

# SoC23

Summit on Children 2023



## **PARTICIPANT MATERIALS**

### **Reasonable Efforts & Kin-First Culture: What's the Connection?**

March 17, 2023

Kelly Beck

# Reasonable Efforts and Kin-First Culture

Kelly Lynn Beck, JD  
Senior Permanency Trainer  
National Institute for Permanent  
Family Connectedness

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## Reasonable Efforts

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- “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.”

- Reasonable Efforts: A Judicial Perspective, Judge Leonard Edwards (ret)2014

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## What's the problem?

The reasonable efforts requirement has been in effect for over thirty-five years in child welfare law;

However, it continues to be underutilized, misinterpreted, and in many cases, ignored.

To fulfill the intent of this vital federal legislation, the courts, child welfare agencies, and other stakeholders should embrace and implement a clear approach that incorporates family-centered, evidence-informed practices designed to support children to remain safely at home, return to family, or remain with family and kin at the earliest point possible.

[See: HOW "REASONABLE EFFORTS" LEADS TO EMOTIONAL AND LEGAL PERMANENCE BOB FRIEND AND KELLY BECK, Capital University Law Review, 2017, Vol. 45, Number 2, Spring, 2017]

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## Definition

- Federal government:
- We do not intend to define "reasonable efforts." To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any regulatory definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective.
  - [US Dept. of Health & Human Services]

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## Most States – Broad Definition

- Generally, these efforts consist of 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, and home visiting programs. Some commonly used terms associated with reasonable efforts include "family reunification," "family preservation," "family support," and "preventive services."
  - Child welfare information gateway, <https://www.childwelfare.gov/>

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## Courts may “entertain” actions:

- Services available in community
- Safety protections
- Transportation solutions
- ABA cites additional:
  - Sufficient safety plan
- Most states:
  - Parenting classes, drug treatment, mental health; DV, supervised visits

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## State Statutory Definitions

- CA – FR services are found reasonable if CWD has identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents and made RE to assist parents in areas where difficulties in compliance (i.e., transportation)
- Connecticut – Neither the word reasonable or efforts is defined by our statutes or federal act – ‘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’

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## What the research shows

- Reasonable services alone have been insufficient to meet the reasonable efforts standards
  - Seldom evidence based
  - Not enough research to prove effectiveness, especially short term
  - No research showing relationship between services and improved parenting skills
    - National Assoc. of Public Child Welfare Administrators, guide for child welfare (2005)

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# Legislative Intent

## Historical Overview

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# Reasonable Efforts

- 1980 – Adoption Assistance and Child Welfare Act
  - Sought to address:
    - Unnecessary placement of children into the care of the state;
    - Prevent foster care drift
    - Lack of permanency for children

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## This Act

- Created a standard for due process when state intervenes into the fundamental areas of family life
  - Requires:
    - Use of fundamental fairness
    - In a planned and reasonable manner
    - With goals of stable permanency
  - Juvenile Courts became responsible for oversight
    - Required to review the facts surrounding removal
    - Determine whether services and resources were utilized

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## Adoption and Safe Families Act of 1997

- Necessary because
  - Implementation – not happening
  - Growing number of children languishing in foster care
  - Children were not receiving timely permanency
- Created:
  - Certain exceptions to RE; shortened FR timelines
  - Requirement that Court must determine if agency utilized RE to finalize alternative permanency plans in a timely fashion
  - No RE = no federal funding; at shelter care – never can received funding (State must pay)

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## ASFA SOUGHT TO

- Maintain the family unit and prevent the unnecessary removal of a child;
- Effect the expeditious reunification of the child and family if TEMPORARY out-of-home placement was necessary;
- Effect an alternate permanency goal in a timely manner; and
- Begin TPR for children who have been placed outside the home for at least 15 of the preceding 22 months

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## Additional Legislation

- Fostering Connections to Success and Increasing Adoptions Act (2008)
  - Notice to Relatives
- Preventing Sex Trafficking and Strengthening Families Act (2014)
  - Promoting normalcy for youth in foster care

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## Families First Prevention Services Act [February 2018]

- Goals of this Legislation:
  - to turn the focus of the child welfare system toward keeping children safely with their families to avoid the trauma that results when children are placed in out-of-home care.
  - To increase the number of children who can remain safely at home with their families,
  - provide families with greater access to mental health services, substance use treatment, and/or parenting skills courses.
  - significantly shifts how the country provides services for families and youth.
  - that they shall be placed in the least restrictive, most family-like, most appropriate setting that meets their needs
  - States can use title IV-E funds toward these services and programs to help prevent disruption within families.

