ever been returned to her.

*In re D.C.*, 659 A.2d 1145 (Vt. 1995) – TPR – Affirmed.

The child was abused while staying with father. Father raped wife who then left him with children. Father claimed to have recovered with a program while incarcerated, but had no proof. The father was now living with 16 year old girl and her two children.

*In re B.M.*, 679 A.2d 891 (Vt. 1996) – TPR – Affirmed.

The father's violent behavior led to removal. Father did not take advantage of services offered to him, nor did he follow through with counseling he found on his own. He was also involved in several criminal activities. His abusive and violent behavior continued.

## **Mental Health Issues**

*In Re G.C.* 749 A.2d 28 (Vt. 2000) – TPR – Affirmed.

Mother's serious mental condition prevented her from working with a foster family that was providing 24 hour a day support. Danger to child justified TPR.

*In re B.S.*, 166 Vt. 345, 693 A.2d 716, 22 A.D.D. 165 (1997) – TPR – Affirmed.

The mentally retarded mother claimed the state violated the Americans with Disabilities Act by not providing appropriate reunification services after removal of her child. The appellate court held that the ADA is not a defense in a termination hearing.

*In re J.T.*, 693 A.2d 283 (Vt. 1997) – TPR – Affirmed.

Reasonable efforts were offered by department including Family Intensive Program and a parent education program. Mother's mental health was so severe that working on parenting skills was impossible. Mother then dropped out of a mental health program. Individual and group counseling with children also failed. The case was referred back to the trial court because of ICWA issues, but if the BIA does not intervene, the TPR will stand.

**“Temporary Care Hearing or hearing following a transfer of custody to DCF:** Since Vermont revised its juvenile statutes in 2009, temporary care hearings (the initial hearing in a juvenile case) have become quite lengthy and issues related to DCF custody are contested more frequently that they



used to be under our old law. Judges report, however, that reasonable effort is rarely raised. Here are some of the reasons:

- a. In Vermont, one of the options for a judge at a temporary care hearing is to issue a “conditional custody order” either maintaining custody with the parents under certain conditions or transferring custody to a relative instead of DCF. Under our statute, DCF custody is viewed as a final and last resort. My understanding from judges is that attorneys advocate for a conditional custody order whenever it is even remotely possible. If the judge puts a conditional custody order in place and it does not work out, the reasonable efforts finding would be made at the time of transfer to DCF later on in the case. Generally, the reason for the order not working out involves a violation of the conditions of the conditional custody order or a grandparent/relative who is unable to continue to care for the child. The reasons are not usually contested.
- b. When custody is transferred to DCF and away from a parent who has not received services from DCF, Federal law provides an easy “out” for judges because it permits a finding that no services were appropriate or reasonable due to “emergency circumstances.” Judges confirm that this is a finding that they frequently make when custody is transferred to DCF at the initial hearing.

#### 1. **“Reasonable efforts to finalize the permanency plan”**

- a. Vermont Law: Vermont (and federal) law requires this finding when the child has been in DCF custody for 12 months. This usually coincides with the first permanency hearing. If there is no agreement by the parties to this finding, the court is supposed to set a hearing on the issue within 30 days of the notice from DCF of the permanency review. (This would translate into maybe 2 weeks from the time of the actual hearing.)
- b. Practical Application: If the permanency goal at the time of the permanency hearing is reunification, this finding is never contested. It is only when DCF proposes that the goal change to adoption and therefore termination of parental rights that there may be an issue. Judges and attorneys alike in Vermont are still struggling to understand what the phrase “reasonable efforts to finalize the permanency plan” really means. Does it mean that we can go back and look at whether DCF made sufficient efforts to make the initial plan of reunification work or does it mean that they are justified in moving forward with changing the goal. The result of this confusion means that attorneys for parents will sometimes stipulate to the finding at the time of the permanency review hearing even though they are fighting the TPR. If they won’t stipulate, then judges struggle with the concept of making this finding without being able to hear all of the evidence related to the TPR. Having a hearing on the issue two weeks after DCF has proposed the change in the plan feels premature and duplicative of evidence that you may have to hear all over again when you hear the TPR case. (Vermont is **not** an open adoption state so TPRs are contested much more frequently here than in open adoption states. Our disposition time frame for hearing TPRs is five months from the time of the filing of the TPR petition. We meet that goal in about half of our cases. Close to 100% of all contested TPRs are appealed.)”

Email from the Honorable Amy Marie Davenport, Chief Administrative Judge for the Vermont Courts. Judge Davenport collected information from a number of sitting judges around the state. She summarizes that information in these paragraphs. A copy of this email and the individual responses is

## **VIRGINIA**

**STATUTES:** VA CODE §§ 16.1-251, -252(A), (E)(2), -279(A)(3)(c), (C)(5)(c), (E)(9)(c) (Supp.1988). § 16.1-278.2A (reasonable efforts regarding notice to parent). § 16.1-278.2A4 – R/E to prevent placement; § 16.1-283(C) – reunification services. § 16.1-281 – definition; §§ 16.1-278 & 282 - when reasonable efforts are required.

### **CASE LAW:**

*Edwards v County of Arlington*, 361 S.E. 2d 644 (1987) (Va.App) – TPR – Reversed.

The mother was a Korean immigrant with apparently limited command of the English language. After the daughter was put in and out of foster care over a period of years, the trial court terminated the mother's rights. On appeal, however, the court reversed the judgment of the trial court and remanded the case to the trial court for further proceedings. The court held that the Department failed to prove by clear and convincing evidence, pursuant to § 16.1-283(B), that it was not reasonably likely that the conditions which resulted in the daughter's neglect or abuse could be substantially corrected or eliminated so as to allow the child's safe return to her mother within a reasonable period of time. Instead, the court determined that the mother suffered from hypothyroidism, which if left untreated, could produce signs and symptoms of psychosis and cognitive impairment, that the evidence suggested that the daughter was not emotionally or physically abused, and that the testimony established that with proper medication the mother's level of functioning could improve. Accordingly, the court reversed the judgment of the trial court and remanded the case for further proceedings.

*Ferguson v Stafford County Dep't of Social Services*, 417 S.E.2d.1 (Va. App, 1992) – TPR – Affirmed.

The father was incarcerated for life. He appealed the TPR claiming there were not enough services. The appellate court held that conditions will not change in a reasonable time. TPR can occur if parents can't rehabilitate after child placed in foster care, "notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent(s) and to strengthen the parent-child relationship." The Department created a service plan before incarceration – then after incarceration the Department did no more. Long term incarceration is a valid and proper circumstance which when combined with other evidence regarding the parent/child relationship, can support a court's clear and convincing evidence that the best interests of the child will be served by TPR.

*Knox v. Lynchburg Div. of Social Services*, 223 Va. 213 (1982) – TPR – Affirmed.

The mother placed the children with another person. The children were in bad condition and the state intervened. The mother was offered services, but was unsuccessful in rehabilitating herself. The court held that the ruling was supported by clear and convincing evidence that the factors specified in Va. Code § 16.1-283(C)(2) were present because the mother failed to remedy adverse conditions identified by the state agency. Once the trial court found by clear and convincing evidence that factors

specified in Va. Code § 16.1-283 were present, the trial court was not required to make a further finding of parental unfitness in order to terminate residual parental rights.

## **Mental Health Issues**

*Guynn v Pulaski County DSS*, 2010 Va. App. LEXIS 499 (not published) – TPR – Affirmed. The appeal was based on no reasonable efforts to reunify. (16.1-283(C)). The appellate court held that the father failed to complete his required psychological exam or follow the case plan. The mother received parenting classes, visitation, housing assistance, counseling, but was unable to comply with services. (Citing *Ferguson supra*). These were low functioning adults.

## **Aggravated Circumstances**

*Toms v Hanover Sept. of Social Services*, 46 Va. App. 257, 616 S.E. 2d 765 (2005) – TPR – Affirmed. The appellate court ruled that it cannot overrule a department’s conclusion that no services should be offered when aggravated circumstances have been proven.

*Toms v. Hanover Dept. of Social Services*, 46 Va. App. 257, 616 S.E.2d765 (2005) – Virginia’s enactment of ASFA legislation gave the state Department of Social Services (DSS) the obligation to submit a foster care plan for court approval, but DSS had a duty to provide rehabilitation services to a parent only if that was consistent with the child’s health and safety. In seeking a termination of parental rights in cases of aggravated circumstances, there was no duty to provide reunification services.

*Christopher Farrell v. Warren Co. DSS – 2282-10-4; Christopher Farrell v. Warren Co. DSS – 2283-10-4; Christopher Farrell v. Warren Co. DSS – 2284-10-4) – Unreported, but can be found at [http://www.courts.state.va.us/courtadmin/aoc/cip/resources/tpr\\_table.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/resources/tpr_table.pdf) - TPR - Affirmed.* The children were removed for the first time because of substance abuse, were returned and then removed again because of unexplained injuries to one child. The appellate court held that services need not be offered under § 16.1-283(B)(2).

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“My office is responsible for training GALs for children, who are generally the same attorneys who represent parents in child dependency cases. In the required 7 hour course for these GALs to initially qualify, this area of the law is covered. In addition, there is a continuing education requirement for GALs for children to maintain their qualification status. The programs are approved by this office as well. Many of these programs address the services available to and needed by parents to regain custody of their children. You are welcome to review our website on the GAL program at [www.courts.state.va.us](http://www.courts.state.va.us), click on “People”, then guardians *ad litem* for children. The Qualification and Performance Standards as well as the continuing education programs that have been approved are listed there.

“Finally, my office also trains new, active and retired juvenile court judges on child dependency practice. While this training can always be improved, we do address the reasonable efforts aspects of the law and offer substantial training on services, funding and policies that promote safety, permanency and well-being for children and compliance with state and federal laws that seek these

outcomes for children. I hope this information and the TPR table will be helpful to you. “

Email from Lelia Baum Hopper, Court Improvement Program, Office of the Executive Secretary  
Supreme Court of Virginia

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“The question of “Reasonable Efforts” is raised in some of them, but what our court of appeals and supreme court do is usually defer to the trial judge’s decision. We have urged parent lawyers to raise the reasonable efforts issue and detail their complaints on the record and by introducing evidence, but overwhelmingly they don’t do it and then raise the issue on appeal without having the necessary record to support the claim.

“With regard to reasonable efforts at the initial hearing, that is rarely, if ever, raised. Our appeal process would not allow that issue to be litigated on appeal until a final decision was made.

“The reason that we have this TPR list and not one regarding the underlying cases is that rarely are the underlying cases ever appealed.”

Email from Judge Steve Rideout (ret.), formerly a juvenile court judge in Alexandria, Virginia.

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“The issue of “reasonable efforts to prevent removal” and the facts specific to that determination in each case are required to be determined by the court at the time of the ex parte removal of the child (Virginia Code Section 16.1-251(2)); at the first adversarial hearing in the abuse/neglect case (Va. Code Section 16.1-252(E)(2)) and in the dispositional order entered in the abuse/neglect case (Virginia Code Section 16.1-278.2. As you noted, the court has to make that determination again at the time of the termination of parental rights. We use form orders developed through VA’s CIP to reflect the required findings at each of these stages. I would be happy to share these form orders with you if this would be helpful to you.

“One potential explanation for the reported cases focusing on TPR may be that there are far more TPR appeals to the Court of Appeals than appeals of underlying abuse/neglect cases. In Virginia, there is a trial de novo in the Circuit Court on any appeal in an abuse/neglect case as well as in a TPR case. The case is then appealed on the record from the Circuit Court to the Virginia Court of Appeals and from there to the Virginia Supreme Court. So, litigants have had the issues fully tried twice in the trial courts before deciding whether to pursue an appeal on the record.”

Email from Judge A. Ellen White, Campbell County J&DR District Court, Virginia.

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“First, I convened monthly 1 hour multi-discipline training on dependency issues and invited all attorneys, GAL attorneys, attorneys for parents, CASA staff and volunteers, community child advocates, and representatives of all court agencies and the schools. I brought in speakers on specific topics from the state and local area. I did part of the legal training myself and had agency attorneys,

our local prosecutors, other local judges, and staff from the Supreme Court Office of the Executive Secretary help with the training. We did full day trainings as well and held mock trials. When we did that we had more than one county participating and it was well attended. The point was to teach the legal requirements, the agency” in house” resources and policies, the community resources, etc. We did training on how to testify in court and how to write court reports. I also met monthly with heads of agencies and schools, and others interested about docket coordination, development of resources, etc. Later state law changed to make my doing the monthly meeting with agency heads unnecessary as teams were set up in every locality in the state and they oversaw resource issue.

“Second, when I first came on the bench I developed a resources manual. We held a community forum, invited everyone involved in a community organization to attend, and developed a public-private listing of resources. We had over 100 local organizations attend one evening and they spoke of what they had to offer, most of which was free.

“For training I did a handout of the categories encompassed by “making reasonable efforts” for prevention of removal and reunification/permanency. I tried to make it simple such as medical, substance abuse rehab, housing, etc. it served as a checklist for agencies, attorneys and CASA volunteers to verify they had identified the problems that led to CPS interventions and matched the resources needed. Then they could look up where they could get the resource from the community resources manual. My agencies helped with this project. I learned a lot and so did they.

“Third, I sent nearly every child who was removed to our local Child Development Center for a full medical, social, educational, psychological evaluation. The parents were invited to attend the Center’s meeting to review the findings and develop a plan. The CDC was run by our state health department. We found many of our removed children already had a CDC evaluation based on a school referral.

“Fourth, I do not recall every making a “no reasonable efforts” finding because I had made sure everyone knew what was expected. I did continue several hearings for further resources to be put in place with monitoring but that was a rare thing. Attorneys sometimes mentioned what rehabilitative resources they thought were needed as “add on” for the foster care plan developed by social services and I ruled on that at the hearing and modified the plan if appropriate. Usually social services agreed and it was rare that was contested.

“I believe that my training at NCJFCJ provided me the leadership and communication skills necessary to make sure that everyone in the court system knew what the legal requirements were and what my expectations were as a judge. I had a very supportive bar and agency heads so it was not difficult to make sure we were all on the same page. My social services agency quickly came to believe in prevention of removal. They were trained mediators and I think that helped them to negotiate good safety plans.

“I was lucky, Len. My community was supportive of the recommendations I learned at NCJFCJ and they were quick studies.”

Email from Judge J. Dean Lewis, a retired judge from Spotsylvania, Virginia. Judge Lewis was the

President of the NCJFCJ and now is the editor of The Judge's Page, a quarterly publication sponsored by National CASA.

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“The short answer to your question regarding whether “reasonable efforts” is frequently litigated is no. And that would apply to our Juvenile and Domestic Relations Courts (original jurisdiction) where I formerly sat as well as our Circuit Courts (de novo appellate jurisdiction) where I now sit. Unfortunately, my personal anecdotal experience is that there is not usually vigorous litigation around this issue. And yes, you are correct, it is mostly in the TPR context when it does come up. Certainly, I am always looking for evidence in the reports, evidence, etc.

“I hope that this will provide you with some assistance. While I do not claim to be all knowing on this issue, I believe that my experience is probably reflective of the current practice and procedure for Eastern Virginia.”

Partial email from Judge Jerrauld C. Jones, Judge of the Norfolk Circuit Court.

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## **WASHINGTON**

**STATUTES:** WASH REV. CODE ANN. §§ 13.32A.170(1)(d), 34.060(6)(a), 130(1)(b) (Supp. 1989). WASH REV.CODE ANN § 13.34.180(1) and 13.34.110 & 13.34.130(1) (prevent removal) (2004); § 13.34.189(d) – services offered and available. § 74.13.020 – DSHS has the duty to provide child welfare services to protect and care for homeless, dependent or neglected children. § 74.13.031 mandates an array of specific services. No finding necessary at TPR. RCW 13.34.136(2) (b)(ii) – “frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify.” RCW 13.34.025(2)(b) – “Services shall include individual, group and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families.” 13.24.020 “The state is charged with reuniting families where possible and with providing necessary services to achieve that goal.”

## **CASE LAW:**

*Washington State Coalition for the Homeless v Department of Social & Health Services*, 949 P.2d 1291, (Wash. 1997) – In a class action the Supreme Court held that the state agency must provide a family with some sort of assistance in obtaining housing where homelessness is a primary reason for foster care placement.

*In the matter of the Welfare of J.H. v S.H.*, 75 Wash. App. 887, 880 P.2d 1030 (Wash App. 1994) – Trial court order to assist with housing. Reversed.

The molesting step-father moved out of the house, but without his income, the family would soon be homeless. The trial court ordered DHHS to assist homeless mother of 4 with housing. “DSHSDCFS

is to take immediate and active steps to assist the mother in applying for public housing... The steps shall make every reasonable effort to avoid foster care placement of the children and alleviate the psychological and emotional distress of the children caused by their homelessness.” (at p. 890). In reversing the trial court the appellate court held that the court cannot order agency to pay for housing without budget for that function. This would give too much power to the trial court, and the power would be open ended. The trial court blamed DHHS for mother’s difficulty dealing with the housing authority. “Nowhere in the child welfare services statutes does the Legislature specifically obligate the Department to provide housing assistance money and we hold that the statutes create no such entitlement.” (1032). “...the court must limit its incursion into the legislative realm in deference to the doctrine of separation of powers.” (at 892).

*In re the Dependency of Tyler L.*, 208 P.3d 1287 (Wash. App. 2009) – Appeal of trial court order suspending all visitation. Reversed.

The children were in foster care, and the mother visited appropriately. The children reacted negatively before and after the visits leading the trial court to suspend visits. – statute (supra) says visitation crucial for maintaining parent-child relationship. Motion brought by GAL, not Department. The court “not finding that mother is the case” should have instituted therapeutic visitation. (citing *T.L.G.* where court suspended visits when father fought with security guard supervising the visits. The appellate court reversed the trial court finding because the department did not consider therapeutic visits.

*In re the Matter of the Welfare of C.S.*, 225 P.3d 953 (Wash Supreme Court, 2010) – TPR – Reversed.

The Child had ADHD – mother could not handle his special needs. Mother was willing to participate in training, but state did not offer it. (RCW 13.34.190 requires it) – Mother had substance abuse problems and overcame them. State did not seek to reunify mother even though she had no further problems. TPR based on substance abuse (“extraordinary because she had been sober for the year preceding the petition.”) The issue for TPR is current unfitness. State offered foster parent training for dealing with ADHD, but did not offer mother those same services.

*In the Matter of the Dependency of P.S.F. The Department of Social and Health Services v Atiba Fleming*, 2013 Wash. App. LEXIS 1647 (2013) – TPR – Affirmed.

Incarcerated father appeals termination claiming he did not receive reasonable services. The appellate court stated that the agency did not offer or provide reasonable services; nevertheless such services would not have remedied father’s parental deficiencies in the foreseeable future. The facts show that the father was never given a list of service even after ordered by the court. The jail indicated that it was unable to provide any services.

*In re Dependency of K.N.J.*, 171 Wn.2d 568, 257 P.3d 522 (2011) – TPR – Affirmed.

Per RCW 13.34.180(1) the state must satisfy 6 factors before terminating parental rights. Factor (d) is “That the services rendered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided.” The department must prove all six factors by clear, cogent, and convincing evidence. However, there is an exception when the offer of services would be futile as in this case. Trial court

stated: Such services would not have remedied parental deficiencies “in the ‘foreseeable future.’”

*In re Dependency of T.R.*, 108 Wash. App. 149, 29 P.3d 1275 (2001) – TPR - Affirmed.

In relation to the termination of parental rights, the State must prove that it has offered or provided all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future. Wash. Rev. Code § 13.34.180(1)(d). The services offered must be tailored to each individual’s needs. The department is not required to offer or provide services that would be futile.

## **Mental Health Issues**

*In re the Dependency of H.W. & V.W. v Bissett*, 961 P.2d 963 (Wash. App. 1998), amended on other grounds on reconsideration, 969 P.2d 1082 (Wash. Ct. App. Div. 1, 1998) – TPR – Reversed. This was a developmentally disabled mother appealing on a lack of reasonable efforts theory. The appellate court held that the department did not by clear and convincing evidence did not provide “all reasonable available services capable of correcting parental deficiencies.” The department never referred mother to Division of Developmental Disabilities for potentially applicable services. Mother’s alleged inability to protect children from their abusive father was no excuse to fail to provide services. Mother did participate in anger management and parenting classes and received in home house cleaning and parenting education. This case is unlike the mother in *In re A.J.R.* (896 P.2d 1298) who did receive services from DDD. Nor did she get training regarding detection of signs of sexual abuse (father convicted of sexual abuse years ago).

*In re Moseley*, 34 Wash. App. 179, 660 P.2d 315 (Div. 3, 1983) – TPR – Affirmed.

The mentally ill mother improved with medication and treatment, but the court found she was still unable to feed, bathe, educate, and shelter her child, or protect her from harm.

*In the Welfare of H.S.*, 973 P.2d 474, 481 (Wash. Ct. App. 1999) – TPR – Affirmed.

Mentally ill parents appeal. Held: The record showed the family was “saturated” with reunification efforts. The court noted that the parents were referred to a program which first did not accept them believing they were not prepared to participate in it. Then the parents were referred for a second time, but this time they refused to participate. This failure was not sufficient to make a finding of no reasonable efforts since the parents received many other services.

*In re Dependency of P.A.D.*, 58 Wash. App. 18, 792 P.2d 159 (1990) – TPR – Affirmed.

The mother was mentally ill and hospitalized. The court found that all reasonable and necessary services capable of correcting parental deficiencies were provided through the mother’s inpatient treatment. The court also found that, even if it decided that the state failed to provide necessary services, there was sufficient evidence in the record from which the trial court could have determined that those services, even if provided, would not have corrected the mother’s parental deficiencies in the near future. The court also agreed with the trial court’s conclusion that the long list of services provided to the father to correct his parental deficiencies, were all the reasonable and necessary services capable of correcting those deficiencies. The department is not required to offer or provide services that would be futile.



*In re Welfare of L.N.B.-L*, 237 P.3d 944 (Wash. Ct. App. 2010) – TPR – Affirmed.

The 2 children were removed from parental care and reunification services were not successful. The father failed to address his parental deficiencies, which included untreated substance abuse, untreated mental health issues, domestic violence, and an inability to live independently. The mother, even after receiving extensive counseling and parenting services, could not safely parent the children.

*In re A.M.*, 22 P.3d 828 (Wash. Ct. App. 2001) – TPR – Affirmed.

The mother disappeared for 2 years after the birth of her child. She argued she had not received active efforts. The appellate court held that the State satisfied its duty to make active efforts to provide appellant with remedial services. The Court rejected appellant's contention that the State could not meet its burden under § 1912(d) where she was voluntarily inaccessible, thereby making it impossible for the State to offer additional remedial and rehabilitative services.

### **Aggravated Circumstances**

*In re Welfare of Hall*, 99 Wash. 2d 842, 664 P.2d 1245 (1983) – Services not offered to an incarcerated father. – TPR – Affirmed.

The statute indicated the services to be provided should be able to remedy parental deficiencies “in the foreseeable future.” The court concluded 8 months was not in the foreseeable future for a four-year-old.

*In re Dependency of J.W.*, 90 Wash. App. 417, 953 P.2d 104 (1998) – TPR – Affirmed.

The mother abandoned the child and the incarcerated father sentenced to 75 years in prison appeals. A parent's imprisonment “does not in itself justify the termination of his parental rights.” “But the parent's resulting inability to perform his or her parental obligations is certainly relevant to the child's welfare.”

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“this is my understanding of the reasonable efforts process in Washington State. Most dependencies go by stipulation, and most of the litigation takes place at the termination of parental rights hearing. Attorneys occasionally, but not too often, raise the issue of “reasonable efforts to prevent removal.” Attorneys are appointed at the shelter care hearing and, therefore, have the opportunity to raise the issue early in the case.

“I also received information from Carrie Hoon Wayno, Assistant Attorney General, representing Children's Administration. She clarified that the Department is only required to prove that reasonable efforts were made to prevent removal when a child is actually being removed. Thus, it must be proven at the shelter care hearing under RCW 13.34.065(5), at the disposition hearing if the child is being removed under RCW 13.34.130(5), or in a later dependency hearing if a child is being removed. However, once a child has been removed from the parents' care and found dependent, the Department is then no longer required to prove reasonable efforts were made to prevent removal, but instead that reasonable efforts have been made to reunify the family. This finding is made in each dependency review hearing, and may be contested at these hearings – although this is less common. Instead, RCW 13.34.180(1)(d) requires that in a termination trial the Department must prove, among other things, that reasonably available services were offered or provided to correct the parental

deficiencies – and if the Department cannot prove this, then parental rights cannot be terminated. This element must be proven in every termination case, and it is often a hotly contested one. The extent to which reasonable efforts to prevent removal is contested in a shelter care or later removal of the child depends on the county. Shelter care hearings are more widely contested in, for example, King County, so this issue is more likely to be contested there. In other counties where shelter care hearings are less often contested, it is less likely to be litigated.”

Email from Cindy Bricker, Sr. Court Program Analyst, Administrative Office of the Courts, Olympia, Washington..

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“This practice depends on the county, but for the most part parents are appointed counsel at the first shelter care hearing, which is required to occur within 72 hours of the removal. They are entitled to request a continuance of the hearing to allow them to consult with their counsel and prepare for the hearing, though, if they prefer.”

Carrie Hoon Wayno, Assistant Attorney General, Social and Health Services Division

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“DSHS/Children’s Administration does file a report detailing services. Until recently it was called and Individual Service and Safety Plan but they are in the process of switching to a Court Report which is supposed to be less confusing and easier to read. I attached copies of both reports, as well as our states mandatory court form for review/permanency planning hearings. The court does has (sic) to find whether the state agency complied with ordering services. We do not really have a lot of R/E case law. The primary case is coalition for the homeless around CA’s duty to offer housing assistance under reasonable efforts to prevent removal of children from homeless families. I checked with our other two managing attorneys and they had the same experience as me. When our attorneys argue reasonable efforts, it typically is reasonable efforts to prevent removal at the shelter care stage (or alternatively at the dependency fact-finding/jurisdictional trial stage) or reasonable efforts to reunify/finalize the permanent plan. It is not typically argued at TPR because even though the dept has to show the offered or provided all reasonably available services at TPR the court doesn’t have to find reasonable efforts. Since the budget crisis and at times the department’s refusal to fund or arrange some services as required by our statute RCW 13.34.025, some courts have found a lack of reasonable efforts to reunify. Some have also done something I think you used to do: If X does not happen, that would be a basis for me to find a lack of reasonable efforts. Our attorneys have appealed court denials to find a lack of reasonable efforts at Shelter care or later but today the court of appeals has not taken up any of these cases. Hopefully we will get some published cases soon.

“I think some attorneys don’t raise the issue because they think the court will just think they are crazy. We have done some trainings around the subject though, and some folks have run with the issue and had some success but typically only in situations where the department has clearly been egregious and acting in bad faith. The standard for showing the state is not doing their job seems really high compared to the standard used to judge the parents.”

Excerpts from email to author from Amelia S. Watson, Parents Representation Managing Attorney,

“Our courts must make “reasonable efforts” findings to prevent removal; to continue shelter care; at the establishment of dependency; at the disposition hearing, etc. Contested shelter care hearings are usually argued over whether the Dept. has carried it’s burden of making “reasonable efforts” to prevent removal. That is also the primary issue in any of the dependency cases that actually go to trial. Our parents/child attorneys are fairly zealous in holding the Dept’s feet to the fire. Our Commissioners have no hesitation in raising that issue. In most non-emergent removals the Dept. has been involved with the family through “voluntary service contracts” which are designed to provide services to the family to avoid filing a dependency petition and/or removing the child. Of course the burden on the Dept. is higher for ICWA cases.

“It is rare that I raise the issue because the advocates routinely address it in their petition, witnesses, and argument. I will not hesitate to raise it if the advocate neglects or forgets to address the issue.”

Email from Judge Patricia Clark, retired Superior Court Judge in King County, Washington, dated 12/17/2013.

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“I recall an ICWA case in the past where the attorneys raised the “no reasonable efforts” argument, by stating there were “no active efforts” prior to the shelter care hearing, which was true. The “no reasonable efforts” argument normally comes up after the dependency fact-finding, and it is seldom raised by the attorneys. I have raised it myself on only a few occasions and you can bet it gets the State’s focused attention. Reviews usually occur between 30-45 days after fact-finding to ensure that proper reunification services are in place for the parents. Our court holds many “status conferences” to check on status of services being in place. They are usually set very early in the case, and often thereafter, to motivate the Attorney General and Social Worker to avoid delays. No ISSP is needed for these hearings. They occur simply to maintain additional supervision and control over the case. These hearings are in addition to the regularized review hearings required by State and Federal law.”

Email from Commissioner Mark Gelman, Pierce County, Tacoma, Washington

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## **WEST VIRGINIA**

**STATUTES:** W.VA. Code Ann. § 49-6-5(a)(6) (Michie 2001) – Asks reviewing courts to describe what efforts were made and why they were successful or unsuccessful. § 49-6-3(a)(2)(B) – state must provide reasonable efforts to prevent placement. § 49-6-2 – Improvement period (not always granted – if aggravated circumstances).

## **CASE LAW:**

*In re Lacey P.*, 433 S.E.2d 518 (W.V. 1993) – TPR – Affirmed.

The court terminated services after three months. The appellate court affirmed holding that the improvement period need not last for 12 months.

*In re Jonathan Michael D.*, 459 S.E.2d 131 (W.Va. 1995) – TPR – Affirmed.

The failure of the family (particularly the mother) to reunify was not the fault of the DHHR – the parent failed to bear the responsibility of showing sufficient progress in order to regain custody.

*In re Edward B., John David F., et al.*, 558 S.E.2d 620 (2001) (W. Va. Supreme Court of Appeals) – TPR of one child – 3 children placed with father and one ordered placed with DHHR. Appeal by Mother – Reversed.

DHHR discovered mother and 5 kids in a trailer, one with problems – failure to thrive. DHHR did nothing to help her. No improvement period offered. Held: the trial court failed to state facts why no reasonable likelihood the mother would eliminate the neglect per § 4-6-5(a)(6). The case plan was inadequate per § 49-6D-3. The social worker testified about lice and mites, but said no one came in to help out the family. Jurisdiction sustained because of an unsafe home. The mother was bonded to the children. Mother asked for improvement period per § 49-6D-3. Case plan set up – at Disposition, the trial court denied improvement period and placed kids with visits for mom. No findings of fact or conclusions of law entered. Held: Inadequate findings. § 49-6-5(a)(6) requires the court to consider the efforts made by the department to provide remedial and reunification services to the parents and whether the court has made reasonable efforts to prevent removal and preserve and reunify the family. (a)(6) requires reasonable efforts before placement can be made. The trial court did not state why reunification with mother is contrary to children’s best interests & whether department made reasonable efforts. Law also requires MDT to be convened within 30 days of filing to develop plan - §§ 49-5D-1 to 7. None called in this case. On remand, call a MDT & develop appropriate family and a child case plan. Father opposed improvement plan. Reconsider the improvement plan. Long delays... Reasonable efforts can include financial resources for the parent (at p. 632). “The family case plan does not appear to adequately address one of the predominant obstacles facing the [mother], her alleged lack of financial resources.”

*In re Jessica M. and Shawnta M.*, (2013) 231 W.Va. 254, 744 S.E.2d 652 – TPR – Reversed.

There was not clear and convincing evidence that the mother failed to take advantage of services provided during the improvement period. Nor was their sufficient proof that the mother did not make the necessary changes to assure the safety of her children.

*State ex rel. Amy M. ve Kaufman*, 470 S.E.2d 205 (W.Va., 1996) The trial judge extended services – Reversed.

The appellate court held that the extension of services was contrary to the best interests of the children. “The goal of an improvement period is to facilitate the reunification of families whenever that reunification is in the best interests of the children involved.” (at p. 212)

“We do a lot of training on reasonable efforts findings with the judges and in our CIP cross-trainings each year, especially in terms of just removal and requirements for Title IV-E eligibility. A recent PowerPoint in attached. CIP also got DHHR to clarify/amend its policy this year on temporary protection plans to limit the time a child may be out of home pursuant to such a plan before court involvement.”

## WISCONSIN

**STATUTES:** WIS. STAT. ANN. § 48.355(2c) (West Supp. 2002) – The court should consider whether “a comprehensive assessment of the family’s situation was completed,” and whether the family received “financial assistance.” § 48.21(5)(b) (West, 1987), § 48.355(2)(a) (West Supp., 1989); § 48.415(2)(a) – TPR cases requires a showing the agency made R/E to provide the services they were ordered to provide to assist the parent in meeting the conditions of safe return. (West Supp. 1989); To prevent removal = § 48.21(5)(b) 1 b and c. and 48.355(2)(b) 6. For R/E and permanency see 48.355(5)(c) 7. § 48.028(4)(g) – defines active efforts.

## CASE LAW:

*Sheboygan County Dep't of Health & Human Services v Tanya M.B.*, 785 N.W.2d 369 (Supreme Court, Wisc. 2010) – TPR – Reversed by appellate court and reversed by the Supreme Court which reinstated the termination.

Issues: were specific services provided as required by Wisc. Stat. § 48.355(2)(b)(1)(2003-4) or by § 48.355(2)(b)(1) (2007-8) & did Dep't make a reasonable effort to comply with the court ordered services. Found by Clear and Convincing Evidence that Dep't made a reasonable effort. Conflict between statutes – later one controls. Jury. Facts: Heroin overdose started it. Father was in prison at the time. The children were placed with mother until she went to prison – then with maternal grandmother. Drug treatment part of services, counseling, co-operate with social worker, provide safe home, clear up criminal cases and get employment. 3 years – then TPR petitions filed. Jury verdict – Dep't made a reasonable effort to provide the services ordered by the court. Need they be specified? No. Held: under either statute. The jury need not write down “specific services”. The record was clear that the Dep't provided reasonable effort and that the parents rejected some services: § 48.415(2)(a)(2)(a).

*Kenosha County Department of Human Services v Jodie W.*, 716 N.W.2d 845 (Wisc. 2006) – TPR – Reversed.

The mother was incarcerated. Her case plan included getting housing. When she did not, TPR proceedings followed. The Supreme Court reversed saying that incarceration in and of itself is only one factor to consider in a TPR case. The trial court must also consider her parenting activities and the condition of her child. The language of WIS. STAT. § 48.415(2) requires a finding by the circuit court that the relevant agency made reasonable efforts. The text obligates the responsible agency to make “an earnest and conscientious effort to take good faith steps to provide the services ordered by the court.” WIS. STAT. § 48.415(2)(a)2.a. The statute does not allow the responsible agency to determine which conditions it must, in good faith, assist the parent in meeting.

*In re the Termination of Parental Rights to Shannon G.*, 644 N.W.2d 295 (Wisc. Ct. App. 2002) – TPR – Affirmed.

Held that reasonable efforts were offered, but termination was affirmed on appeal based on the best interests of the child.

## ICWA

*In re J.J.*, 462 N.W. 2d 551 (Wisc. Ct. App. 1990) (unpublished table decision available at No.90-0158, 1990 WL 174568. TPR – Dismissed – Affirmed.

The Indian parents did not cooperate with the social worker. The department alleged that the parents' bland and benign approach to their children jeopardized the children's welfare. At trial, the director of counseling services in the parents' tribe testified that Native American parents traditionally distrusted social workers and developed a fatalistic attitude when confronted with attempts to remove their children. The trial court dismissed the department's petition, finding that there was no evidence of efforts consistent with the requirements of the ICWA to prevent the breakup of a Native American family. The appellate court affirmed that the department had not provided active efforts.

*In re S.L.*, 455 N.W.2d 678 (Wis. Ct. App. 1990)(unpublished table decision) available at 1990 WL 57500 (Wisc. Ct. App. Feb.7, 1990). Removal of child – Affirmed.

The child was removed because of physical abuse. The mother filed a motion to dismiss and contended that there was insufficient evidence to breakup an Indian family pursuant to 25 U.S.C.S. § 1912(d), (e). The trial court denied the motion and transferred custody to the county. The mother appealed. The court affirmed the trial court's judgment. The court held that there was sufficient evidence of attempts made by the county to provide remedial services to prevent the breakup the family, as required by § 1912(d). The court held that expert testimony that the child did not want to return to her mother and that a return would be harmful to the child was sufficient to show that the return of the child was likely to result in serious emotional or physical damage, as required by §1912(e).

## Mental Health Issues

*In Interest of Torrance P.*, 187 Wis. 2d 10, 522 N.W. 2d 243 (Ct. App. 1994) – TPR – Affirmed. The mentally ill father claimed that the Americans with Disabilities Act entitled him to special treatment after his child was removed. The court rejected the notion that the ADA was a defense to a termination proceeding, noting that Wisconsin law § 48.415 obligated the state to prove reasonable efforts and to take the parties' characteristics into account as part of that effort.

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“R.E. gets addressed at all of our hearings; from the shelter care hearing – we call it temporary physical custody through plea hearing and disposition and perm. plan hearings. It also is an element of one of our most commonly used TPR grounds – continuing need of protection and services in which the state has to prove the agency made reasonable efforts to provide the services ordered to assist the parent in resolving the parenting issues and getting the child safely home. “All of our standard orders -from tpc hearing, through disposition and ppr (as mandated by ASFA and corresponding state statute – see for example 48.21 (5) (b)) mandate reasonable efforts findings (except in r.e. not required cases – which we too infrequently recognize).

“I cannot say that r.e. gets litigated often – probably not as often as it should. I do think it occasionally

gets litigated in the perm. plan review hearings and certainly gets contentiously litigated on occasions in the tpr cases where it is an element.”