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## Common Theme in Fed Legislation?

Family, Relatives, Kinship is and should be a priority

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## Kin-First Culture [Shift]

- Kin-First Culture – A child welfare system that consistently promotes immediate kinship placements, helps children in foster care maintain connections with kin, and tailors services and supports for kinship families.
- Policy and practice that prioritizes placement with relatives or close family friends.
- Identifying and engaging kin in a way that creates a culture that truly values kin families
- Understanding that “every kid needs a family”
  - Creating a Kin-First Culture, ABA 07/01/2017, Miller; EKNF Annie E. Casey Foundation;
  - Kinship Promising Practices, ABA Center on Children & the Law/Generations United, Nov.2022

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## CA

- Kin-first culture exists when all levels of leadership within a system, policies, practices and training ensure that when children and youth experience traumatic events at home and the child welfare system intervenes, every effort, across the system of care, is made to keep them safely at their home.
- If the child must be removed from a home, they live with relatives, extended family or other loved ones. Kin-first culture gives families and communities the opportunity to heal from trauma *together*.

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## Ohio Placement Preferences

- When a child is not able to live with his or her parents, Ohio values keeping that child with family and those with whom he or she has a connection.
- Every child deserves to have love and stability in his or her life.
- Ohio's public children services agencies strive to work with relatives who are willing and able to assume custody of a child and any siblings to explore this option first in order to prevent a child from coming into an agency's care.
- Ohio agencies must work with the family to explore relative options and conduct the assessments to determine their willingness and ability to care for the child.
- Consideration of relative resources begins with the agency's first involvement with the family to facilitate the family working together to support one another and assure the safety of the child.
- Agencies are required to conduct a diligent search for identified relatives and notify them within thirty days of the child's removal.
- The preference is for the child to have stability through a permanent arrangement such as a relative assuming legal custody.
  - [Placement Policy related to Preferences \(in pertinent part\)](#)

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## The Connection

- A judge's reasonable efforts decisions at child welfare hearings may avoid separating families and help children achieve permanency faster.
- Family and Fictive kin provide a sense of belonging, culture and connectedness. Placement/visitation/maintaining connections to them can prevent removal, reduce length of stay & provides better permanency outcomes.
- *Shared Agreement?*

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## When finding is required

“Reasonable efforts” are a title IV-E agency requirement to obtain a judicial determination that the child welfare agency has made efforts:

- to maintain the family unit and prevent the unnecessary removal of a child from the home, as long as the child’s safety is ensured.
- to return the child to a safe home.
- complete any steps necessary to finalize the permanent placement of the child.

[42 USC§ 671; [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_aggregate](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_aggregate)]

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## Federal Motivation

Call to Action

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DAVID  
KELLY (prev.)  
Special  
Assistant to  
Children's  
Bureau  
Associate to  
Commissioner  
Jerry Milner

- "Many say the child welfare system is broken. We disagree.."
- We believe that the system is perfectly designed to achieve the precise outcomes it's achieving today."
- "to bring more and more children into care and do little to help parents or their families."
- It's perfectly designed to perpetuate and exacerbate the trauma, disproportionality, disparity, dependency and harmful intergenerational cycles of family destruction."
- It is perfectly designed to devalue families and undermine communities."
- "The system takes too many children into care, and this must change"

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- "I don't believe for a moment..
- That professionals who go into the field do not do so with malignant intent, but the hard truth is that we do harm in the name of doing good.
- We know this. We have to be honest about this. We have to come to terms with the harm that we have and continue to cause. We have to stop it.
  - We are all complicit:
    - Every judge that fails to make meaningful inquiries about reasonable efforts & rubber-stamps a court order;
    - Every attorney who fails to help ensure RE are made to prevent removal;
    - Every caseworker that continue the assembly line case plans..."

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If we are  
going to  
change...

- We need to stop mythologizing vulnerable families
- We need to let go of the system that we designed to rescue children
- And construct a system that's designed to promote health and well-being for all families

- "In Era of Family Separation, a Top Administration Official Vows to Fight the Practice in Child Welfare," April 17, 2019, Chronicle of Social Change; <https://chronicleofsocialchange.org/>

- David Kelly and Jerry Milner now with: Family Integrity and Justice Works

- <https://pubknow.com/media-center/former-leadership-team-of-u-s-childrens-bureau-launches-family-integrity-justice-works-at-public-knowledge/>

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Executive  
Order  
(June 2020)  
Strengthening  
the Child  
Welfare  
System for  
America's  
Children

Sec.5 Improving Processes to Prevent Unnecessary Removal and Secure Permanency for Children

(a) Federal Review of Reasonable Effort Determination and Timeliness Requirements

(i) within 2 yrs. of this order, Secretary shall require that both the title IV-E reviews and the Child and Family Services Reviews conducted... specifically and adequately assess the following requirements:

- (A) reasonable efforts to prevent removal
- (B) TPR within statutory timelines, unless statutory exemptions
- (C) reasonable efforts to finalize permanent plans; and
- (D) completion of relevant required family search and notifications and how such efforts are reviewed by the court.

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## Children's Bureau Informational Memorandum – Jan.2021

- Purpose of IM
  - Provide best practice info., resources and recommendations for achieving permanency for children and youth in a way that prioritizes the child's or youth's well-being.
  - Emphasizes the importance of agencies and court to focus on each child's unique needs, attachments, and connections when making permanency decisions
  - Focus: Importance of preserving family connections for children as a fundamental child welfare practice

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## [Innovative] Practices to Meet the Legislative Intent

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What additional efforts can be employed?

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## Only a few states

- Locating and involving the non-offending parent and other relatives, prior to removal
  - Front-Loading - Family Finding and Engagement/Preventative
- Note: Family usually designated as a placement option only
  - Family and natural supports could be key

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## Family Meetings

- Pre-Removal
- Pre-Adjudication
- On-going
- Case planning
- Support during FR

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## Family Finding

- Family Finding
  - Is there anyone who can safely care for the child to avert entering care, including non-custodial parent?
  - Who is related or connected to this child and family on the planet?
  - Who can safely be/stay involved and connected to this child and family?
  - Who can come to the table and participate in planning and decision making to promote safety, permanency and well being?
  - Who will remain a part of the support network, and how can they best contribute?
- Searches – routine, every case, early and often

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## Dr. Darla Henry 3-5-7 Model© Program

- Is core practice for engaging children, youth and their families in grief work and relationship building
- Is a guided approach towards achieving permanency options
- Provides training, tools and coaching to support this work
- Establishes a best practice foundation towards interventions and decision making
- Program focuses on continuity and stability of service delivery specifically to children and their families

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## Family Group Counseling/Decision Making

Intent cont'd

- Meetings empower families by developing the knowledge, skills and relationships that allow them to participate in decision-making regarding their child

- Family Acceptance Project

Putting research into practice by developing an evidence-based family model of wellness, prevention and care to strengthen families and promote positive development and healthy futures for LGBT children and youth.

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## Child and Family Team

- Meetings designed to facilitate the “family” determining needs, case planning and permanency planning
  - Prior to removal [Probation: Youth at Risk]
  - At time of removal
  - At necessary intervals, including Placement Stabilization

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## Kinship Culture

- County or system-wide
  - Philosophy
  - Adherence
  - Intentionality
- In the Courtroom
  - Oversight
- In our Community

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## Judicial Inquiry

- NCJFCJ Bench cards
  - Preliminary Protective Hearing:
    - Am I convinced that reasonable efforts 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?
- Quality Hearing
  - Judicial Inquiry – Judge can drive the content and depth of information presented in court. This may reduce the time children spend in temporary care and increases the likelihood that children will reunify
  - Quality Hearing Toolkit for Judicial Use – Ohio Supreme Court [Incl: RE reminders]
- Attorney Advocacy
  - Has Dept made reasonable efforts to remove? Is youth placed with family/fictive kin, placed in family-like setting?

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## A County/Court System, Intentional, Streamlined Approach

What is possible.

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## What information/evidence does the Court need?

Who should/can provide it?

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## Evidence/Information necessary finding

- “Efforts” – What are they? Not just services.
  - Involve family/connections/non-offending parents Early and often
- Families First Act – Are those efforts included in decision making?
- What can be done today so that the child/youth can go home?
  - Self-reflective questions for Judicial Officer
  - Questions asked by agency to uncover who can be there for him/her.
    - [See: NCJFCJ.org, CCC – Initial Hearing Bench card; JCC Permanency Bench cards  
[https://www.courts.ca.gov/documents/Permanency\\_Bench\\_Card\\_Appendices.pdf](https://www.courts.ca.gov/documents/Permanency_Bench_Card_Appendices.pdf)

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## Additional Required Findings

- Family Finding (due diligence, timelines)
- Paternity (how, who, when?)
- ICWA (follow up)
- Relative Placement Preference
- Sibling Placement/Connection
- Concurrent Planning

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## Judicial Oversight

- Set the Standard
- Everyone is involved
- No Reasonable Efforts findings when warranted
- Communicate, Collaborate and Coordinate
- Lead the way

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## Introducing the Reasonable Efforts Findings Study

Seeks to better understand how judges' reasonable efforts decisions relate to case outcomes for children.