Email from Judge Christopher Foley, Milwaukee County Circuit Court, Wisconsin. A copy is available from the author.

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## WYOMING

**STATUTES:** TPR – Clear and Convincing evidence necessary: Wyo. Stat. Ann. § 14-2-309(a); TPR must prove unsuccessful R/E to rehabilitate the family (309 (a)(iii) (Michie 1997). After removal, the court shall appoint a MDT to create reasonable and attainable recommendations for the court outlining the goals or objectives the parents should be required to meet for family reunification. W.S. §14-3-440 (a) “...reasonable efforts shall be made to preserve and reunify the family.” (e) “Reasonable efforts determinations shall include whether or not services to the family have been accessible, available and appropriate.” (f) “The court shall make the reasonable efforts determinations required under this section at every court hearing.” § 14-2-318(a) “The court may appoint counsel for any party who is indigent.” (Representation at a termination of parental rights hearing).

## CASE LAW:

*S.D. v Carbon County Dep’t of Family Servs.*, 57 P.3d 1235, 1239, (Wyo, 2002) – TPR – Affirmed. The provision of reasonable efforts must be proven by clear and convincing evidence. Services for this family began before birth. Child removed at age 1. Now the child is 5. Dirty home, unhealthy – parents shown how to clean, but they kept it dirty, refused to feed child properly, developmental delays, and instability. 24 hour social worker support is unreasonable. Services included nutritional support, psychological evaluations, health care, budgeting instruction and housekeeping instruction. Parents did not visit regularly and demonstrated lack of effort with services. But the court noted that “it was not unsympathetic to the disabilities and hardships of the parents. However...[w]hen the rights o a parent and the rights of a child are on a collision course, the rights of the parent must yield.” R/E can include home visits by nurses (at p. 1240). To ensure that the case plan is more than a paper plan, the court must examine whether the agency has provided the services the plan requires (at p. 1240). “There is a limit to what we ask of [the agency] in the absence of parental cooperation.” (at 1241)

*In the Interest of NDP, JAP, ANP and ICP, CP v State of Wyoming*, 108 P.3d 613 (Supreme Court, 2009) – Dependency, guardianship ordered. – Affirmed.

Mother needed to undergo substance abuse treatment, and court properly rejected request for additional reunification services due to failure to complete treatment.

*In the Matter of the Termination of Parental Rights to L.A. v. The State of Wyoming, Dep’t of Family Services*, 215 P.2d 266 (Wyoming Supreme Court, 2009) – TPR – Affirmed.

Incarcerated father appeals denial of services. Held by clear and convincing evidence that father was unfit to have custody of child. (Wyo. Stat. Ann. § 14-2-309(a)(iv)).

*In the Matter of the Termination of Parental Rights to ATE, KOE, ETE, ME, FDE, State of Wyoming, Dep't of Family Services v TWE, III, 222 P.3d 142 (2009. Wyoming Supreme Court) – TPR petition denied by trial court – appeal by department – Affirmed. The agency intervened because of a dirty home and dental problems with one of 5 children. After social worker intervention, the family made no changes and the children were removed. Mother left the state. 5 caseworkers worked with Father. He kept using Marijuana. The rule was no visits without clean tests, thus there was no contact for substantial periods of time. Father did not participate in the majority of services. At TPR hearing the trial court denied petition. Held: There must be proof by clear and convincing evidence. Lots of services, mostly failed, but one caseworker approved of father's work with services and the children. Next caseworker said did not approve of father's conduct. The kids were "bonded" to father. Then the testing started and the rule about visits. Father was required to have children present with him at parenting classes, but positive tests prevented that. The appellate court pointed out that marijuana use had nothing to do with original case. No reasonable efforts found..*

*In re J.L., 989 P.2d 1268 (1999) – TPR – Affirmed.*

There was a long history of physical abuse. Court held rehabilitative efforts were unsuccessful. Numerous social workers and mental health professionals attempted to assist parents in developing nurturing behaviors, in-home and outreach classes utilized every feasible educational approach to communicate with parents, and parents were given parenting classes, anger management counseling, individual counseling, and job counseling for a period extending over six years, with no significant progress made during that time. The case plan asked mother to develop nurturing behaviors. Services were provided for 6 years without progress.

*In re M.N., 78 P.3d 232 – TPR – Affirmed.*

The children were removed because of a dirty home, they were left unsupervised, and the mother had brain disorder. The agency offered the mother services 3 years before formal proceedings were filed. The agency tried to get mother employment and housing, education, hygiene, nutrition training, Medicaid, money for day care, food stamps, financial assistance, but mother failed to take advantage of opportunities ultimately refusing to participate in services.

*In re H.P., 93 P.3d 982 – TPR – Affirmed.*

Reasonable efforts upheld. The children were removed when the grandparents said they could no longer care for them. After mother served some prison time, the children were returned to her. During her time in prison, the grandmother took the children to visit mother in prison. They were then removed because of a dirty home, children left alone, and mother's drug use. Multi-disciplinary meetings held to encourage mother to complete her four different case plans. The case plan was tailored to meet mother's needs while incarcerated. The agency also provided housing and counseling services.

*In re F.M., 163 P.3d 844 (Wyo. 2007) – TPR – Reversed.*

Reasonable efforts not provided. Dirty home, unattended children and meth pipe at removal. Termination of parental rights pursuant to Wyo. Stat. Ann. § 14-2-309(a)(iii) (2007) requires clear and convincing proof of three elements: (1) abusive treatment or neglect by the parent; (2) reasonable efforts by a family services agency have been unsuccessful to rehabilitate the family; and (3) the



child's health and safety would be seriously jeopardized by remaining with or returning to the parent. The Supreme Court said state did not provide clear and convincing evidence of reasonable efforts by the agency. No evidence that the agency provided mother with services directed at housing, employment, or other tasks set out in case plans. Only 2 case plans were created. The state did not provide for visitation after the mother was incarcerated and made no effort to facilitate communication between mother and her child. There was no multi-disciplinary meeting as required by state law.

*In the Interest of J.W. and B.J.*, 2010 WY 28, 226 P.3d 873 (Wyo. 2010) Placement order – Reversed.

The children were removed from the mother and placed locally with a foster home. Mother was unsuccessful in reunifying and asked that the children be placed with relatives who lived far away in the state. The trial court refused, but the appellate court ordered the relative placement. Courts are more likely to place with relatives even after time with foster parents.

### **Mental Health Issues**

*Matter of C.M.*, 556 P.2d 514, 519 (Wyo. 1976) – TPR – Affirmed.

Developmentally delayed parents were unable to maintain a safe and clean household. “It would seem unreasonable and not for the best interests of the child that professional welfare workers should be furnished to care for this child in the parental home on a twenty-four-hour basis for the many years until the child herself can be self-sufficient.”

*MB v Laramie County Dep't of Family Services*, 933 P.2d 1126(Wyo. 1997) – TPR – Reversed. The child was placed in protective custody when the mother was being treated for her schizophrenia. The reunification case plan did not inform the mother of the consequences of failure to comply with the case plan. The Supreme Court said the agency should have provided services. Reasonable efforts not made because mother was not provided with a copy of the case plan, nor a warning about possible TPR.

*In the Matter of the Termination of Parental Rights to SRJ and DCJ v Hot Springs County Dep't of Social Services*, 212 P.3d 611 (Supreme Court, 2009) – TPR – Affirmed.

Held: The Department offered reasonable rehabilitation services to mother prior to TPR. Mother was paranoid and a substance abuser and received 2 years of services after removal. Mother continued to use drugs. The court held that strict scrutiny was the test for TPR's. The services included counseling, drug testing, visitation, and accommodations for mother's frequent moves.

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“In recent years, the Children's Justice Project (CJP) has focused on enhancing legal representation for parents in the juvenile justice system. While I don't think our project can take full credit, we have done a lot of education to parents' attorneys and have a very active “parent's representation committee” that recently developed and trained guidelines for attorneys representing parents (see attached). The publication and recent trainings have information on reasonable efforts.

“So, I would say, yes, reasonable efforts is routinely litigated in court proceedings and this issue is

raised at shelter care hearings in most jurisdictions. I am a former attorney guardian ad litem (fresh out the system and practiced in 2 judicial districts up until October, 2013. We spent time at each juvenile hearing discussing reasonable efforts, whether it was the parent's attorney or GAL bringing up the issue at the hearing).

Email from Eydie Trautwein, J.D., Wyoming Supreme Court, Children's Justice Project Coordinator.

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The Wyoming Children's Justice Project has created "Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases." The first edition was published in December of 2012. The Guidelines are a project of the Wyoming Supreme Court.

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"Wyoming courts should adopt the six-factor test articulated in the Minnesota statutes.<sup>533</sup> With this test, Wyoming courts can proceed with termination of parental rights cases where necessary and appropriate, without fear of reversal. Additionally, DFS and other partners in the child welfare system will be better versed on 'reasonable efforts,' hopefully creating more permanency for children in Wyoming." Ross, W., "Wyoming Courts Continue to Struggle with Termination of Parental Rights Cases: The Problem with 'Reasonable Efforts'; *In re F.M.*, 163 P.3d 844 (Wyo.2007)," *Wyoming Law Review*, Vol. 9, 2009, pp. 697-714, at p. 714.

<sup>533</sup> *Improving the Court Process for Alaska's Children in Need of Aid*, Alaska Judicial Council, Anchorage, October, 1996, *op.cit.*, footnote 102 at p. 98.

<sup>534</sup> These comments were sent to the author by the Honorable William Hitchcock, a retired judicial officer from Alaska who presided over the Anchorage juvenile courts for 26 years.

<sup>535</sup> Hazeltine, S., "Speedy Termination of Alaska Native Parental Rights: The 1998 Changes to Alaska's Child in Need of Aid Statutes and Their Inherent Conflict with the Mandates of the Federal Indian Child Welfare Act," 19 *Alaska Law Review* 57 (2002) at p. 71.

<sup>536</sup> 42 U.S.C. sections 671(16) & 675(B).

<sup>537</sup> 45 C.F.R. section 1356.21(c)(4)

<sup>538</sup> Kaiser, J. "Finding a Reasonable Way to Enforce the Reasonable Efforts Requirement in Child Protection Cases," *op.cit.*, footnote 70 at p. 132.

<sup>539</sup> The extensive case law reports from Connecticut are derived from the work of Inez Diaz Galloza and Josh Michtom of the Public Defender's Office. I have added cases, organized the cases according to content, and edited a number of their entries. Several cases appear more than once because the case involves several subjects.

<sup>540</sup> Galloza, I.D. and Michtom, J., *Child Protection Casebook*, Connecticut Judicial Department's Court Improvement Project, p. 542. Many of the Connecticut appellate cases listed below are listed in the *Child Protection Casebook* on pages 442-462.

<sup>541</sup> D.C. Code §16-2312(d)(3)(A) (d)(3) If neglect is alleged, an order of shelter care under this subsection shall include a determination of whether: (A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, a determination that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and D.C. Code § 4-1301.09a Reasonable efforts

(a) In determining and making reasonable efforts under this section, the child's safety and health shall be the paramount concern.

(b) (1) Except as provided in subsection (c) of this section, reasonable efforts shall be made to preserve and reunify the family by the Agency.

(2) These reasonable efforts shall be made prior to the removal of a child from the home in order to prevent or eliminate the need for removing the child, unless the provision of services would put the child in danger.

[542](#) 42 USCS § 671 State plan for foster care and adoption assistance (a) Requisite features of State plan. In order for a State to be eligible for payments under this part [42 USCS §§ 670 et seq.], it shall have a plan approved by the Secretary which—(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; 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 45 CFR 1356.21 Foster care maintenance payments program implementation requirements. (d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

[543](#) D.C. Code § 16-2320 Disposition of child who is neglected, delinquent, or in need of supervision (f) In its dispositional order for a child adjudicated neglected, the Division shall:

(2) Include a determination of whether:

(A) Reasonable efforts were made to prevent or eliminate the need for removal, or, in the alternative, that the child's removal from the home is necessary regardless of any services that could be provided to the child or the child's family; and

[544](#) D.C. Code § 16-2323 Review of dispositional orders

(a) When a child has been adjudicated neglected and a dispositional order has been entered by the Division, the Division shall:

(3) If reasonable efforts are not made pursuant to § 4-1301.09a, hold a permanency hearing within 30 days after the determination that reasonable efforts need not be made; and

(4) Hold a permanency hearing for every child within 12 months after the child's entry into foster care and at least every 6 months thereafter, for as long as the child remains in an out-of-home placement.

D.C. Code § 4-1301.09a Reasonable efforts

(a) In determining and making reasonable efforts under this section, the child's safety and health shall be the paramount concern.

(b) (1) Except as provided in subsection (c) of this section, reasonable efforts shall be made to preserve and reunify the family by the Agency.

(2) These reasonable efforts shall be made prior to the removal of a child from the home in order to prevent or eliminate the need for removing the child, unless the provision of services would put the child in danger.

(3) Reasonable efforts shall be made to make it possible for the child to return safely to the child's home.

(c) If reasonable efforts as required by subsection (b) of this section are determined to be inconsistent with the child's permanency plan, the Agency shall make reasonable efforts to place the child in

accordance with the child's permanency plan and to complete whatever steps are necessary to finalize the child's permanent placement.

[545](#) *In the Matter of: A.S.*, N-1281-93, Superior Court of the District of Columbia, Family Court, 2003 D.C. Super. LEXIS 41, September 17, 2003.

[546](#) This case is criticized in Spreng, J., "The Private World of Juvenile Court: Mothers, Mental Illness and the Relentless Machinery of the State," *op.cit.*, footnote 272 at p. 189.

[547](#) Found in Edwards, L., "Improving Implementation" *op.cit.*, footnote 67 at p. 18.

[548](#) Crossley, W. *op.cit.*, footnote 3 at p. 303

[549](#) *Id.* at p. 304

[550](#) Crossley, *op.cit.*, footnote 3 at p. 312.

[551](#) DeVault, Esme, *op.cit.*, footnote 301, at pp. 764-5.

[552](#) For a critique of the appellate court's handling of this case, see Telfer, D., "In re T.M.: Who Protects the Indigent Parents," *Journal of Law and Family Studies*, Vol. 6, 2004, at pp 161-170

[553](#) The Minnesota six-factor test includes the following: Were the services "(1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; (6) realistic under the circumstances." MINN. Stat. Ann. §§ 260.012(h)(1-6).

## Appendix B

### Definitions of Reasonable Efforts: Statutes and Case Law

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**ALABAMA** Ala. Code Ann. Section 12-15-65(m);

Alabama statute § 12-15-312(b) defines reasonable efforts.

“As used in this chapter, reasonable efforts refers to efforts made to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from his or her home, and to make it possible for a child to return safely to his or her home. In determining the reasonable efforts to be made with respect to a child, and in making these reasonable efforts, the health and safety of the child shall be the paramount concern. If continuation of reasonable efforts 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 including, if appropriate, through an interstate placement, and to complete whatever steps are necessary to finalize a permanent plan for the child.”

See also §12-15-301(10)

In the Alabama case of *H.H. v Baldwin County Department of Human Resources* the court referred to Utah and Connecticut cases for a definition of reasonable efforts:

“We conclude that the phrase ‘reasonable efforts,’ although undefined in [the Utah Code], is not ambiguous, for the legislative meaning can be gleaned from the definition of the individual words comprising the phrase....”

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### **ALASKA**

Alaska Stat. section 47.10.086(a)-(b) - the “department’s duty to make reasonable efforts... includes the duty to:

- identify family support services that will assist the parent or guardian in remedying the conduct or conditions in the home that made the child a child in need of aid;
  - actively offer the parent or guardian, and refer the parent or guardian to, those services; and
  - document the department’s actions that are taken.
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## ARKANSAS

Ark. Code Ann. Section 9-27-303(43)(A)(iv) – provides that the “agency shall exercise reasonable diligence and care to utilize all available services.” “‘Reasonable efforts’ are measures taken to preserve the family and can include reasonable care and diligence on the part of the department or agency to utilize all available services related to meeting the needs of the juvenile and the family. Reasonable efforts may include the provision of ‘family services,’ which are relevant services provided to a juvenile or his or her family, including, but not limited to:

Child care

Homemaker Services

Crisis counseling

Cash assistance

Transportation

Family therapy

Physical, psychiatric, or psychological evaluation

Counseling or treatment”

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## CALIFORNIA

California Rule of Court 5.502(26) – “‘Reasonable efforts’ or ‘reasonable services’ means those efforts made or services offered or provided by the county welfare agency or probation department to prevent or eliminate the need for removing the child, or to resolve the issues that led to the child’s removal in order for the child to be returned home, or to finalize the placement of the child.”

California: “Reunification services will be found to be reasonable if the child welfare department has ‘identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist parents in areas where compliance proved difficult (such as helping to provide transportation...)’” *In re Riva M.*, 286 Cal.Rptr. 592, 599 (1991).

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## COLORADO

Colo. Rev. Stat. Ann. Section 19-1-1-3(89) - Reasonable efforts includes the responsibility “to provide, purchase, or develop the supportive and rehabilitative services,” required to prevent placement or achieve reunification.”

§ 19-1-103 – “The term ‘reasonable efforts’ means the exercise of diligence and care for children who are in out-of-home placement or are at imminent risk of out-of-home placement....Services provided by a county or city agency in accordance with § 19-3-508(1)(e), are deemed to meet the reasonable effort standard described in this subsection.”

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## CONNECTICUT

Connecticut: Gen. Stat. § 46b-129: “The term ‘reasonable efforts’ refers to the services to be provided to the parents and the steps the parents may take to address the problems that prevent the child from safely reuniting with the parents.”

“Reasonable is commonly defined to mean ‘not extreme or excessive’ or ‘fair.’ Merriam-Webster’s Collegiate Dictionary 974 (10th ed. 1999). ‘Effort’ is commonly defined to mean ‘conscious exertion of power: hard work’ or as a ‘serious attempt.’ *Id.* At 368. Thus, [the appropriate state agency] would comply its statutory obligation to make reasonable efforts toward reunification if it makes a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights. *See also In re Eden F.*, 48 Conn. App. 290, 710 A. 2d 771, 782-3 (1998) (noting that ‘the word [“] reasonable [“] is the linchpin on which the department’s efforts in a particular set of circumstances are to be adjudged’ and that ‘reasonableness’ is an objective standard and whether reasonable efforts have been proven depends on the careful consideration of the circumstances of each individual case’ (citation omitted)), *reversed on other grounds*, 250 Conn. 674, 741 A.2d 873 (1999); *accord In re J.D.* 2001 WL 10422577, at \*7-8, 2001 Con. Super LEXIS 2358, at \*21-22 (Conn. Super. Ct. Aug. 8, 2001).”

“Neither the word ‘reasonable’ nor the word ‘efforts’ is ...defined by our legislature or by the federal act from which the requirement was drawn.” *In re Eden F.*, 48 Conn.App.290, 710 A. 2d771. 782-3 (1998)

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## **DELAWARE**

Ann. Code Tit. 29 § 9003

The Division of Family Services will provide family preservation services.