Klain, E. (2022) OPRE Report No. 2022-231

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## Handouts

- ACYF-CB-IM-20-09
- Reasonable Efforts: Let's Raise the Bar By Judge Leonard Edwards (ret)\*
- Creating a Kin-First Culture, ABA, Miller, July 1, 2017
- Kinship Promising Practices, ABA Center on Children and The Law/Generations United, November 2022
- Every Kid Needs a Family, An Attorney Advocacy Guide, Annie E. Casey (May 2015)
- Klain, E. (2022) Introducing the Reasonable Efforts Finding Study; OPRE Report No. 2022-231)
- Articles by Presenter:
  - Unlocking Reasonable Efforts Kinship is Key, Journal of Poverty Law, 2012
  - HOW "REASONABLE EFFORTS" LEADS TO EMOTIONAL AND LEGAL PERMANENCE BOB FRIEND AND KELLY BECK, Capital University Law Review, 2017.

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## For more information and additional resources

- **National Institute for Permanent Family Connectedness**  
[familypermanency.org](http://familypermanency.org)  
[senecafoa.org](http://senecafoa.org)  
[NIPFC@senecacenter.org](mailto:NIPFC@senecacenter.org)
- [Kelly\\_Beck@Senecacenter.org](mailto:Kelly_Beck@Senecacenter.org)

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July 01, 2017

# Creating a Kin-First Culture

Jennifer Miller

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When children can't live safely with their parents and must enter foster care, child welfare policy prioritizes placement with relatives or close family friends, also known as kinship foster care. Research confirms that children do best in kinship foster care and that family connections are critical to healthy child development and a sense of belonging.<sup>1</sup> Kinship care also helps to preserve children's cultural identity and relationship to their community.

Child welfare systems across the country are redoubling their efforts to identify and engage kin as foster parents. These efforts are influenced by several factors:

- Research repeatedly shows placing a child within their own family reduces the trauma of removal from a child's home, is less likely to result in placement disruptions, and enhances prospects for finding a permanent family if the child cannot return home.<sup>2</sup>
- There is growing national consensus that institutional care does not benefit children except in time-limited therapeutic settings to meet specific treatment needs.
- A shortage of foster parents exists in most communities.

Despite the strong value of kinship foster care, many child welfare systems face barriers to finding, approving and supporting kinship families and seek strategies to create a culture that truly values kin families. This article summarizes seven steps to create a kin-first culture—one in which child welfare stakeholders consistently promote kinship placement, help children in foster care

maintain connections with their families, and tailor services and supports to the needs of kinship foster families. Lawyers and judges can play a meaningful role in creating a kin-first culture by promoting each of the steps in their daily practice, supporting agency leaders and staff striving to create kin-first cultures, and reflecting on ways they can help advance the seven steps. These seven steps are adapted from a consensus document by the ABA Center on Children and the Law, Generations United, and ChildFocus, drawing on the experiences of several jurisdictions on the forefront of creating child welfare cultures that truly value kin.

## Step 1: Lead with a kin-first philosophy.

Leadership is key to creating a kin-first culture. Child welfare leaders, including judges and attorneys, can promote the belief that children belong with family. By using their position and authority, leaders can send a message that placement with kin should always be the first priority.

**\* In Connecticut, the Commissioner of the Department of Children and Families issued an all staff memo at the beginning of her tenure laying out her expectations that all children be placed with kin whenever possible, and that placement in non-kin care should be the exception. The Commissioner also set a target for all regions to aspire to: 40% of overall placements with kin.**

To fully live out a kin-first philosophy, leaders must align their resources, staffing, tools and training to reflect the underlying values of a kin-first culture. For judges and attorneys, this means consistently asking about and reinforcing the importance of family connections when cases are heard in court and in representation of children and parents. At the agency level, a kin-first philosophy can be supported by staffing teams to identify kinship families when children first enter care, assess kin families for their capacity to provide safe and nurturing care for children, and support kinship families who step in, often with no preparation for their caregiving role. It also means fully advocating for resources to support kin caregivers through training, tailored and accessible services, case management, and more.