The division must prepare and maintain a written case plan for each child under its supervision or custody that shall include, but not be limited to, a description of the child’s problems, the care and treatment of the child, and any other services to be provided to the child and the child’s family.

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## **FLORIDA**

Fla. Stat. Ann. Section 39.521(1)(9)(f)(1) - “reasonable effort means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.”

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## **GEORGIA**

Georgia: Ann. Code §15-11-58 “Reasonable efforts are measures taken by the Division of Family and Children’s Services of the Department of Human Services and other appropriate agencies to preserve and reunify families.”

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**INDIANA**

*In the Matter of Myers*, 417 N.E.2d 926 (Ind. App. 1981) at p. 931 – “The question of what constitutes ‘reasonable services’ is one which can not be answered by a definitive statement. Instead, it must be answered on the basis of any given factual situation, for it is clear that services which might be reasonable in one set of circumstances would not be reasonable in a different set of circumstances.”

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**IOWA**

Iowa Code Ann. Section 232.102(10)(a)(1) - “The term ‘reasonable efforts’ refers to efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family home....Reasonable efforts may include intensive family preservation services or family-centered services, if the child’s safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

- (1) The type, duration, and intensity of services or support offered or provided to the child and the child’s family. If intensive family preservation services were not provided, the court record shall enumerate the reasons the services were not provided, including, but not limited to whether the services were not available, not accepted by the child’s family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found more appropriate.
  - (2) The relative risk to the child of remaining in the child’s home versus removal of the child.”
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**KENTUCKY**

Ky. Rev. Stat. Ann. Section 620.020(10)-(11) - “‘Reasonable efforts’ means the exercise of ordinary diligence and care by the Department to utilize all preventive and reunification services available to the community.” Those services required to reunify a family for purposes of dependency cases.

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**LOUISIANA**

La. Children’s Code Ann. Art. 603(17) - “‘Reasonable efforts’ means the exercise of ordinary diligence and care by department case managers and supervisors and shall assume the availability of a reasonable program of services to children and their families.”



**MAINE**

MAINE Statute: § 4041(1)

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**MASSACHUSETTS**

Massachusetts Ann. Laws Ch. 119, §29C. “The court shall determine the reasonable efforts to be made, consistent with the best interests of the child.”

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**MICHIGAN**

Michigan Comp. Laws §712A.18f – “Reasonable efforts are measures taken to preserve and reunify the family and may include:

- Efforts to be made by the parents
  - Efforts to be made by the agency
  - A schedule of services to be provided, including in-home services
  - A schedule of parenting time between the child and the parent, if appropriate
- 

**MINNESOTA**

Minn. Stat. Ann. §§ 260.012(a),(b)(1)-(2), (c) - Courts must consider whether services were (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances.” §260.12(c). Reasonable efforts is “the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child. § 257.071 lists some of the services that may be available.

**REASONABLE EFFORTS 260.012 DUTY TO ENSURE PLACEMENT PREVENTION AND FAMILY REUNIFICATION;**

§260.012 (f) Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency to use culturally appropriate and available services to meet the needs of the child and the child’s family. Services may include those provided by the responsible social services agency and other culturally appropriate services available in the community. At each stage of the proceedings where the court is required to review the appropriateness of the responsible social services agency’s reasonable efforts as described in paragraphs (a), (d), and (e), the social services agency has the burden of demonstrating that:

- (1) it has made reasonable efforts to prevent placement of the child in foster care;
- (2) it has made reasonable efforts to eliminate the need for removal of the child from the child’s home and to reunify the child with the child’s family at the earliest possible time;
- (3) it has made reasonable efforts to finalize an alternative permanent home for the child, and

considers permanent alternative homes for the child inside or outside of the state;

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## **MISSISSIPPI**

Mississippi Ann. Code §43-51-3 – “Family preservation services are services designed to help families alleviate risks or crises that might lead to out-of-home placement of children. The services may include procedures to maintain the safety of children in their own homes, support to families preparing to reunify or adopt, and assistance to families in obtaining services and other sources of support necessary to address their multiple needs in a culturally sensitive environment.”

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## **MISSOURI**

Mo. Ann. Stat. § 211.183(1)-(5) – “‘Reasonable efforts’ means the exercise of reasonable diligence and care by the division to utilize all available services related to meeting the needs of the juvenile and the family. In determining reasonable efforts to be made and in making such reasonable efforts, the child’s present and ongoing health and safety shall be the paramount consideration.”

*In the Interest of A.L.W.*, 773 S.W.2d 129 (Mo. Ct. App. 1989) – defines reasonable efforts as found in Missouri Ann. Stat. § 211.183(1)-(5) (West Supp. 2002); “‘Reasonable efforts’ means the exercise of reasonable diligence and care by the division to utilize all available services...”

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## **NEVADA**

Nev. Rev. Stat. § 432B.393(1)-(2), (4)-(5) - “Reasonable efforts have been made if an agency has exercised diligence and care in arranging appropriate and available services for the child.” Courts should “[e]valuate the evidence and make findings based on whether a reasonable person would conclude that reasonable efforts were made, “and to consider “any input from the child.”

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## **NEW HAMPSHIRE**

New Hampshire Rev. Stat. Annot. § 169-C: 24-a(III)(c) - “whether the state has made reasonable efforts...the district court shall consider whether services to the family have been accessible, available, and appropriate.”

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## **NEW YORK**

N.Y. Soc. Serv. Law §§ 384-b(7)(f) and 392(8) - the statute calls for “diligent efforts” as “reasonable attempts” by the agency to “assist, develop and encourage a meaningful relationship between the parent and the child.” The court may order diligent efforts to include assistance “in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment.

**NORTH CAROLINA**

North Carolina Gen. Stat. §§ 7B-101 & 7B-507 – “The term ‘reasonable efforts’ means the diligent use of abuse prevention or reunification services by the Department of Social Services when a juvenile remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not be returned home, then reasonable efforts are the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.”

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**NORTH DAKOTA**

North Dakota Cent. Code Ann. § 27-20-32.2(1) - reasonable efforts is “the exercise of due diligence, by the agency granted authority over the child...to use appropriate and available services to meet the needs of the child and the child’s family in order to prevent removal of the child from the child’s family or, after removal, to use appropriate and available services to eliminate the need for removal, to reunite the child and his or her family, and to maintain family connections.”

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**OHIO**

Ohio Rev. Code Ann. §2151.419(A)(1) - “Reasonable efforts are relevant services provided by the agency to the family of the child.” “The agency has the burden of proof regarding those reasonable efforts.”

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**RHODE ISLAND**

Rhode Island Gen Laws §40-11-12.2(b)-(d) “Reasonable efforts are measures taken to preserve and reunify families.”

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**SOUTH CAROLINA**

South Carolina Ann. Code § 63-7-1680 – “Reasonable efforts include services that are reasonably available and timely, reasonably adequate to address the needs of the family, reasonably adequate to protect the child, and realistic under the circumstances.”

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**SOUTH DAKOTA**

South Dakota Codified Laws § 26-8A-21 – Reasonable efforts “means provision by the department of any assistance or services that:...[a]re available pursuant to the comprehensive plan of preventive services of the department; [or] [c]ould be made available without undue financial burden on the

department....”

*In re W.G.*, 597 N.W.2d 430, 433 (S.D. 1999) – “What is reasonable is defined by the individual circumstances of each case.”

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## TENNESSEE

Tennessee Code Annotated § 37-1-166(g) -

Reasonable efforts is defined as “the exercise of reasonable care and diligence by the Department to provide services related to meeting the needs of the child and the family.”

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## TEXAS

Texas Family Code § 262.001 – “In determining the reasonable efforts that are required to be made with respect to preventing or eliminating the need to remove a child from the child’s home or to make it possible to return a child to the child’s home, the child’s health and safety are the paramount concerns.”

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## UTAH

Utah Ann. Code §§ 62A-4a-203; 78A-6-312 -*State ex rel. A.C.*, 2004 UT App 255, 97 P.3d 706 (2004, Utah Ct. App.) – defined R/E by looking to the individual words. Reasonable is commonly defined to mean “not extreme or excessive” or “fair.” Merriam-Webster’s Collegiate Dictionary 974 (10th ed. 1999). “Effort” is commonly defined to mean “conscious exertion of power: hard work” or as a “serious attempt.” Thus, DCFS would comply with its statutory obligation to make reasonable efforts toward reunification if it makes a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights”. (at 368)

*A.F. v State of Utah*, 2010 UT App 133 (2010) unpublished “Reasonable efforts has been defined as ‘a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights.’”

A “reasonable effort” to provide reunification services is a fair and serious attempt to reunify a parent with a child prior to seeking to terminate parental rights; reasonableness in this context is an objective standard and depends upon a careful consideration of the facts of each individual case. West’s U.C.A. § 78A-6-314(2)(b). *State ex rel. K.F.*, 2009 UT 4, 201 P.3d 985 (Utah 2009).

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## VERMONT

Vermont Ann. Stat. Tit. 33, §§ 5102 & 5321 – “Reasonable efforts must be made to prevent unnecessary removal of the child from the home. In cases involving a child who has been removed

from the home, reasonable efforts must be made to finalize the permanency plan for the child. Reasonable efforts to finalize a permanency plan and may consist of

- When the permanency plan for the child is reunification, efforts to reunify the child and family following the child’s removal from the home,
  - When the permanency plan for the child does not include reunification, efforts to arrange and finalize an alternate permanent living arrangement for the child.”
- 

## **WASHINGTON**

Washington Rev. Code Annot. §§ 13/34/025 & 13.34.130(3) – “Reasonable efforts include specific services, such as housing assistance, that are provided to the child and the child’s parent, guardian, or legal custodian, and preventive services that are offered or provided to prevent the need for out-of-home placement.”

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## **WEST VIRGINIA**

West Virginia Ann. Code §§ 49-1-3 & 49-6-5 – “Reasonable efforts are measures taken by the department to provide remedial and reunification services.”

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## **WISCONSIN**

Wis. Stat. Ann. §48.355(2c) – A court’s consideration of reasonable efforts shall include, but not be limited to: “A comprehensive assessment of the family’s situation; Financial assistance to the family, if applicable; Provision of services, including in-home support and intensive treatment services, community support services, or specialized services for family members with special needs.”

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## **WYOMING**

Wyoming Ann. Stat. § 14-3-440 – “Reasonable efforts require services to the family that are accessible, available, and appropriate.”

# **Appendix C**

## **Useful Court Forms Regarding Reasonable Efforts**

### **I. Troup County, Georgia**

- A. Affidavit of Services
- B. Affidavit of Reasonable Efforts

### **II. Mecklenburg County, North Carolina**

- A. Reasonable Efforts Report

### **III. Santa Clara County, California**

- A. Declaration of Reasonable Efforts Temporary Custody Report

### **IV. Commonwealth of Kentucky**

- A. Affidavit of Reasonable Efforts

### **V. State of Washington**

- A. Court Report

### **VI. State of Tennessee**

- A. Protective Custody Order
- B. Bench Order – Custody
- C. Adjudicatory/Dispositional Order

### **VII. State of New Hampshire**

**IN THE JUVENILE COURT OF TROUP COUNTY<sup>1</sup>**

**STATE OF GEORGIA  
IN THE INTEREST OF:**

NAME:  
SEX:  
AGE:  
DOB:

A CHILD(REN) UNDER THE AGE OF 18 YEARS

**AFFIDAVIT OF SERVICES PROVIDED AND/OR ACTIONS TAKEN BY THE TROUP  
COUNTY DEPARTMENT OF FAMILY AND CHILDREN SERVICES PURSUANT TO PRIOR  
ORDER OF THIS COURT**

The above named child(ren) is/are presently in the conditional custody of \_\_\_\_\_  
pursuant to O.C.G.A. 15-11-55(a)(1) by prior Order of this Court dated \_\_\_\_\_.

The undersigned case manager currently assigned to this case does hereby state to the Court that the  
following services and/or actions have been provided by the Department since the date of the last  
hearing in this matter on \_\_\_\_\_, to wit:

- Drug/alcohol screens (list date and result of each screen)
- Substance abuse treatment (list date of each scheduled session or class and attendance)
- Other ordered services (homestead counseling for domestic violence, etc.; parent aide  
services, etc.; report on each service, including name of provider, compliance and progress)
- Other matters considered by the Department to be significant to the case. (6/14/2010) Ka'ron  
Heard - Affidavit of Services Provided and Actions Taken.wpd Page 2

The Department feels that the person (or persons) with whom the Court has placed conditional  
custody of the above-named child(ren):

- Is/are making adequate progress toward completion of the matters ordered monitored by the  
Department; or
- Is/are NOT making adequate progress toward completion of the matters ordered monitored  
by the Department.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Type name)

Social Services Case Manager

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

**IN THE JUVENILE COURT OF TROUP COUNTY  
STATE OF GEORGIA**

**TROUP COUNTY DFACS AFFIDAVIT OF REASONABLE EFFORTS REGARDING THE  
FOLLOWING CHILD / CHILDREN, to-wit:**

NAME	DOB	AGE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

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This Affidavit may list all children when their circumstances are the same. A separate Affidavit should be made for a child whose circumstances require different action by the department.

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1. Risk(s) which make continuation in the home contrary to the welfare of the child(ren) and removal from the home in the best interest of the child(ren):

- Physical abuse by a member of the child's household.
- Sexual abuse by a member of the household or someone with access.
- Child requires medical attention and protection.
- Child is left with no or inappropriate supervision for an extended period of time.
- Unsanitary and unsafe living conditions.

**REASONABLE EFFORTS AFFIDAVIT**

HEARING DATE \_\_\_\_\_

- The parent has no appropriate or stable residence.
  - Absent parent – Parent cannot be found / Parent incarcerated / parent refusing to or unable to care for the child(ren).
  - Severe emotional abuse: child in need of protection or refuses to return home.
  - Domestic violence in the home.
  - Drug abuse directly affecting the care of the child(ren).
  - Other.
- 

**2. EFFORTS PRIOR TO REMOVAL:** What efforts were made by the department prior to date of the child(ren)'s removal to prevent or eliminate the need for the removal of the child(ren) from the home, and to make it possible for the child(ren) to return safely home.



**(Applies where D.F.C.S. has had involvement prior to the initial removal of the Child(ren).)**

Financial assistance provided in the form

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Removal of sexual or physical perpetrator from the home.

Medical treatment.

Substance abuse assessment and treatment.

Emergency Services (counseling, parent aid, homemaker, etc.)

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Design of safety plan to insure the child(ren's) safety in the home.

Design and implementation of a child protective services plan.

General case management services.

Other.

---

**3. EFFORTS SINCE REMOVAL:** Efforts by the department since removal to reunify the child(ren) with the family.

Reunification case plan design and implementation.

Drug or Alcohol assessment by

---

Drug or Alcohol treatment by

---

**REASONABLE EFFORTS AFFIDAVIT**

**HEARING DATE** \_\_\_\_\_

Mental Health assessment by

---

Mental Health treatment by

---

Parenting classes.

Counseling for

---

provided by

---

Emergency services (homemaker, parental aid, etc.)

---

Financial assistance as follows:

---

Housing assistance.

Transportation

General case management services

Other:

---

# AFFIDAVIT

The undersigned after being sworn swears (or affirms) that this Affidavit of Reasonable Efforts is true to the best of my knowledge and belief and that any false statement contained herein may subject me to criminal prosecution.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

\_\_\_\_\_  
Caseworker Signature

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

## REASONABLE EFFORTS AFFIDAVIT

**HEARING DATE** \_\_\_\_\_

**Child(ren) Name(s):** \_\_\_\_\_  
**Court / File No(s):** \_\_\_\_\_  
**Hearing Date for Report(s):** \_\_\_\_\_  
**Social Worker(s):** \_\_\_\_\_

### Reasonable Efforts Report [555](#)

- PREVENT REMOVAL**
- REUNIFICATION**
- ADOPTION**
- OTHER PERMANENT HOME**

The following efforts have been made to achieve the above-indicated plan for permanence:



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III. Efforts to Prevent Removal/Locate Appropriate Placement:

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IV. Child(ren) Placed into Temporary Custody by:

- Police (See Juvenile Contact Report)       Social Worker (See below)

V. Name of Social Worker Placing Child(ren) into Temporary Custody:

VI. Date of Temporary Custody: \_\_\_/\_\_\_/\_\_\_ Time of Temporary Custody: \_\_\_:\_\_\_ am / pm

VII. Location Where Child(ren) Placed into Temporary Custody: \_\_\_\_\_

VIII. Reason for Removal:

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IX. Future Service Needs:

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X. I declare under penalty of perjury under the laws of the State of California that the above information is true and correct to the best of my knowledge and that this declaration was executed in California on the date set forth below.

Social Worker \_\_\_\_\_ Telephone \_\_\_\_\_ Date \_\_\_\_\_

AOC - 657      Doc. Code: RCHR  
Rev. 7-96

**COMMONWEALTH OF KENTUCKY**  
**Court of Justice**

Case No. \_\_\_\_\_ Court \_\_\_\_\_ County \_\_\_\_\_

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TPR. NO. \_\_\_\_\_  
NO. \_\_\_\_\_

In the interest of \_\_\_\_\_, a child born,  
\_\_\_\_\_ and committed to the Cabinet for Human Resources.

Date of Birth \_\_\_\_\_

Pursuant to KRS 610.125(3), the representative of the Cabinet of Human Resources provides the Court with the following:

1. The child was committed to the Cabinet on \_\_\_\_\_, 19 \_\_\_\_\_.

2. The child has been placed in the following locations: (total period of the child's commitment)

Location \_\_\_\_\_ Date \_\_\_\_\_

From \_\_\_\_\_ To \_\_\_\_\_

3. The parent(s) have received the following services (arranged by CHR) since the last permanency plan / case progress report:

Father \_\_\_\_\_

Mother \_\_\_\_\_

The results:

4. The father has had \_\_\_\_\_ visits and the mother has had \_\_\_\_\_ visits with the child since the last permanency plan / case progress report.

The extent, quality and frequency of the communications with the child [ ] by the mother has been

by the father has been

5. There are familial or institutional barriers to returning the child to the home, ending the commitment of the child to CHR, or delivering appropriate services needed by the child for the following reasons.

\_\_\_\_\_  
\_\_\_\_\_

6. The following services are needed to make the transition from out-of-home care to independent living for children who have reached age 16.

Educational \_\_\_\_\_

Vocational/Job Preparation

Basic Living Skills

Personal/Social/Emotional Development

7. The child's current placement situation and the services being provided to the child are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. CHR proposes the following services are necessary to  terminate the commitment of the child to CHR,  to return the child home, or  to facilitate another permanent placement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. The permanency goal for the child as recommended by CHR is as follows:

\_\_\_\_\_  
\_\_\_\_\_

CHR Representative,  
Affiant \_\_\_\_\_ Date

Subscribed and sworn to before me by \_\_\_\_\_, this day of \_\_\_\_\_, 19 \_\_  
Notary Public \_\_\_\_\_ My Commission expires: \_\_\_\_\_

## COURT REPORT

Hearing Information					
<b>TYPE OF HEARING</b> Dependency Review Hearing Fact Finding Hearing Motion Permanency Planning Hearing Termination Hearing	<b>DATE OF REPORT</b>	<b>PLAN COVERS FROM:</b>	<b>TO:</b>		
		Concurrent jurisdiction has been ordered / requested.			
<b>DATE OF HEARING / REVIEW</b>	<b>TIME OF HEARING / REVIEW</b> <div style="text-align: center;">A.M. P.M.</div>		<b>LEGAL NUMBER</b>		
Child's Information					
<b>CHILD'S NAME</b>	<b>DATE OF BIRTH</b>	<b>AGE</b>	<b>GENDER</b> Male Female	<b>PRIMARY LANGUAGE</b>	<b>OPD</b>
<b>LEGAL STATUS OF CHILD</b>	<b>DATE OF SHELTER CARE</b>	<b>DATE OF DEPENDENCY</b>		<b>DATE OF TERMINATION OF PARENTS</b>	
Has paternity been established?    Yes    No Name: _____ Type: _____ Status: _____					
<b>RACE (CHECK ALL THAT APPLY)</b> African American / Black    Asian / Pacific Islander    Canadian First Nations (CFN) Caucasian / White    Hispanic / Latino American Indian / Alaskan Native (AI / AN) Other (specify):					
Is there reason to believe this child is American Indian / Alaskan Native?    Yes    No Child's Tribal status: Has the Tribe(s) been notified of this hearing?    Yes    No    N/A Recommendations by child's Tribe(s) or LICWAC:					

Placement	
CHILD CURRENTLY RESIDES In Home      Out of Home	
PLACEMENT TYPE Adoptive Home Court Ordered Unlicensed Placement Detention Center Family Crisis Residential Center Foster Home / Receiving Home Group Care – Staff Residential Group Crisis Residential Center Group Home Hospital Juvenile Rehabilitation Licensed Foster Home or Relative of Specified Degree Licensed Foster Home – Godparent / Supp Ntwrk / Tribal Rel / or Rel not Spec Deg Regional Assessment Center Regional Crisis Residential Center Relative of Specified Degree (Not Receiving Foster Care Payments) Secure Crisis Residential Center Supervised Independent Living Therapeutic Foster Home – BRS / CHAPS Contract MTSC	
PLACEMENT RECOMMENDATION In Home      Out of Home	
Total placements: Was there a placement change during this review period?    Yes    No When and how was the parent(s) notified of placement changes that occurred during this review period?	
How many months in out-of-home care?      of	
ICPC STATUS Is there an out-of-state placement proposed?    Yes    No Has a request been made to the receiving state?    Yes    No	
Is current placement in close proximity to family home?    Yes    No	
Describe why recommended placement is most appropriate, least restrictive and in the child's best interest.	
Case Summary	
CHILD'S NAME	DATE OF LAST HEALTH AND SAFETY VISIT
CHILD'S SUMMARY	



MOTHER'S NAME			
<b>MOTHER'S SUMMARY</b> <i>This section will not be shared with the child's caregiver. Confidential information related to parent's health issues, mental health treatment and substance abuse treatment should be discussed in this section.</i>			
SERVICES PREVIOUSLY ORDERED FOR THE MOTHER:			
Yes	Partial	Yes	Partial
No	Reserved	No	Reserved
FATHER'S NAME			
<b>FATHER'S SUMMARY</b> <i>This section will not be shared with the child's caregiver. Confidential information related to parent's health issues, mental health treatment and substance abuse treatment should be discussed in this section.</i>			
SERVICES PREVIOUSLY ORDERED FOR THE FATHER:			
RECOMMENDATIONS FOR FINDING OF COMPLIANCE		RECOMMENDATIONS FOR FINDING OF PROGRESS	
Yes	Partial	Yes	Partial
No	Reserved	No	Reserved
<b>Visitation</b>			
When and how were the parent(s) notified of visitation changes that occurred during this review period?			
<b>Permanency Planning</b>			
Date Current Plan Ordered:			
PRIMARY PLAN		ALTERNATE PLAN	
Return home	Guardianship	Return home	Guardianship
Adoption	Third Party custody	Adoption	Third Party custody
<b>Proposed Permanent Plan</b>			
PRIMARY PLAN		ALTERNATE PLAN	
Adoption Guardianship		Adoption Guardianship	
Lng Term FC Agrmt w/ Crt Apprl		Lng Term FC Agrmt w/Crt Apprl	
Rel Plcmnt Agrmt w/ Crt Apprl		Rel Plcmnt Agrmt w/Crt Apprl	
Return Home		Return Home	
Third party custody RCW 26.10		Third party custody RCW 26.10	
Describe reasonable efforts to reunify including progress made to alleviate need for placement:			

Describe efforts to achieve permanency:		
Has termination petition been filed? Yes No Compelling reason for not filing termination petition:		
Aggravated circumstances:		Date of Finding:
<b>Relative Search</b>		
Describe Relative Search efforts, including in-state and out-of-state placement options and appropriateness of options.		
Search Effort		
DATE	SEARCH TYPE	RESULTS
Search Outcome		
CONTACT DATE	CONTACT RESULTS	
NAME	RELATIONSHIP TO CHILD	
<b>Case Background</b>		
Efforts to prevent out of home placement:		
Describe the nature and extent of the maltreatment or family situation.		
Describe the surrounding circumstances accompanying the maltreatment or family situation.		
<b>Participant Information / Legal Representation</b>		
MOTHER'S NAME	PHONE NUMBER	ATTORNEY'S NAME

ADDRESS	PHONE NUMBER	PHONE NUMBER	
FATHER'S NAME	PHONE NUMBER	ATTORNEY'S NAME	
ADDRESS	PHONE NUMBER	PHONE NUMBER	
FATHER'S NAME	PHONE NUMBER	ATTORNEY'S NAME	
ADDRESS	PHONE NUMBER	PHONE NUMBER	
FATHER'S NAME	PHONE NUMBER	ATTORNEY'S NAME	
ADDRESS	PHONE NUMBER	PHONE NUMBER	
GUARDIAN AD LITEM / CASA NAME		ATTORNEY'S NAME	
ADDRESS		PHONE NUMBER	
CHILD'S ATTORNEY'S NAME		PHONE NUMBER	
ADDRESS	PHONE NUMBER	ATTORNEY'S NAME	
CA WORKER'S NAME	PHONE NUMBER	ATTORNEY'S NAME	
ADDRESS		PHONE NUMBER	
OTHER AGENCY SOCIAL WORKER'S NAME		PHONE NUMBER	
OTHER AGENCY SOCIAL WORKER'S NAME		PHONE NUMBER	
ADDRESS	PHONE NUMBER	PHONE NUMBER	
OTHER AGENCY SOCIAL WORKER'S NAME	PHONE NUMBER	PHONE NUMBER	
ADDRESS		PHONE NUMBER	
<b>Attachments</b>			
Visit Plan Service Plan	Education Plan CHET	Independent Living Plan Native American Indian Status	Other
Copies of this Court Report must be provided to parents and/or their attorneys and youth age 12 and older and their attorney, if represented. CA worker certifies that copies of this Court Report were provided to individuals on the dates listed below.			

MOTHER'S / ATTORNEY'S NAME	FATHER'S / ATTORNEY'S NAME	YOUTH'S NAME / ATTORNEY'S (12 YEARS OR OLDER)
DATE	DATE	DATE
CHILDREN'S ADMINISTRATION WORKER		DATE
Submitted by:		
DIVISION OF CHILDREN AND FAMILY SERVICES SUPERVISOR		DATE
DATE		
Approved by:		

Copies: Case File  
Parents / Parent Attorney  
Voluntary Agency  
Child (over 12) / Child's Attorney

CA Worker Attorney  
Guardian ad Litem / GAL Attorney  
Child's Caregiver

Original: Juvenile Court or Other Review Body

## Recommended Services and Tasks

Recommended agency responsibilities:

Recommended caregiver responsibilities:

Services and tasks recommended for the mother:

Additional services currently provided / recommended:

Services and tasks recommended for the father:

Additional services currently provided / recommended:

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**IN THE JUVENILE COURT OF \_\_\_\_\_ COUNTY, TENNESSEE STATE OF  
TENNESSEE**

**CHILD/CHILDREN UNDER THE AGE OF EIGHTEEN**

**IN THE MATTER OF \_\_\_\_\_**

**DOCKET NO: \_\_\_\_\_**

---

**PROTECTIVE CUSTODY ORDER**

- It appears to the Court from:
- the sworn allegations of the petition filed by \_\_\_\_\_ in the this matter.

the sworn statements of

\_\_\_\_\_ that there is probable cause to believe that the above-named child(ren), is/are a dependent and neglected child(ren) within the meaning of the law, that the child(ren) is/are subject to an immediate threat to the child(ren)'s health and safety to the extent that delay for a hearing would be likely to result in severe or irreparable harm, and there is no less drastic alternative to removal available which could reasonably and adequately protect the child(ren)'s health and safety pending a preliminary hearing; that it is contrary to the child(ren)'s welfare at this time to remain in the care, custody, or control of the parents/caretakers/custodians, because of the following (*provide specific facts for each child*):

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The Court further finds that:

- Reasonable efforts have been made and services have been rendered to prevent or eliminate the removal of said child(ren) from his/her/their home, including (*if different services were provided for different children, specify below*):

- Mental health counseling for child/children
- Drug & alcohol counseling for child/children
- Parenting classes
- Community Intervention Services (CIS)
- Structured After-School/Summer Activities
- Day Treatment for \_\_\_\_\_

- Non-Custodial Assessment
- Intensive in-home case management
- Sexual perpetrator treatment for \_\_\_\_\_
- Residential Treatment for \_\_\_\_\_
- Locating absent parent(s)
- Other (specify) \_\_\_\_\_

- Mental health counseling for parent
- Drug & alcohol counseling for parent
- Psychological evaluation for \_\_\_\_\_

- Family Crisis Intervention
- Probation/Aftercare
- Intensive Case Management
- Home Ties
- Sexual abuse treatment for child
- Homemaker services
- Locating relatives
- Respite Care

(Detailed information) \_\_\_\_\_

It was reasonable to make no efforts to maintain the child(ren) in the home based on an assessment of the family and the child(ren)'s circumstances that include:

- Reasonable efforts to prevent removal were not required because:
- this court or another court of competent jurisdiction has previously determined that the parent has subjected the child(ren) to aggravated circumstances as defined in T.C.A. §36-1-102(9);
- the parent has been convicted in a criminal court of one of the felony crimes against a child specified in T.C.A. §37-1-166(g)(4)(B); or
- the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.
- The Department of Children's Services failed to provide reasonable efforts to prevent the child(ren)'s removal from the home.

The Court further finds that it is in the best interest of the child(ren) as follows, and

**IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED:**

The child(ren) \_\_\_\_\_ is/are hereby brought into the protective custody of this Court.

Temporary care and custody of the child(ren) \_\_\_\_\_ is/are placed with the State of Tennessee, Department of Children's Services with authority to provide any appropriate plans for the care of said child(ren) and to consent to any necessary medical, surgical, hospital, educational, institutional, psychiatric, or psychological care pending further determination of the child(ren)'s custodial status by the Court.

The preliminary hearing in this cause is set for \_\_\_\_\_.

That \_\_\_\_\_ shall be appointed as guardian ad litem for the child(ren).

That \_\_\_\_\_ is appointed to represent the mother.

That \_\_\_\_\_ is appointed to represent the father.

It is further ordered

\_\_\_\_\_  
All state, county, or local agencies and any public or private medical or mental health treatment resources with information on records relevant to the child(ren)'s situation shall release such information or records as are necessary for the management of this case to the legal custodian named above and to any authorized representatives of the case management team of a community health agency, which is providing coordination of care and services with the legal custodian named above.

**ENTERED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE / MAGISTRATE

**IN THE JUVENILE COURT OF \_\_\_\_\_ COUNTY, TENNESSEE**

IN THE MATTER OF:	)	
_____	)	
_____ DOB _____	)	NO: _____
_____	)	
_____ DOB _____	)	NO: _____
_____	)	
_____ DOB _____	)	NO: _____
Child(ren) Under Eighteen (18) Years of Age	)	

**BENCH ORDER - CUSTODY TO DCS**

This cause came to be heard on \_\_\_\_\_, 2\_\_\_\_ before the Honorable \_\_\_\_\_, Judge/Magistrate of the Juvenile Court of \_\_\_\_\_ County, Tennessee, upon \_\_\_\_\_ filed by \_\_\_\_\_ for a \_\_\_\_\_ hearing.

Present for the hearing were: the child(ren)

- mother,  father, \_\_\_\_\_
- attorney/guardian ad litem for chil(dren), \_\_\_\_\_
- attorney(s) for parent(s), \_\_\_\_\_
- other participant(s), \_\_\_\_\_

The Court, having considered the testimony and evidence presented and the entire record, finds as follows:

- there is probable cause to believe the child(ren) is/are dependent, neglected or abused in that \_\_\_\_\_
- there is clear and convincing evidence that the child(ren) is/are dependent and neglected in that \_\_\_\_\_
- there is clear and convincing evidence that the child is unruly and in need of treatment and rehabilitation in that \_\_\_\_\_
- This matter was referred to the juvenile-family crisis intervention program and it has been certified that no other less drastic measure other than court intervention exists, pursuant to \_\_\_\_\_

T.C.A. § 37-1-132(b)(2).

- there is proof beyond a reasonable doubt that the child is delinquent and in need of treatment and rehabilitation in that \_\_\_\_\_

\_\_\_\_\_

The Court finds the continuation of the child(ren) in the home is contrary to the welfare of the child(ren), is not in the child's best interest, and there is no less drastic alternative to removal based on the following facts:

\_\_\_\_\_

\_\_\_\_\_

The Court finds:

- Reasonable efforts were made to prevent the child(ren)'s removal from the home, which include:

- |   |   |
|---|---|
| <input type="checkbox"/> Mental health counseling for child/children  | <input type="checkbox"/> Mental health counseling for parent  |
| <input type="checkbox"/> Drug & alcohol counseling for child/children | <input type="checkbox"/> Drug & alcohol counseling for parent |
| <input type="checkbox"/> Parenting classes                            | <input type="checkbox"/> Psychological evaluation for _____   |
| <input type="checkbox"/> Community Intervention Services (CIS)        | <input type="checkbox"/> Family Crisis Intervention           |
| <input type="checkbox"/> Structured After-School/Summer Activities    | <input type="checkbox"/> Probation/Aftercare                  |
| <input type="checkbox"/> Day Treatment for _____                      | <input type="checkbox"/> Intensive Case Management            |
| <input type="checkbox"/> Non-Custodial Assessment                     | <input type="checkbox"/> Home Ties                            |
| <input type="checkbox"/> Intensive in-home case management            | <input type="checkbox"/> Sexual abuse treatment for child     |
| <input type="checkbox"/> Sexual perpetrator treatment for _____       | <input type="checkbox"/> Homemaker services                   |
| <input type="checkbox"/> Residential Treatment for _____              | <input type="checkbox"/> Locating relatives                   |
| <input type="checkbox"/> Locating absent parent(s)                    | <input type="checkbox"/> Respite Care                         |
| <input type="checkbox"/> Other (specify)                              |   |

(Detailed information)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- It was reasonable to make no efforts to maintain the child(ren) in the home based on an assessment of the family and the child(ren)'s circumstances that include:

- Reasonable efforts to prevent removal were not required because:
  - this court or another court of competent jurisdiction has previously determined that the parent has subjected the child(ren) to aggravated circumstances as defined in T.C.A. §36-1-102(9);
  - the parent has been convicted in a criminal court of one of the felony crimes against a child specified in T.C.A. §37-1-166(g)(4)(B); or
  - the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.
- The Department of Children’s Services failed to provide reasonable efforts to prevent the child(ren)’s removal from the home.

It appearing to the Court that the following is the best interest of the child(ren) and the public.

**IT IS THEREFORE ORDERED:**

1. That temporary custody of the child(ren) \_\_\_\_\_ is hereby awarded to the State of Tennessee, Department of Children’s Services, with the authority to consent to any ordinary or necessary medical, surgical, hospital, psychological, psychiatric, institutional or education care.
2. That all state, county, or local agencies with information or records relevant to the child(ren)’s situation, including any public or private medical or mental health treatment resources and all educational facilities, shall release such information or records as are necessary for the management of this case to the Department of Children’s Services and to any authorized representatives of the case management team of a community services agency under T.C.A. 37-5-301 et seq. which is providing coordination of care and services with the Department of Children’s Services.
3. This matter is set for \_\_\_\_\_ hearing on
4. \_\_\_\_\_

**ENTERED** this the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_

\_\_\_\_\_

JUDGE / MAGISTRATE



IN THE MATTER OF:

\_\_\_\_\_, DOB \_\_\_\_\_ ) NO: \_\_\_\_\_

\_\_\_\_\_, DOB \_\_\_\_\_ ) NO: \_\_\_\_\_

\_\_\_\_\_, DOB \_\_\_\_\_ ) NO: \_\_\_\_\_

Child(ren) Under Eighteen (18) Years of Age )

ADJUDICATORY / DISPOSITIONAL ORDER

This cause came to be heard on \_\_\_\_\_, 2\_\_\_ before the Honorable \_\_\_\_\_, Judge/Magistrate of the Juvenile Court of \_\_\_\_\_ County, Tennessee, upon \_\_\_\_\_ filed by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, as an  adjudicatory/  dispositional hearing.

Present for the hearing were:

the mother,

had notice and failed to appear

- did not have notice or whereabouts unknown
DCS  has  has not made reasonable efforts to locate and provide notice
 was represented by Attorney

waived her right to representation pursuant to TRJP 30 at this hearing and chose to proceed pro se, as evidenced by the waiver of counsel form incorporated herein.

the father,

- had notice and failed to appear
 did not have notice or whereabouts unknown
DCS  has  has not made reasonable efforts to locate and provide notice
 was represented by Attorney

waived her right to representation pursuant to TRJP 30 at this hearing and chose to proceed pro se, as evidenced by the waiver of counsel form incorporated herein.

the child/children,

- was/were not present
 participated by phone because \_\_\_\_\_

Guardian(s) ad Litem,

- had notice and failed to appear  did not have notice

resource parent(s),

- had notice but chose not to attend

did not receive notice

n/a because \_\_\_\_\_

other participant(s), including CASA, agency representatives, and other parties \_\_\_\_\_ and representatives of the Department of Children's Services,

---

Upon the proof introduced at the hearing with all necessary parties properly before the Court either in person or by service of process; and the entire record, the Court finds by clear and convincing evidence that the child(ren) is/are dependent and neglected as follows (*specific findings of fact*):

---

The Court further finds that it is contrary to the child(ren)'s welfare to remain in the home and is in the child's best interest to be removed from the care, custody, or control of his/her \_\_\_\_\_ because: \_\_\_\_\_ and, there is no less drastic alternative to removal.