Finally, leaders can demand that everyone is held accountable for living out the kin-first philosophy. This requires judges to hold agencies accountable for searching for and engaging kin, and for agencies to understand the roadblocks to kinship placements. It also means holding all levels of staff accountable for playing their part in the kin-first culture.

## Step 2: Develop written policies and protocols that reflect equity for children living with kin and recognize their unique circumstances.

Children in kinship foster care deserve the same attention as children placed with non-kin. Yet too often, child welfare policy and protocol is developed with non-kin foster families in mind and fails to recognize the unique experiences of kin families. Foster families who are not related to the child make a conscious decision to become foster parents and prepare for having children placed in their homes. Kin families, on the other hand, often step in with little preparation before having the child placed in their home and face a different emotional connection to the situation given their relationship to the child.

Child welfare systems must have a unique perspective when working with kin families and adopt policies that reflect an understanding of the different ways kin and non-kin become involved in the process. Kin-first systems take time to review their policies and practices to ensure they clearly outline how relative caregivers will be notified and engaged when children first enter care, the issues caseworkers should be attuned to in assessing kin families, and how all stakeholders, including the legal community, can advocate for the full range of support kin families need to meet the children's needs.

While the experiences of kin families may differ from those of non-kin, the supports they need to care for children who have experienced trauma are the same. This means kin families should receive the same financial supports and services to support the children as all other foster families. Kin families may need extra support since many step in without warning and may have immediate needs, such as filling out required paperwork, navigating the licensing process, obtaining car seats and cribs, etc.

Policies that are unique for kin first-systems include:

- **Diligent search** – steps to identify, notify, and engage kin throughout the child welfare continuum.
- **Emergency placement protocols** – steps to make the first placement a kin placement when children face immediate removal from parents.



- **Licensing policies** – recognizing that some nonsafety licensing standards for foster parents may need to be more flexible for kinship families.
- **Training** – providing initial and ongoing education for kin that recognizes their existing connection to the child and family.
- **Permanency options** – recognizing that legal options for kin may differ than those for non-kin.
- **Full disclosure** – ensuring kin families understand the full range of legal options available to them.
- **Financial supports** – ensuring kin families have the same financial supports as other foster families, including permanency supports.

\*Several states have aligned their policies with their kinship philosophy as part of broader efforts to increase the percentage of children first placed with kin. The District of Columbia, Tennessee, and Westmoreland County, PA all revised policies to reflect a kin-first philosophy. These efforts ensure staff are clear on the expectations for their contributions to the kin-first culture and policies guide decisions when working with kinship families. These policies also help ensure the philosophy of kinship care doesn't compromise the overall focus on safety for all children and youth in foster care.

### 3. Identify and engage kin for children at every step.

Kin-first states begin identifying a child's extended family network from the moment the child comes to the attention of the child welfare system. When agencies first begin working with families, kin can help prevent removing the child from his or her family by playing a supportive role with parents in crisis. By identifying and engaging supportive family networks early in a family's involvement with the child welfare system, child welfare stakeholders can better assess viable placement options if removal becomes necessary later.

**\*Pennsylvania state law requires family finding, a strategy to locate and engage kin for children at risk of or already in foster care. Under Pennsylvania law, the county must begin family finding in every case at the time of referral to the child welfare agency, and the court must inquire at each hearing whether the agency has complied with family-finding requirements.**

Technology as a tool to help child welfare agencies locate kin is promising, particularly for older youth who have been in foster care for a long time and may lack strong family connections. Yet strategies to locate and engage family connections should always begin by engaging parents and children to identify their own family networks. Parents may hesitate initially to name family members who can step in, but may be more supportive over time when they understand the alternative is having the child live with a stranger.

Traditionally, child welfare systems have focused on family networks on the maternal side, but there is strong consensus in the field about the importance of fully engaging fathers and paternal relatives so children have every opportunity to connect to both sides of their family tree. Some child welfare agencies find using genograms with family members can help identify maternal and paternal family connections.

While placement with kin is a high priority, not all kin are in a position to have children placed in their home. They can, however, support children wherever they are placed by providing transportation to visitation, visiting with the children, and helping parents make progress on their treatment plans. Kin can also stay connected to children while in residential treatment programs and support families once children return home.

**\*Agencies that routinely hold family team meetings and encourage parents to bring family and community supports create environments that allow for stronger engagement of kin connections. In Hawaii, Epic O'Hana is a nonprofit organization that uses O'Hana meetings to help children stay safe and connected to family. O'Hana meetings are facilitated by agency staff and grounded in the philosophy about the importance of family connections for children involved in the child welfare system.**

**Step 4: Create a sense of urgency for making the first placement a kin placement**

Research shows kinship foster care is more stable than non-kin care and can help prevent disruptions that harm a child's well-being.<sup>3</sup> Kin-first systems invest necessary resources into making the child's first placement a kin placement whenever possible. First placement with kin is key to reducing the trauma of being placed with someone the child doesn't know, and it also helps ensure non-kin foster parents are available for children who don't have viable extended family options for placement.

Unfortunately, child welfare systems<sup>4</sup> are not always structured in a way that makes first placement with kin possible. Strategies that help create this sense of urgency include:

- **Kinship firewall** – requiring a supervisor, program manager, or director to approve all non-kin placements. Firewalls help ensure caseworkers do not bypass considering family connections and notifying and engaging all known family members before placing children outside their family network. A firewall makes it harder, not easier, to place with non-kin foster parents. Judges and attorneys can also ask whether family connections have been fully explored when presented with children and youth in non-kin placements.

**\*Tennessee developed a Kinship Exception Request form that case managers must complete and submit for approval before making a non-kin placement. Several regions have kinship coordinators responsible for ensuring all efforts are made to locate kin and support caseworkers in their efforts to engage and assess prospective kin foster parents.**

- **Teamwork across units** – in many jurisdictions, child protective workers, who are responsible for investigating reports of abuse and neglect and, when necessary, removing children from their parents, must also complete all steps to identify and assess kinship options. Emergency placement with kin is labor-intensive, and child protection staff need support from others in the child welfare agency who can search for family connections, complete criminal and child protection background checks, help child protection workers make quality decisions about placement, make an initial visit to the family to assess for safety and suitability, and more.
- **Initial home checks** – initial checks of the kinship home can be conducted by staff who have strong skills engaging and assessing kinship families for safety, understand licensing requirements, and can inform kinship families of their options and the steps moving forward. Too often, child protection staff are overwhelmed with the investigation and removal and



may not have the time or background to do the initial engagement with kin.

- **Family team meetings** – family team meetings held before a removal occurs are ideal times to bring in extended family networks who can help parents develop a plan for safe care for a child at imminent risk of removal. Those same family members may be viable placement options if a plan for keeping the child at home can't be developed.

**Removing barriers to timely background checks** – many jurisdictions experience serious lag times getting the results of background checks to determine suitability of a kinship placement. Local leaders should work with law enforcement to remove barriers to timely access to criminal background checks and ensure results of child protection background checks are available to inform placement decisions. Delays in receiving fingerprinting results can also hamper placement decisions. Several agencies have purchased Live Scan technology to make fingerprinting easier and faster for prospective foster parents.

## 5. Make Licensing a Priority

Most state licensing standards for foster parents were developed years ago, before the child welfare field prioritized kinship care as the best option for children in foster care. As a result, they were created to ensure safety for children living with someone they did not know, making many licensing standards irrelevant for children living with a grandparent, aunt, uncle, or close family friend. Most licensing standards have also become outdated in general and challenging for the average foster parent to meet. A review of state licensing standards by Generations United and the ABA Center on Children and the Law found many foster parent licensing standards, such as income requirements, age limitations, and space considerations discriminate against many of the families who are most likely to step forward to care for children in custody, including kinship caregivers.

The barriers to licensing kin as foster parents has resulted in preventing many kinship families caring for children from becoming licensed. Families that haven't been licensed are not eligible for foster parent subsidies and lack some protections that licensed families enjoy. It also presents a risk to the state if something happens to the child and the state cannot prove it has done everything to verify the kin foster parent has the capacity to care for the child.

States can overcome many licensing barriers by establishing clear guidelines for requesting and granting waivers for nonsafety licensing standards. Waivers are allowable under federal law and can be granted when waiving the standard does not compromise safety. Examples include training requirements, space requirements, and requirements for the number of children sleeping in a room.

Caseworkers can also educate kin on the option to become licensed and the benefits to doing so. Judges can also probe further when kinship families are not licensed and promote flexibility in the licensing process when safety is not a factor.