Reasonable efforts were made to prevent the child(ren)'s removal from the home, which include:

Mental health counseling for child/children

Mental health counseling for parent

Drug & alcohol counseling for child/children

Drug & alcohol counseling for parent

Parenting classes

Psychological evaluation for \_\_\_\_\_

Community Intervention Services (CIS)

Family Crisis Intervention

Structured After-School/Summer Activities

Probation / Aftercare

Day Treatment for \_\_\_\_\_

Intensive Case Management

Non-Custodial Assessment

Home Ties

Intensive in-home case management

Sexual abuse treatment for child

Sexual perpetrator treatment for \_\_\_\_\_

Homemaker services

Residential Treatment for \_\_\_\_\_

Locating relatives

Locating absent parent(s)

Respite Care

Other (specify)

(Detailed information)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It was reasonable to make no efforts to maintain the child(ren) in the home based on an assessment of the family and the child(ren)'s circumstances that include:  
\_\_\_\_\_

- Reasonable efforts to prevent removal were not required because:
- this court or another court of competent jurisdiction has previously determined that the parent has subjected the child(ren) to aggravated circumstances as defined in T.C.A. §36-1-102(9);
  - the parent has been convicted in a criminal court of one of the felony crimes against a child specified in T.C.A. §37-1-166(g)(4)(B); or
  - the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily.
- The Department of Children's Services failed to provide reasonable efforts to prevent the child(ren)'s removal from the home.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:**

1. That \_\_\_\_\_  
is/are a dependent and neglected child(ren) within the meaning of the law.
2. That temporary custody of said child(ren)  shall remain with the Department of 3. Children's Services  is hereby awarded to the Department of Children's Services with the authority to consent to any necessary medical, surgical, hospital, or institutional care effective \_\_\_\_\_.
3. That this Order shall remain in effect subject to further Orders of this Court.
4. That child support is reserved.
5. This matter is scheduled for a \_\_\_\_\_ hearing on \_\_\_\_\_

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH

<http://www.courts.state.nh.us>

Court Name:

Case Name:

Case Number:  
(if known)

**CONTRARY TO THE WELFARE AND /OR REASONABLE EFFORTS ORDER**

CHINS  DELINQUENT

*FOR USE WHEN: A child/minor is removed from the home or his/her removal is contemplated, State law requires the Court make findings as follows:*

**CHINS**

**(When and What Finding)**

- A.  Initial Removal, **Contrary to the Welfare**
- B.  Within 60 days of Removal, **Reasonable Efforts to Prevent Removal**
- C.  Review Hearing, **Reasonable Efforts to Finalize the Permanency Plan**  
*(NOTE: Finding required based on state law)*
- D.  Permanency Hearing, **Reasonable Efforts to Finalize the Permanency Plan**

**DELINQUENT**

**(When and What Finding)**

- A.  Initial Removal, **Contrary to the Welfare**
- B.  Within 60 days of Removal, **Reasonable Efforts to Prevent Removal**
- C.  Review Hearing, **Reasonable Efforts to Finalize the Permanency Plan**  
*(NOTE: Finding required based on state law)*
- D.  Permanency Hearing, **Reasonable Efforts to Finalize the Permanency Plan**

On \_\_\_\_\_, \_\_\_\_\_ a hearing was held.

**FINDINGS OF FACTS**

The Court makes the following findings of fact:

**A. CONTRARY TO THE WELFARE FINDING, PURSUANT TO RSA 169-B:11-a, I AND RSA169-D:10- b, (INITIAL REMOVAL)** (Required unless a child/minor is released to a parent or legal guardian)

Continuation in the home  **is**  **is not** contrary to the child's/minor's welfare for the following

reasons:

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*CHINS CASES: Unless a child is released to a parent or legal guardian, the Court shall determine, pursuant to RSA 169-D:10-b, whether continuation in the home is contrary to the child's welfare. The Court is required to make this determination in its first court ruling that sanctions, even temporarily, the removal of a child from the home (i.e. taken into temporary custody and removed from the home immediately thereafter). If the determination is not made, the child will be ineligible for Title IV-E foster care maintenance payments for his/her entire stay in an out-of-home placement.*

---

*DELINQUENT CASES: Unless a minor is released to a parent or legal guardian, the Court shall determine, pursuant to RSA 169-B:11-a, I, whether continuation in the home is contrary to the minor's welfare. If the "contrary to the welfare" determination is not made in the first court ruling, the minor will be ineligible for Title IV-E foster care maintenance payments for his/her entire stay in an out-of-home placement. This is required even if the removal (arrest, custody, and placement or detention) is only temporary, provided it exceeds four (4) hours. The Court is required to make this determination in its first court ruling that sanctions, even temporarily, the removal of a minor from the home (i.e. arrested or taken into custody and placed with someone other than a parent or legal guardian).*

---

**B. REASONABLE EFFORTS TO PREVENT THE REMOVAL, PURSUANT TO RSA169-B:11-a, II AND RSA 169-D:10-b, II (WITHIN 60 DAYS OF REMOVAL) THE COURT FINDS (SELECT i, ii OR iii):**

- i. Reasonable efforts  **were made**  **were not made** by DJJS or another agency to prevent the child's/minor's removal from the home of  mother  father  legal guardian as follows:
- ii.  Based on the safety considerations and circumstances of the child/minor and family at the time of removal, it is **reasonable that no additional effort is required** by DJJS to maintain the child/minor in the home of  mother  father  legal guardian.
- iii.  **Reasonable efforts were not required** to be made by DJJS to prevent the child's/minor's removal from the home of  mother  father  legal guardian because the parent/guardian has been convicted of a crime, pursuant to one of the following: RSA 630:1-a; 630:1-b;630:2; 629:1; 629:2; 629:3; 631:1; 631:2; 632-A:2; 632-A:3.

---

*State law requires that within 60 days of a child's/minor's removal from the home the*

*Court make a “reasonable efforts” determination. If the determination is not made, the child/minor will be ineligible for Title IV-E foster care maintenance payments for her/his entire stay in foster care.*

---

**C. REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN, PURSUANT TO RSA 169- D:21, II, (REQUIRED FOR ALL REVIEW HEARINGS FOR CHINS AND DELINQUENTS)**

**THE COURT FINDS (SELECT i AND ii):**

- i. The child has been in an out-of-home placement for  months, since \_\_\_\_\_ (Date). Reasonable efforts to finalize the permanency plan that is in effect  **were made**  **were not made** by DJJS to make it possible for the child to return to the home. The reasonable efforts or deficiencies were as follows:

\_\_\_\_\_  
\_\_\_\_\_

- ii.  Reunification is and remains the permanency plan for the child in an out-of-home placement **AND**

The **concurrent plan** is one of the following:

- Termination of Parental Rights (TPR)/Adoption  
 Parental Surrender/Adoption;  
 Guardianship with a Fit and Willing Relative

\_\_\_\_\_;

Guardianship with Another Appropriate Party;

\_\_\_\_\_ or

Another Planned Permanent Living Arrangement (APPLA)

\_\_\_\_\_

To date, the efforts made by DJJS with respect to the concurrent plan are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

*State law requires that at a CHINS review hearing the court determine whether DJJS has made reasonable efforts to finalize the permanency plan that is in effect. In most instances, the permanency plan that is in effect is reunification and when this is the plan, the Court shall consider whether services to the family have been accessible, available, and appropriate.*

---

**D. REASONABLE EFFORTS TO FINALIZE THE PERMANENCY PLAN, PURSUANT TO RSA 169- B:31-a, III AND RSA 169-D:21-a, III (PERMANENCY HEARING) THE COURT FINDS (SELECT i AND also ii OR iii):**

i.  The child/minor has been in an out-of-home placement for  months, since \_\_\_\_\_ (Date). Reasonable efforts to finalize the permanency plan that is in effect

were made  were not made by DJJS to make it possible for the child/minor to return to the home. The reasonable efforts or deficiencies were as follows:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ii. Reunification is the permanency plan for the child/minor in an out-of-home placement AND

The concurrent plan is:

\_\_\_\_\_

The following is required by DJJS to implement the permanency plan for the child/minor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

iii.  Reunification is no longer the permanency plan for the child/minor in an out-of-home placement

**AND**

The **concurrent plan** is one of the following:

Termination of Parental Rights (TPR)/Adoption

Parental Surrender/Adoption;

Guardianship with a Fit and Willing Relative

\_\_\_\_\_;

Guardianship with Another Appropriate Party;

\_\_\_\_\_ or

Another Planned Permanent Living Arrangement (APPLA)

\_\_\_\_\_

The following is **required by DJJS to implement the permanency plan**. Where **APPLA** is the permanency plan and the **child/minor is 16 years or older**, the implementation of the permanency plan should include the services and educational planning that will help with the transition to independent living.

---

*State law requires that at a permanency hearing the Court determine whether DJJS has made reasonable efforts to finalize the permanency plan that is in effect. In most instances, the permanency plan in effect is reunification and the Court is required to consider whether services to the family have been accessible, available, and*

*appropriate. Title IV-E foster care maintenance funds will not available until this court finding is made.*

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**E. THE COURT FURTHER ORDERS:**

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See attached further orders.

**These orders are effective immediately. All prior consistent orders remain in effect.**

**SO ORDERED:**

*PLEASE NOTE: This order shall reflect the date of the hearing as the date the finding was made and the order issued.*

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Date	Signature of Judge
	Printed Name of Judge

Copies:  Attorney for Child/Minor  Prosecutor

Mother

Father  \_\_\_\_\_ School District (Sending)

DJJS/JPPO

Other  \_\_\_\_\_ School District (Receiving)

1 These two forms were provided to the author by Judge Michael Key, Judge of the Juvenile Court of Troupe County, Georgia. Judge Key reports that many counties in Georgia use these or similar forms.

555 This form was provided to the author by the Mecklenburg County (Charlotte), North Carolina, Department of Social Services.



## **Appendix D**

**Letter from Judge to Children's Services Director Regarding Reasonable Efforts**

Superior Court  
State of California  
Santa Clara County Superior Court Building  
191 North First Street  
San Jose, California 95113  
(4061 299-3949  
Chambers of Leonard P. Edwards, Judge

December 6, 1989

Richard O'Neil, Director  
Department of Family  
and Children's Services  
55 West Younger  
San Jose, California 95110

Dear Dick:

I am writing to explain why the Juvenile Court Judicial Officers have made several "no reasonable efforts" findings in the past few months and what I believe the findings mean to the Department and the County. I believe these issues are novel and deserving of some detailed explanation.

As you know, pursuant to both state and federal law, the Court is required to make reasonable efforts findings at almost every stage of a dependency action. Reasonable efforts refers to those actions which the Department would reasonably be expected to take to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the Department would reasonably make to reunite foster children with their biological parents.

Two issues have recently resulted in findings of no reasonable efforts. The first is the failure of the Department to provide a placement for teenage mothers and their babies. The second is the failure of the Department to provide intensive in-home services to enable drug abusing mothers and their drug exposed babies to be placed together in the community.

In each of these types of cases, the Social Workers who appear in my court are working hard to prevent the removal of children and to provide services to facilitate reunification. They are, however, unable to provide the services on the scale to which I refer. Instead, they report to me in court that they have looked everywhere, that these services do not exist and that, as a result, the baby must be removed from the mother's care.

These are cases in which everyone in the courtroom agreed that the baby and mother should be together and, but for the lack of resources, they would be placed with one another. Moreover, everyone agreed that the provision of these services was reasonable under the circumstances. Indeed, these services have been widely discussed in Santa Clara County as being a necessary part of the effective support of children and families in the County. They are available in many counties both in

and out of California.

The finding of “no reasonable efforts” in these cases is important for several reasons. First, it is an indication that certain specified services were all that were necessary to retain a child with a parent. Second, it means that, given the circumstances of the County, the services are not extraordinary or unreasonable. Third, it may mean the Department will be unable to complete permanency planning for the child. Without a finding of “reasonable efforts,” the termination of parental rights may not be legally possible. See Welfare and Institutions Code Section 366.22. Finally, the finding means that the Department cannot be reimbursed for the costs of a child’s out-of-home care. See 42 U.S.C. Sections 671(a) (15) and 672 (a) (1).

Pursuant to my duties as Juvenile Court Judge, I am advising you of the consequences of a no reasonable efforts finding and hoping that by working with the Board of Supervisors you will be able to take steps to ensure that such services are available to the children and families in Santa Clara County. Of course, I will do whatever I can to assist you in your efforts.

Thank you for your consideration and attention to this important problem. I look forward to hearing from you about its resolution.

Sincerely yours,

LEONARD EDWARDS  
Presiding Judge, Juvenile Court

LE: hd  
cc: Board of Supervisors  
County Executive  
Presiding Judge, Superior Court  
Superior Court Juvenile Court Committee  
County Counsel  
District Attorney  
Public Defender  
Chief Probation Officer  
Federal Compliance Officer

# Appendix E

## Visitation Documents

1. Visitation Report by clinical psychologists
2. Letter from the Presiding Judge to the Director of Children's Services.
3. Letter from Director of Children's Services to the Presiding Judge.
4. Letter from the Presiding Judge to the local newspaper regarding the opening of a visitation center.
5. Court Order regarding Visitation

AMAL S. BARKOUKI, PhD.  
CLINICAL PSYCHOLOGIST  
301 B SARATOGA AVENUE • LOS GATOS, CALIFORNIA 95030  
(408) 395-2604

August 23, 1988

Honorable Judge Edwards  
Juvenile Court  
840 Guadalupe Parkway  
San Jose, CA 95110

Dear Judge Edwards:

At your request, we visited the site of \_\_\_\_\_ visits with his mother at the Department of Social Services (D.S.S.) auditorium, 55 West Younger Street in San Jose. We observed the facility on two different Saturday mornings, July 30 and August 20. In preparation for the visits and in order to better understand the circumstances of our observations, we spoke with a large number of people including administrators, supervisors, on-line social workers, probation officers, police officers, Family Court Services Staff, natural parents, foster parents, and Children's Shelter staff. While at first there were some reactions of surprise that the agencies had not been apprised of this undertaking earlier, we were most graciously welcomed and aided in our endeavors. Both Ms. Sylvia Pizzini and Ms. Anelda Quattieri facilitated our visits and helped arrange fruitful contacts with other key informants. Our contacts all appeared to be open and candid in their opinions, and we feel that we are able to describe the visitation site quite comprehensively.

### DESCRIPTION and IMPRESSIONS of SATURDAY MORNING D.S.S. VISITATION

The D.S.S. auditorium is approximately the size of a junior high school multipurpose room (approximately 60 x 40 feet). It has a low shallow stage at one end. The walls are office-beige and the floor is institutional linoleum. It can be best described as utilitarian, a no-frills meeting room somewhat in need of a fresh coat of paint. In this large room are plastic office chairs and about 20 small tables that can be pushed together or lined up for lectures or meetings. On Saturday mornings the furniture is spread out in little clusters of 3 or 4 chairs per table with many more chairs placed around the walls.

Into this space were crowded between 170 and 200 people on the mornings of our observations. Half of these members were visiting adults: mothers, fathers, grandparents, and other extended family members. Approximately one half of the children were younger than two years old, and the remainder ranged

in age from 2 to approximately 13, with most of this group clustering between the ages of two and eight. We were told that these visits were less crowded than usual, probably because a number of Emergency Care Satellite homes were on vacation. We were frankly at a loss to imagine how any more people could be accommodated in the available space.

There are three rooms adjacent to the auditorium. The foster parents wait for their charges in these rooms. Some have other children with them who are not visiting or being visited. The adults chat amongst each other, usually comparing notes on childcare experiences. Many of them have known each other for years. The children visit with each other, draw on the blackboard, or entertain themselves with paper and pencil or toys brought from home.

The visitation is orchestrated such that the parents line up outside the main entrance while the foster parents come with the children to the side entrance. The two groups do not interact outside the building. The police officers are very visible in directing the human traffic flow. One gets the impression that the foster parents are "slipping-in" hurriedly. Many are pushing strollers-for-two and carrying babes in arms. They all seem to be rushing, first to enter the building and then to leave it. Their easy chit-chat indoors does not carry over to the outside. At the end of the visit, each foster parent is busy shepherding their charges into cars and out of the parking lot. The natural parents wait inside the auditorium until the "all-clear" sign is given before they leave the building.

The parents waiting in line also know each other. Some, including this child's mother have been visiting for many months. She says that she visited her first son every Saturday morning for 16 months. A family that we had evaluated for Juvenile Probation six months ago, whereupon the court had ordered reunification and return to the home, was still only able to see their sons on these Saturday visitations. We met a number of people whom we had evaluated. Standing in line with the parents we were easily included in the group. Here the chit-chat is about "the system." The complaints are familiar ones which we often hear in our office: Everything takes so long, nobody tells you what's going on, even when you do everything they want they will keep the kids, the lawyers keep changing, the social workers keep changing, the continuances keep coming, the Court dates get delayed, and all they get is an hour a week in "the Zoo" to visit with the children. Surprisingly, when asked about the specific problems of the D.S.S. visitation, parents complained only that it was too hot, too crowded, and too noisy. They said that they liked the staff and thought they were doing their best. Most of them felt that the staff was friendly and that they were well treated. (A few complained of rude/brusque treatment at check-in.) We had the distinct impression that many of these parents had turned the waiting-in-line and the lack of privacy from a negative

to a positive experience. We found that a self-help support group mentality has sprung up between many of these parents, and a significant amount of camaraderie was in fact an attractive side-effect to what could be an otherwise noxious situation.

Once the parents have checked in, they sit in the auditorium while staff members accompany the foster parents and their solemn charges as they come in to meet the parents. The children are left with their parents, and the foster parents leave almost immediately. It is all very noisy and the quick messages such as "the baby needs his diaper changed" or "the bandaid is covering a tiny scratch and is nothing to worry about" must be almost shouted into the parents' ears.

At first the mood is slightly apprehensive while parent, child and sibling(s) establish contact. The little family groupings are quite varied. Some parents have come prepared with toys and clothing. Some parents have brought food. This ranges from complete meals, such as McDonald's burgers (often requested by their kids), or tamales, to heavily sugared soda pop, and much too much candy. Many parents come quite unprepared and seem not to know what to do to establish contact with their children. There is a lot of milling around, with adults talking to each other and kids going from grouping to grouping. Within a quarter hour the energy pitch increases, it gets even noisier, and now some family groups seem more focused in on themselves. Many single parents sit alone holding their babies. They jiggle them on their knees and look into their faces. Others talk to, play with, or feed their children. After a while some parents walk around the room with their babies and engage in conversation with each other. It is as though some parents need the distraction and stimulation of the activity level in the room and might find it hard to tolerate an hour alone with an infant or child. The mother and child you asked us to observe seemed to fall into this category.