**\*A District of Columbia policy called “Temporary Licensing of Foster Home for Kin” includes a “List of Potentially Waivable Requirements.” Caseworkers must complete a Request for Waiver of Licensing Requirements for Temporary Licensing in DC explaining why the waiver will not impact safety for the child. Connecticut also requires a placement waiver request form for every waiver granted to kin and non-kin foster parents. The form provides guidance on which entities must approve the waiver before it can be granted, with criminal and child protection background waivers requiring a higher level of approval than other types of waivers.**

When licensing kinship caregivers as foster parents, caseworkers should examine the suitability of each caregiver in relation to the individual child, not just whether the caregiver can be licensed according to state or tribal licensing standards. Ensuring kin caregivers have the capacity to provide safe, nurturing care to a specific child in custody is not always consistent with what is needed to pass the licensing process, especially when the caregiver already knows the child.

## 6. Support permanent families for children.

The ultimate goal for children in foster care is to safely return home to their parents. Kin should receive encouragement to support the goal of a safe return home, but be prepared to consider providing a permanent home if reunification isn't possible. Kin-first child welfare systems take the time to understand the unique relationships and dynamics of each family and support problem solving centered on the best possible decision about the most appropriate permanent families for children.

Strategies that promote permanency for children in kinship include:

- Ensuring a full range of permanency options, including reunification, subsidized adoption, subsidized guardianship, and tribal customary adoption. Guardianship and tribal customary adoption are options that are important to kin families that do not want to terminate parental rights, which is required for adoption.
- When children cannot return home, clearly explaining the options for legal permanence and helping families choose the option that works best for them.
- Providing post-reunification, adoption, and guardianship services to ensure families have help to prevent disruptions as children and youth continue to deal with the trauma associated with the initial removal from their home and other childhood traumas.

Several states use a chart of permanency options to help families understand the legal options available and what each option means from a financial and legal perspective. These charts help ensure caseworkers are providing accurate information about subsidies, medical assistance, access to government benefits and community supports, the legal process for establishing permanency, and the nature of the legal relationship between the children and their kin. Permanency charts also help child welfare systems clearly delineate for families the assistance available for relatives with a blood relationship as compared to those not related by blood, marriage or, adoption. Judges and attorneys also play a central role educating family members about the permanency options available and what they mean for the entire kinship triad.

## 7. Create a Strong Community Network to Support Kin Families

Community-based organizations, other public systems, and the legal community are often a child welfare agency's best allies in achieving positive outcomes for children in kinship care.

Community partnerships can ensure kin access tailored services and supports they need for the child, and can promote culturally responsive services that honor each family's unique ethnic and cultural heritage. It is often easier for families to build trust with organizations in the community than with public child welfare agencies that have a long history of mistrust.

**\*A Second Chance, Inc. is a licensed foster care agency that exclusively serves kinship foster parents caring for children in Allegheny County, PA's foster care system. A Second Chance**



**licenses families within 60 days of placement, conducts specialized kinship training, and provides permanency services to kinship caregivers, parents, and children.**

Legal systems are also critical, and courts, attorneys, and court-appointed special advocates (CASAs) can reinforce the importance of kinship placement and family connections for children in foster care. Judges can routinely ask caseworkers what steps they have taken to identify extended family networks and ask older youth if there are family connections that are important to them. Attorneys and CASAs can also advocate for more consistent engagement of kin throughout a child's involvement with the child welfare system.

Strong community networks also engage other public systems to build awareness about the needs of children in kinship care. Schools, early childhood, economic security, housing and aging services are just some public systems that should be aware of the role of kinship foster parents and help them access services and supports for the children.

**\*Washington State has a strong infrastructure of support for kinship families at the state and local levels. A legislatively mandated kinship care oversight committee coordinates resources across departments, while a kinship workgroup of public agency staff works to remove barriers to supporting kin. The state's navigator program also helps caregivers navigate services and supports at the local level.**

Creating a kin-first culture doesn't happen overnight. It requires constant attention, oversight, and refinement to ensure all staff honor and value family connection for children in foster care and live that value in their engagement with families every day. Kin-first systems must also balance the importance of helping children stay connected to kin with the unfortunate reality that not all kin connections are appropriate placements, and that first and foremost, the mission of the child welfare agency is ensuring child safety. The child welfare field has gradually come to understand that even when children can't live with their extended families, it is critical to their well-being that they remain connected and receive support to navigate and maintain family relationships.

**Jennifer Miller**, MSW is founding partner of ChildFocus, Inc. a national child welfare consulting firm specializing in policy advocacy, organizational development, strategic planning, and communications. ChildFocus partners Jennifer Miller and Mary Bissell have a special passion for the issue of kinship care and have provided technical assistance and consultation to numerous public agencies, providers, and foundations on ways to strengthen their approach to kinship care.

Jennifer previously worked at Cornerstone Consulting Group, the Annie E. Casey Foundation, and the American Public Human Services Association on issues impacting vulnerable children and families.