We were struck by the importance of the child-child interactions. Children's faces lit up as they recognized each other from previous placements or from previous visits. One perky little girl visiting her older brother sang out "Hello, Foster Farms!" Siblings got a chance to see each other or see the "new" baby. In a setting which seems to hold so little for the children themselves, these rays of small connections should at least be mentioned.

As the time to end the visits grows near, different participants show different reactions. Some parents begin putting toys and food away early, perhaps acting this way to exert some control over their impending separation, others as if frustrated by a nonresponsive child. Still other parents and children begin to look blank-faced again and seem to have little to say to each other. Other parents and children become more anxious or distractible, wander around, and walk into the groupings of other families. As time is called, last

minute cleanup and goodbyes take place, and the foster parents appear, some wheeling carriages, pick up their charges, and quickly leave. The very young children seem not to notice leaving their family and going off with a new caretaker. The older children, with a better developed, stable picture in their heads of their parents, react more strongly, with tears, depression, anger, clinging, or overcontrol of their emotions. As the foster parents leave, the parents stand around near the exit, looking forlorn, some crying, hardly speaking to each other at first. When it is time for them to leave, they go quickly, some talking to old friends or new acquaintances, several complaining about the system which keeps them apart from their children.

POSSIBLE EFFECTS OF SATURDAY MORNING D.S.S.  
VISITATION ON PARENT and CHILD

There is some confusion and differing perceptions about the use of this service in an overall reunification plan. Some believe it is designed for, and used by, predispositional cases only. This was not our impression. Clearly, there were families who have been coming for many months (or as with Ms. B, for over a year). The Shelter administrator feels that this multiple use and the horrible back-logging of cases which do not receive speedy adjudication and/or resolution is a major contributor to overwhelming a service originally designed as a holding action for 30 to 60 days.

The purpose of the visitation is also viewed differently by service providers and service recipients. Social workers tend to see this visitation as a very small part of a longer, more complex reunification plan which might include remaining drug free, attending parenting classes, going to counseling, finding appropriate shelter, etc. Parents, however, tend to interpret visitation, including this one, as being the bellweather of how well they are doing in the system (or being done to by the system). That is, they believe that if they are doing well they should be rewarded by being allowed to see their children more often. The specific details of which parents and children qualify to visit here, as opposed to having a social worker individually supervise their visits, or whether the parents get both types of visits, or whether this Saturday visit is used as a make up for individual visits that the social worker had to cancel, are beyond our scope. It appears that known difficulties, such as parents who would be expected to be management problems or children with severe medical problems, are excluded from this service, as are cases where close supervision is needed to prevent undue pressure on a child/victim witness.

If we were to look only at the Saturday morning visitation in terms of how well it is meeting the needs of children, it is likely that the effect of the visitation will be, in large part, a function of the child's developmental stage. Children who are under the age of 6-8 months, and who have been removed from

their mothers at or shortly after birth, will be unable to bond to them during such limited visits. The fact that this is such a noisy and highly distracting environment may make it harder on parents and child, but even if the environment were physically perfect, a child this young cannot bond in one or two hours a week. While we cannot cite a definitive study of specific bonding needs measured in hours per day, we can extrapolate from our knowledge of child development that for good quality bonding to occur, infants from 0-6 months need to be with a nurturing individual four to six hours a day. They do not have the capacity to distinguish the parent from other, to them far more meaningful, caretakers such as their satellite home foster parents. Such visits may serve to keep the child in the parent's psychological and emotional space, but they do nothing towards keeping the parent in the child's psychological and emotional space.

For children, such as the B. baby, who are removed from their parents at six months to a year of age, the picture is already confounded by the preceding bonding experiences. For example, we understand that this child's early experiences were characterized by some emotional and physical neglect. It is reported that he was often left unattended and understimulated, while at the same time he was being overfed to the point of obesity. We were concerned by his placid demeanor and what appears to be a distinct sluggishness or a possible developmental delay in his physical responses. This could be a result of organic factors or due to poor parenting, or because of a combination of both. After all, a nonresponsive child is not very engaging of an easily distracted mother. According to Mrs. B's social worker, when not being specifically coached by her worker, the baby's mother does not follow through with stimulating exercises or other suggestions for interacting with her child. This corroborates our observations at the D.S.S. visit. When one of us paid attention to Mrs. B., she paid attention to the baby. When we were not actively involved with her, her attention wandered all over the room. She seemed to need an inordinate amount of contact, and on a number of occasions would go up to people to start conversations with "Would you like to hold my baby?" Clearly this D.S.S. facility setting is not conducive to improving the relationship between Mrs. B. and her child. It probably does nothing for the child. At best it may keep Mrs. B. cognizant of the fact that she is the child's mother, a role that seems important to her self-image and around which she may organize some of her psychic energy. Without the active supervision and coaching she receives on her other weekly visit, when the social worker is involved, we would probably find her even more distracted and disengaged.

Generally speaking, we do not believe that the D.S.S. auditorium visits serve any needs of young children until after they have reached the stage of "object-constancy" (i.e. they are able to carry with them a consistent mental-emotional construct of their parent even when the parent is absent). They also need to understand the concepts of time and spatial relationships and



have acquired some language skills to understand the meaning of: "I will see you here again next week." We would expect these characteristics to have developed between the ages of three to five years, given a normal development in the first three years of life. However, very few of these children have had their basic needs met in the first three years of their lives. With the older children, it is important that they be reassured that their parents still exist. Sometimes children catastrophize the abandonment, and fear that they have deserted their needy parents to the mercy of an overwhelming world. Sometimes they think awful thoughts or wish destruction on the parents who have hurt or abandoned them. Sometimes they feel guilty that they are responsible for their separation from their parents, perhaps by having told a teacher about having been abused. Seeing their parents can be the only real reassurance that their thoughts are not weapons and their fears are not premonitions of things that will take place. This is about all that an hour a week can do for these children. Over time the psychologically healthier the child is, at any age, the likelier he or she is to develop better bonding relationships with a good caretaker than it can maintain with a parent in these circumstances.

It would be a mistake to consider these Saturday morning visits as forms of reunification intervention. They do not adequately serve the needs for bonding of young children nor the improvement of parent-child interactions with older children. The problem is by no means limited to the site or the setting. The most salient problem is how little time is actually available for parent-child interaction. Not only is the Saturday time itself necessarily limited, but in many cases there is little if any other available visitation. This lack of consistent contact between parent and child is bound to create both short and long term problems, whether these be in reunification and in permanent placements, or later in abrogations and adoptions. The current system is stretched beyond its resources. Social workers and probation officers are using a lot of their professional time supervising visits during the week, the Children's Shelter is left understaffed on Saturday mornings, and still parents and children are dolefully underserved in terms of their need for appropriate contact.

#### RECOMMENDATIONS

In the best of all possible worlds we would not need this visitation site; or, as one foster mother said, "The only way to improve the situation is to have a drug-free world." But even in this less-than-perfect-world we might not need the D.S.S. auditorium visit if:

- a) We could have intensive social services, teaching homemakers, visiting nurses, community companions, parent educators, respite care workers, family therapists, decent housing, emergency funds, and

all the community resources needed to keep most children with their parents, while insuring their physical wellbeing and improving their psycho-social environment.

- b) We had speedy adjudication of all cases brought to Court for disposition (reunification services, guardianship, abrogation, etc.). Only a small minority of cases would remain awaiting disposition (within 30 days) and individual plans could be made for them.

But within our current and definitely imperfect system, it may yet be possible to make some changes:

1. Predispositional cases should be distinguished from cases which are ostensibly in various stages of reunification. If the cases were adjudicated within 30 days, then the Saturday morning visits could be used as a stop-gap crisis measure for the reassurance of older children and the maintenance of parental contact with younger and older children.
2. Families for whom reunification services are recommended should not be using this facility in this manner. As stated before, this type of visitation cannot be seen as playing any part in a reunification plan. Visitation for the purposes of reunification requires much more parent-child interaction time, with much more focussed guidance and supervision of this interaction.
3. The entire visitation program must be augmented by more staff; volunteers, paraprofessionals, students of child development, social work and counseling, retired teachers, etc. can be enlisted from the community. (There is a small beginning of this already started by the Department.)
4. Families who can benefit from reunification services should receive individualized visitation plans. Some may be able to visit at the foster parents' homes, some at other neutral settings supervised by a volunteer who would be supervised by a social worker. The worker might spend an hour every other week with parents and children to develop guidance and counseling plans.
5. In the meantime the current visiting hours can be staggered so that no more than 50 people (including children) visit at one time. If more volunteers and fewer staff were used per visit, this might not overload staff any further. Then the sites could possibly be dispersed better throughout the county, perhaps using schools with multipurpose rooms and some indoor/outdoor play equipment. If the numbers, noise, and overstimulation were lower then the visits could be expanded to two hours at a time.

6. Provisions should be made for a staff/volunteer supervised time period of 15 minutes at beginning and end of visits, wherein foster parents and parents can exchange information, along with handing the children back and forth. Both parents and foster parents wanted this opportunity and felt that it would be good for the children to see them collaborate together on their behalf.
7. Parents should be discouraged from giving their children too much candy and sugared drinks. Foster parents complained of "sugar highs", stomach aches, and indigestion that they believe is due to too much sugar and not to emotional upset following the Saturday visits. Some suggestions should routinely be made to the parents as to what they could bring to their children during their visits.
8. The ambiance of the current site can itself be improved with carpetting, which would also reduce the noise level. One mother who met her children in our office said that she had never been able to see her daughter crawl before, because the auditorium floors are too hard and cold for her baby to crawl on. Colorful waist-high partitions properly placed could give a semblance of individual family space while allowing observation and supervision. Volunteers or parents could help with the set-up and dismantling of the partitions. Child-sized stacking chairs are needed, and perhaps some pillows.
9. The use of uniformed policemen seems problematic to some people. We felt that the need for safety of parents, children, and staff and the need to deter drug and alcohol problems from becoming too blatant overrode these objections.

In closing, we would like to say that we were impressed with the amount of compassion we ourselves observed and which we heard from the people we interviewed. Everyone was upset and dissatisfied with the current program. While people naturally saw things from different perspectives, there was much agreement on the definition of the problem, some agreement as to the causes of the problem, and many ideas as to the improvement needed.

Sincerely,



Amal S. Barkouki, Ph.D.



William D. Winter, Ph.D.

AB/WW/gj

Superior Court of the State of California

COUNTY OF SANTA CLARA  
191 NO. FIRST STREET  
SAN JOSE, CALIFORNIA 95113

CHAMBERS OF  
LEONARD P. EDWARDS  
JUDGE

September 20, 1988

Mr. Richard O'Neil, Director  
Department of Social Services  
55 West Younger Avenue  
San Jose, California 95110

Dear Dick:

On behalf of the Juvenile Court Committee of Superior Court I am writing concerning the quantity and quality of visitation provided by your departments between parents and children who have been removed from their parents.

For a number of years we have all been aware of the paucity of resources devoted to the provision of visitation to parents and children. The court recognizes that visitation is not appropriate in some cases and must be supervised in other cases. In still others, there is no reason why there cannot be extensive unsupervised contact between parents and children.

Unfortunately the dependency system is simply not equipped to provide enough visitation for separated families and the quality of some of the scheduled visitation is unacceptable.

One of the reasons we call this to your attention is that the amount and quality of visitation is often below the standard that the court would find reasonable under existing legal standards. As you know the court is required to make reasonable efforts findings at all dependency hearings. A critical component of most reasonable efforts findings is the amount of visitation a parent has completed. Related to that is the quality of that visit, including the relationship between parent and child at the visit. There is insufficient visitation to make such findings now.

The problem is complex and may involve resources you do not have. It certainly will involve creative and cooperative thinking.

We have a few suggestions. First, based upon the enclosed report the Saturday visitation program must be modified immediately. Second, we hope you can begin to identify persons within your departments that social workers and probation officers can turn to for assistance when substantial visitation is required. It appears that your investigating caseworkers are unable to bear the brunt of any increased visitation.

Third, you might consider arranging for visits in the parent's home whenever possible. If that is not possible, you might persuade foster parents to provide visits in their homes. We are aware of some of the problems this may create, but it is also clear that successful visits are more likely in a homelike setting than in a county office building.

Finally, there are a number of persons who have been working for some time trying to develop a visitation program that would combine the needs of the Probation Department, the Department of Social Services and Family Court Services. We could give you those names if you are interested.

The Superior Court expects you to take the lead in addressing this critical issue. The court will support your efforts. We ask to be apprised of your efforts as soon as possible.

Sincerely yours,

LEONARD EDWARDS  
Presiding Judge  
Juvenile Court

LE:jh

Enc.

cc: Superior Court Juvenile Judges Committee  
Presiding Judge Peter Stone

# County of Santa Clara

Department of Social Services



55 West Younger Avenue  
San Jose, California 95110

November 7, 1988

Honorable Leonard P. Edwards  
Presiding Judge, Juvenile Court  
840 Guadalupe Parkway  
San Jose, CA 95110

Dear Len:

I am responding to your letter of September 20, 1988, regarding the Department's arrangements for visitation between children placed in Emergency Satellite Homes (ESH's) and their birth parents.

As a result of that letter, and the report attached to it submitted by Drs. Amal S. Barkouki and William D. Winter, my staff and I have begun to document the nature and extent of visitation under the current situation and to take steps to increase visitation alternatives. The status of these efforts to date is:

- A survey (attached) of all social workers is underway to determine how many children in ESH's have contact with their parents at times other than the Saturday morning group visitation. Preliminary discussions with social workers indicate that some use the Saturday group visit as a supplement to visitation rather than the only visit.
- Upon completion of the survey, we will have specific information regarding the future plans and visitation needs of children in ESH's. We can then develop alternatives as indicated by the survey findings. For example, those children who could otherwise be in regular foster care would more appropriately be visited at the foster home if their parents are cooperating with the service plan. On the other hand, those children who would be at risk if they were allowed unsupervised visitation with parents, might use the Saturday visitation at DSS as a supplement to other supervised visitation arranged by the social worker.

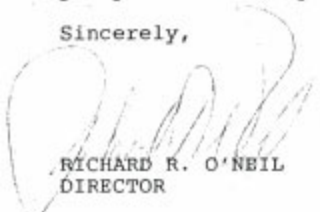
Board of Supervisors: Suzanne Wilson, Zoe Lofgren, Thomas L. Legan, Fred Hendon, Dianne McKenna  
County Executive: Sally H. Reed



- Since many of the children have been in ESH's for several months at the time the case is transferred to DSS, they have "settled-in" and it would be contra-indicated to move them to a regular foster home if reunification plans are progressing successfully. Therefore, the ability to place children in regular homes as soon as possible after detention is essential to preventing them from ESH visitation restrictions. My staff is working on a proposal which would allow ER workers to move children from an ESH to a placement of choice early in the process. I plan to discuss this issue with Pete Silva after the proposal is finalized and I have met and conferred with Local 535.
- I am developing a home-like "Visitation Center" in the community. GSA is looking for a large rental house which we can refurbish as a comfortable place for visitations to occur. I envision a community organization taking on the house as a project, volunteering time and furnishings to the cause. We will probably staff this center with counselors and transportation officers.

I share your concern for promoting parent-child visitations which are conducive to reunification. I believe the above-system changes and program enhancements will help achieve our common goal. I will keep you posted on the progress of these efforts.

Sincerely,



RICHARD R. O'NEIL  
DIRECTOR

RRO:SP:dmh  
(LTRS 2-3)

Attachment

October 31, 1988

All Continuing Child Welfare Social Workers

**SATURDAY VISITATION PROGRAM FOR ESH CHILDREN - SURVEY**

I have been working with Sylvia Pizzini, Assistant Director, to improve Reasonable Efforts services to children in Reunification status. Part of this effort focuses on visitation opportunities for parents whose children are still in ESH homes.

Please use this opportunity to give your ideas or suggestions on how this program works for you and how it can be a better resource for you.

1. How many of the children in your caseload are in Emergency Satellite Homes?
2. Do you have any children in your caseload who are in ESH homes and visit their parents at the ESH Saturday visitation at DSS?
3. If yes, how many visits per week, in addition to the supervised Saturday visits, does each child in your caseload have with their parents (list # for each child)? If no, skip to question 4.
4. Of the children in #2 above, how many do you think will be returned home?
5. How many will be placed in regular foster homes?
6. How many will be placed in foster/adopt homes (excluding relatives)?
7. How many will be placed with a relative?
8. What is the reason for not moving children from ESH to a placement of choice, either now or in the past?
9. The supervised Saturday visitation program at DSS was designed for children who are in protective custody. Why, after the dispositional hearing are you still using, or have you in the past used, the Saturday visitation program--what purpose does Saturday visits have in your case plan?





Dear Sirs:

On Monday, May 8th, the Santa Clara County Department of Social Services officially opened Clover House, a visitation center for parents whose children have been removed for reasons of abuse or neglect. I did not notice any coverage in the Mercury News.

This is a newsworthy event. The Department of Social Services or DSS is charged with the responsibility of protecting children, preserving families and finding appropriate long term placement for children who cannot be reunited with their families. At the heart of any reunification program is visitation in homelike atmosphere.

Clover House is a private home which has been converted to provide a suitable visitation setting for parents separated from their children. It is a humane and sensitive response to families who need support if reunification is going to be achieved.

Upon its opening Clover House became a model for visitation centers in California. Our community has a right to be proud of it just as we will be proud when our Children's Shelter is completed in the years to come.


The public often reads about the Department of Social Services when there is a tragedy involving children and their families. It is important to recognize the fine work that social workers do on a daily basis to serve the families in our community. It is even more important to celebrate when the quality of services is significantly improved as when the doors of Clover House opened.

Congratulations to Dick O'Neil, Director of DSS for his leadership in opening this new community resource.

Leonard Edwards  
Presiding Judge, Juvenile Court

(ENDORSED)  
**FILED**

NOV 8 1988

GRACE K. YAMAKAWA  
County Clerk  
Santa Clara County  
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA  
JUVENILE COURT

O R D E R

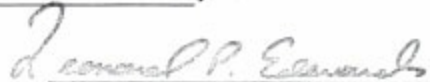
Effective immediately in all dependency cases (Welfare and Institutions Code sections 300 et seq) the Probation Department and Department of Social Services shall include in dispositional, six months review and permanency planning reports a specific set of recommendations relating to visitation between the child and any non-custodial parent. The recommendations shall include the frequency, duration and terms of any visitation.

If there is a recommendation for no visitation between a parent and child, the report shall contain a statement of reasons why contact would be detrimental to the child. The parents' views on visitation shall also be included in the report. This order is made partially in response to the case of In re Rada W. (1988) 88 C.D.O.S. 7459 which holds that it is

1 improper for the judge to delegate visitation decisions to the  
2 supervising case worker.

3 DATED: \_\_\_\_\_

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5 LEONARD EDWARDS  
6 Presiding Judge, Juvenile Court

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## Appendix F

### 45 Code of Federal Regulations Section §1356.21

#### §1356.21

Foster care maintenance payments program implementation requirements.

**(a) Statutory and regulatory requirements of the Federal foster care program.** To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, CFR 1356.30, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

**(b) Reasonable efforts.** The State must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(1) of the Act), the State must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

**(1) Judicial determination of reasonable efforts to prevent a child's removal from the home. (i)** When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

**(ii)** If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

**(2) Judicial determination of reasonable efforts to finalize a permanency plan. (i)** The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

**(ii)** If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

**(3) Circumstances in which reasonable efforts are not required to prevent a child's removal**

**from home or to reunify the child and family.** Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

**(i)** A court of competent jurisdiction has determined that 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)** A court of competent jurisdiction has determined that the parent has been convicted of:

**(A)** 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;

**(B)** 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;

**(C)** Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter; or

**(D)** 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 with respect to a sibling have been terminated involuntarily.

**(4) Concurrent planning.** Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

**(5) Use of the Federal Parent Locator Service.** The State agency may seek the services of the Federal Parent Locator Service to search for absent parents at any point in order to facilitate a permanency plan.

**(c) Contrary to the welfare determination.** Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of that stay in foster care.

**(d) Documentation of judicial determinations.** The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order.

**(1)** If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

**(2)** Neither affidavits nor *nunc pro tunc* orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

**(3)** Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

**(e) Trial home visits.** A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

**(f) Case review system.** In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

**(g) Case plan requirements.** In order to satisfy the case plan requirements of sections 471(a) (16), 475(1) and 475(5) (A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

**(1)** Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

**(2)** Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

**(3)** Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interests and special needs of the child. (FFP is not available when a court orders a placement with a specific foster care provider);

**(4)** Include a description of the services offered and provided to prevent removal of the child from the home and to reunify the family; and

**(5)** Document the steps to finalize a placement when the case plan goal is or becomes adoption or placement in another permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act. When the case plan goal is adoption, 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. (This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0140. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

**(h) Application of the permanency hearing requirements. (1)** To meet the requirements of the permanency hearing, the State must, among other requirements, comply with section 475(5) (C) of the Act.

**(2)** In accordance with paragraph (b)(3) of this section, when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the court determines that reasonable efforts to reunify the child and family are not required.

**(3)** If the State concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the State must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

- (i) The case of an older teen who specifically requests that emancipation be established as his/her permanency plan;
- (ii) The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him/her to the age of majority and to facilitate visitation with the disabled parent; or,
- (iii) The Tribe has identified another planned permanent living arrangement for the child.
- (4) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of *permanency hearing* must be so extended by the administrative body.
- (i) Application of the requirements for filing a petition to terminate parental rights at (1)** Subject to the exceptions in paragraph (i)(2) of this section, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):
- (i) Whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:
- (A) Must calculate the 15 out of the most recent 22 month period from the date the child is considered to have entered foster care as defined at section 475(5)(F) of the Act and § 1355.20 of this part;
- (B) Must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;
- (C) Must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,
- (D) Need only apply section 475(5)(E) of the Act to a child once if the State does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;
- (ii) Whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,
- (iii) Who has been convicted of one of the felonies listed at paragraph (b)(3)(i) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.
- (2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:
- (i) At the option of the State, the child is being cared for by a relative;
- (ii) The State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child. Compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:
- (A) Adoption is not the appropriate permanency goal for the child; or,
- (B) No grounds to file a petition to terminate parental rights exist; or,
- (C) The child is an unaccompanied refugee minor as defined in 45 CFR 400.111; or
- (D) There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights; or
- (iii) The State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable



efforts to reunify the family are required.

**(3)** When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

**(j) Child of a minor parent in foster care.** Foster care maintenance payments made on behalf of a child placed in a foster family home or child care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on items listed in the definition of *foster care maintenance payments* in § 1355.20 of this part.

**(k) Removal from the home of a specified relative. (1)** For the purposes of meeting the requirements of section 472(a)(1) of the Act, a removal from the home must occur pursuant to:

**(i)** A voluntary placement agreement entered into by a parent or guardian which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or  
**(ii)** A judicial order for a physical or constructive removal of the child from a parent or specified relative.

**(2)** A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

**(3)** A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties.

**(l) Living with a specified relative.** For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), one of the two following situations must apply:

**(1)** The child was living with the parent or specified relative, and was AFDC eligible in that home in the month of the voluntary placement agreement or initiation of court proceedings; or

**(2)** The child had been living with the parent or specified relative within six months of the month of the voluntary placement agreement or the initiation of court proceedings, and the child would have been AFDC eligible in that month if s/he had still been living in that home.

**(m) Review of payments and licensing standards.** In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

**(1)** The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

**(2)** The licensing or approval standards for child care institutions and foster family homes.

**(n) Foster care goals.** The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation with the force of law.

**(o) Notice and opportunity to be heard.** The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and an opportunity to be heard in permanency hearings and six-month periodic reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not include the right to standing as a party to the case.

[65 FR 4088, Jan. 25, 2000, as amended at 66 FR 58677, Nov. 23, 2001]

## Appendix G

### 45 CFR §1355.25 Principles of Child and Family Services

#### §1355.25

Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

**(a)** The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

**(b)** Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

**(c)** Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

**(d)** Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

**(e)** Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

**(f)** Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

**(g)** Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

**(h)** Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.[61 FR 58654, Nov. 18, 1996

# Appendix H

## Courts Catalyzing Change (CCC) Benchcards

### Persons who should be present at the PPH<sup>2</sup>

- Judge or judicial officer
- Parents of each child whose rights have not been terminated
  - Mothers, fathers (legal, biological, alleged, putative, named), non-custodial parents – all possible parents
- Parent partners, parent mentors if assigned/available, substance abuse coach, DV advocate
- Relatives – relatives with legal standing or other custodial adults, including adult half-siblings
  - Paternal and maternal relatives
- Non-related extended family, fictive kin (someone who is known and trusted by the families; godparents)
- Assigned caseworker
- Agency attorney
- Attorney for each parent (if conflict exists)
- Legal advocate for the child
- Guardian ad Litem (GAL)
- Court Appointed Special Advocate (CASA)
- ICWA expert (if ICWA applies)
- Tribal representative/tribal liaison
- Treatment and/or service providers
- All age-appropriate children
- Foster parents
- Cultural leaders, cultural liaisons, religious leaders
- Court-certified interpreters or court-certified language services
- Education liaison/school representative
- Court reporter
- Court security

### Courts can make sure that parties and key witnesses are present by:<sup>3</sup>

- Ensuring that the judge, not the bailiff or court staff, makes the determination about who is allowed to be in the courtroom.
- Asking the youth/family if there is someone else who should be present.
- Requiring quick and diligent notification efforts by the agency.
- Requiring both oral and written notification in a language understandable to each party and witness.
- Requiring service/tribal notice to include the reason for removal, purpose of the hearing, availability of legal assistance in a language and form that is understandable to each party and

witness.

- Requiring caseworkers and/or protective service investigators to facilitate attendance of children, parents, relatives (paternal and maternal), fictive kin and other parties.
- Facilitating telephonic or video conferencing appearance at hearings.

### **Reviewing the Petition**

- A sworn petition or complaint should be filed prior to the preliminary protective hearing and served/provided to the parents.
- The petition should be specific about the facts that bring the child before the court.
- The petition should not be conclusory without relevant facts to explain and support the conclusions.
- Petitions need to include allegations specific to each legal parent or legal guardian if appropriate.
- If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.
- Petitions/removal affidavits need to include specific language clearly articulating the current threat to the child's safety.

### **Reflections on the Decision-Making Process that Protect Against Institutional Bias:**

#### **Ask yourself, as a judge:**

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced (or how might it influence) my decision-making process and findings?
- What evidence has supported every conclusion I have drawn, and how have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts in ICWA cases) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?

### **Indian Child Welfare Act (ICWA) Determination**

The court should require that the applicability of the ICWA be determined before proceeding with the preliminary protective hearing. If the court has reason to believe ICWA applies, the court should proceed accordingly.

- If Yes – different standards apply, refer to the ICWA Checklist.
- If Yes – determine whether there was clear and convincing evidence, including testimony of a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. § 1912(e).

### **Engage Parents**

- What language are you most comfortable speaking and reading?
- Do you understand what this hearing is about?
- What family members and/or other important people should be involved in this process with us?
- Do you understand the petition? (review petition with parties)

### **Due Process**

- Who are the child's parents and/or guardians?
- How was paternity determined?
- What were the diligent search efforts for all parents?
- Have efforts to identify and locate fathers been sufficient? What has been done?
- How were the parents notified for this hearing?
  - Was the notice in a language and form understandable to parents and/or guardians?
- Do the parents understand the allegations?
- Are the parents entitled to representation? Are there language issues to consider when appointing attorneys?
- Are there issues in the case that are covered by the Americans with Disabilities Act?

### **Legal Threshold for Removal**

- Has the agency made a prima facie case or probable cause showing that supports the removal of the child?
- Have the family's cultural background, customs and traditions been taken into account in evaluating the event and circumstances that led to the removal? Have the parent(s) cultural or tribal liaison/relevant other(s) been asked if there is a culturally-based explanation for the allegations in the petition?

### **Reasonable Efforts (to Prevent Removal)**

- Were there any pre-hearing conferences or meetings that included the family?
  - Who was present?
  - What was the outcome?
- What services were considered and offered to allow the child to remain at home? Were these services culturally appropriate? How are these services rationally related to the safety threat?
- What was done to create a safety plan to allow the child to remain at home or in the home of another without court involvement?
  - Have non-custodial parents, paternal and maternal relatives been identified and explored? What is the plan to do so?
- How has the agency intervened with this family in the past? Has the agency's previous contact with the family influenced its response to this family now?

### **What is Preventing the Child From Returning Home TODAY?**

- What is the current and immediate safety threat? Has the threat diminished? How do you know that? Specifically, how can the risk be ameliorated or removed?
- What is preventing the child from returning home today? What type of safety plan could be developed and implemented in order for the child to return home today?
  - What specifically prevents the parents from being able to provide the minimally adequate standard of care to protect the child?

- Will the removal or addition of any person from or in the home allow the child to be safe and be placed back in the home?
- If the safety threat is too high to return the child home, how have the conditions for return been conveyed to the parents, family and child, and are you satisfied that they understand these conditions?

### **Appropriateness of Placement**

- If child is placed in foster care/shelter, have kinship care options been fully explored? If not, what is being done to explore relatives? If so, why were the relatives deemed inappropriate?
- If child is placed in kinship care, what steps have been taken to ensure the relative is linked with all available training, services, and financial support?
- How is the placement culturally and linguistically appropriate?
- From the family and child’s perspective, is the current placement culturally and linguistically appropriate?
- How does the placement support the child’s cultural identity? In what way does the placement support the child’s connection to the family and community?
- How does the placement support the family/child’s involvement in the initial plan?
- What are the terms of meaningful family time with parents, siblings and extended family members?
- Do the terms of family time match the safety concerns? Is it supervised? Specifically, why must it be supervised?
- Is the time and location of family time logistically possible for the family, and supportive of the child’s needs?

### **Reasonable Efforts to Allow the Child to SAFELY Return Home**

- What services can be arranged to allow the child to safely return home today?
- How are these services rationally related to the specific safety threat?
- How are the parents, extended family and children being engaged in the development and implementation of a plan for services, interventions, and supports?
- How will the agency assist the family to access the services?
  - Does the family believe that these services, interventions and supports will meet their current needs and build upon strengths?
  - Has the family been given the opportunity to ask for additional or alternate services?
- How are the services, interventions and supports specifically tailored to the culture and needs of this child and family?
  - How do they build on family strengths?
  - How is the agency determining that the services, interventions and supports are culturally appropriate?
- What evidence has been provided by the agency to demonstrate that the services/interventions

for this family have effectively met the needs and produced positive outcomes for families with similar presenting issues and demographic characteristics?

## **CLOSING QUESTIONS TO ASK PARENTS, CHILDREN AND FAMILY MEMBERS**

- Do you understand what happened here today?
- Do you understand what are the next steps?
- Do you have any questions for the court?

2 State and federal law determine who must be present for any hearing to proceed. Noted participants may or may not be required by law; however, as many as possible should be encouraged to attend the initial hearing.

3 State and federal law determine who must be present for any hearing to proceed.

# **Appendix I**

## **Interim Review Forms**

1. Adoption Progress
2. Status of the Child Regarding the Indian Child Welfare Act
3. Paternity
4. Receipt of Psychological Evaluation
5. 90 Day Reunification Review for Child Under Three



## REASON FOR HEARING

### Interim Review: Adoption Progress

#### CURRENT SITUATION

1. Parental rights terminated on \_\_\_\_\_
2. Appeal pending?  Yes  No  
If yes, the date the appeal was filed is \_\_\_\_\_
3. Case transferred to Adoptions Bureau?  Yes  No  
If not, the estimated date for transfer is \_\_\_\_\_
4. Name of adoptions social worker: \_\_\_\_\_
5. Child(ren) in a prospective adoptive home?  Yes  No  
If not, the estimated date for prospective adoptive home placement is \_\_\_\_\_
6. Adoption home study completed?  Yes  No  
If not, the estimated date for completion of adoptive home study is \_\_\_\_\_
7. Matching process completed?  Yes  No  
If not, the estimated date for matching is \_\_\_\_\_
8. Adoption Assistance Program (AAP) determination completed?  Yes  No  
If not, the estimated date for completion of AAP determination is \_\_\_\_\_
9. Full Disclosure completed?  Yes  No  
If not, the estimated date for completion of Disclosure is \_\_\_\_\_
10. Adoption Placement Agreement signed?  Yes  No  
If not, the estimated date for signing of Adoption Placement Agreement is \_\_\_\_\_
11. Finalization scheduled?  Yes  No  
If not, the estimated date for Finalization Hearing is \_\_\_\_\_
12. Describe special problems preventing adoption finalization:  
\_\_\_\_\_

## REASON FOR HEARING

### Interim Review: Status of Indian Child Welfare Act

#### CURRENT SITUATION

1. Native American or Eskimo ancestry alleged by:  mother  father  child  other (specify):
2. Federally recognized Tribe(s) / Band(s) alleged:
3. The SOC 318 was sent to:
  - the Bureau of Indian Affairs (BIA) on (date).
  - the Tribe(s) / Band(s) on (date).A copy of the SOC 318  is attached  was previously filed with the Court.
4. The SOC 319 was sent to:
  - the Bureau of Indian Affairs (BIA) on (date).
  - The Tribe(s)/Band(s) on

A copy of the SOC 319  is attached (date).

was previously filed with the Court.

5. Response received from the BIA?  Yes  No

If yes:

The child is a member or is eligible for enrollment in the following Tribe(s) / Band(s):

The child is a not a member or is not eligible for enrollment in the following Tribe(s) / Band(s):

the BIA found insufficient information to determine Tribe(s) / Band(s).

6. Response received from the Tribe(s) / Band(s)?  Yes  No If yes:

The child is a member or is eligible for enrollment in the following Tribe(s) / Band(s):

The child is a not a member or is not eligible for enrollment in the following Tribe(s) / Band(s):

The following Tribe(s)/Band(s) found insufficient information to determine membership or if the child could be enrolled:

7. Copies of the following are attached:

Original Certified Mail Return Receipt(s) (green postcard) from the following Tribe(s)/Band(s):

Response from the following Tribe(s)/Band(s):

## REASON FOR HEARING

### Interim Review: Paternity

## CURRENT SITUATION

1. Referral made to paternity testing coordinator on: \_\_\_\_\_ (date)
2. Specimens drawn on all required parties?  Yes  No  
If not, specimen has not been drawn because:
  - a.  Alleged father  mother  child has failed to participate because:
  - b.  Specimen from incarcerated  mother  father pending.
  - c.  Other (specify):
3. Lab is re-testing specimen samples.  Yes  No
4. Copy of test results attached.  Yes  No
5. Alleged father, \_\_\_\_\_  confirmed  excluded as the biological father.

## Interim Review: Receipt of Psychological Evaluation

### CURRENT SITUATION

1. Psychological evaluation has been completed and a copy is attached.  Yes  No

2. If the evaluation is not attached, complete the following:

Request submitted to coordinator on: \_\_\_\_\_ (date)

Waiting for evaluator to be assigned.

waiting for appointment with evaluator.

Person to be evaluated is not  cooperating  available.

Evaluation in progress.

Evaluation is complete, but the report is not prepared.

3. Comments:

# **Interim Review: 90 Day Reunification Review for Child Under Three**

## **CURRENT SITUATION**

1. Outline the case plan for the parent(s) and the child(ren).
2. What progress has been made on each component of the case plan?
3. Briefly describe any specific problems in implementing the case plan.
4. Any new information about the ICWA?  Yes  No  
If yes, what is the new information?
5. Briefly describe the placement of the child and include information on whether the current placement is a concurrent placement. If not, what efforts have been made regarding concurrent planning?

## Appendix J

### California Standard of Judicial Administration §5.40(c) & (d)

#### **(c) Standards of representation and compensation**

The presiding judge of the juvenile court should:

- (1) Encourage attorneys who practice in juvenile court, including all court-appointed and contract attorneys, to continue their practice in juvenile court for substantial periods of time. A substantial period of time is at least two years and preferably from three to five years.
- (2) Confer with the county public defender, county district attorney, county counsel, and other public law office leaders and encourage them to raise the status of attorneys working in the juvenile courts as follows: hire attorneys who are interested in serving in the juvenile court for a substantial part of their careers; permit and encourage attorneys, based on interest and ability, to remain in juvenile court assignments for significant periods of time; and work to ensure that attorneys who have chosen to serve in the juvenile court have the same promotional and salary opportunities as attorneys practicing in other assignments within a law office.
- (3) Establish minimum standards of practice to which all court-appointed and public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings, and advocacy for their respective clients.
- (4) In conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases.

#### **(d) Training and orientation**

The presiding judge of the juvenile court should:

- (1) Establish relevant prerequisites for court-appointed attorneys and advocates in the juvenile court.
- (2) Develop orientation and in-service training programs for judicial officers, attorneys, volunteers, law enforcement personnel, court personnel, and child advocates to ensure that all are adequately trained concerning all issues relating to special education rights and

responsibilities, including the right of each child with exceptional needs to receive a free, appropriate public education and the right of each child with educational disabilities to receive accommodations.

- (3) Promote the establishment of a library or other resource center in which information about juvenile court practice (including books, periodicals, videotapes, and other training materials) can be collected and made available to all participants in the juvenile system.
- (4) Ensure that attorneys who appear in juvenile court have sufficient training to perform their jobs competently, as follows: require that all court-appointed attorneys meet minimum training and continuing legal education standards as a condition of their appointment to juvenile court matters; and encourage the leaders of public law offices that have responsibilities in juvenile court to require their attorneys who appear in juvenile court to have at least the same training and continuing legal education required of court-appointed attorneys.

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