## Building a Kin-First Courtroom

### Role of the Court

Court oversight is critical to achieving best practices and improving permanency outcomes. Judges can ask the following questions to create an expectation for a kin-first culture:

- What is preventing a kinship placement now?
- What reasonable efforts were made to place siblings together?
- Ask the agency at each and every hearing: What efforts has the agency made to identify and locate kin? What efforts have been made to engage kin beyond a notice letter so that they may be part of a child's life?
- Ask the parents and child(ren) at first and all subsequent hearings to give the court information about their important family connections.
- Has the agency explained all possible placement options to kin (i.e., guardianship, adoption, foster care, etc.)?
- Order a visitation plan not only for parents, but for siblings and relatives so children can maintain family connections.
- Ask whether the Indian Child Welfare Act applies and ensure the agency makes efforts to identify appropriate placements.

### Judicial Licensing Considerations

Judges can also ask questions about licensing relative caregivers and associated supports and services to care for children in their care.

- Does your state require relatives to be licensed foster parents to care for children in state custody?
- Are licensing waivers used in your jurisdiction?
- If relatives are not licensed, the court should ask why. Is it by the relative's choice?
- Do the relatives fully understand all of their placement options? Is there an environmental barrier that can easily be fixed or waived (i.e., family needs a new bed or fire extinguisher, etc.)?
- Do kin have the services and supports needed to meet the unique needs of the children placed in their home?
- Ultimately, it is up to the agency to determine whether or not a relative can be licensed. The court cannot order a home to be licensed, but can inquire and provide oversight as needed.

## Endnotes

1. ChildFocus. [\*Children in Kinship Care Experience Improved Placement Stability, Higher Levels of Permanency, and Decreased Behavioral Problems.\*](#) 2. Ibid.
3. Ibid.
4. Beltran, Ana and Heidi Redlich-Epstein. *Improving Foster Care Licensing Standard around the United States: Using Research Findings to Effect Change*, March 2012.



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# HOW “REASONABLE EFFORTS” LEADS TO EMOTIONAL AND LEGAL PERMANENCE

BOB FRIEND AND KELLY BECK

“Hidden within the landmark legislation were two words that, over the years, would come to summarize the expectations of the law, typify its vagueness, and predict its controversy—‘reasonable efforts.’”<sup>1</sup>

## I. ABOUT THE AUTHORS

The authors of this article, Bob Friend, LCSW, and Kelly Beck, JD, collectively have over sixty years of experience working with children, youth, and families.<sup>2</sup> They have each spent the majority of their professional careers dedicated to learning, training, coaching, and inspiring “permanency.”<sup>3</sup> For the last six years, they have worked together at the National Institute of Permanent Family Connectedness (NIPFC)<sup>4</sup> to train and coach professionals in child welfare agencies, court systems, and other partner agencies on how to reduce the time youth spend in care, increase

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<sup>1</sup> Wendy Whiting Blome, *Reasonable Efforts, Unreasonable Effects: A Retrospective Analysis of the “Reasonable Efforts” Clause in the Adoption Assistance and Child Welfare Act of 1980*, 23 J. SOC. & SOC. WELFARE 133, 134 (1996). See also 42 U.S.C. § 671(a)(15)(B)(i)–(ii) (2012) (“[R]easonable efforts shall be 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 the child’s home; and to make it possible for a child to safely return to the child’s home . . .”).

<sup>2</sup> See *Trainer and Staff Bios*, NAT’L INST. FOR PERMANENT FAM. CONNECTEDNESS, <http://www.familyfinding.org/trainings/trainer-bios.html> [https://perma.cc/JF25-4H74].

<sup>3</sup> See *More About Family Finding*, NAT’L INST. FOR PERMANENT FAM. CONNECTEDNESS, <http://www.familyfinding.org/moreaboutfamilyfinding.html> [https://perma.cc/QS3T-3YF9] (“Although physical legal permanence is an explicit outcome for most cases, Family Finding defines permanency as a state of permanent belonging, which includes knowledge of personal history and identity, as well as a range of involved and supportive adults rather than just one legal resource.”); *NRCPFC Web-based Practice Toolkits*, NAT’L RESOURCE CTR. FOR PERMANENCY & FAM. CONNECTIONS, <http://www.nrcpfc.org/projects-and-products.html> [https://perma.cc/MCD5-L2UY].

<sup>4</sup> See generally NIPFC, NAT’L INST. FOR PERMANENT FAM. CONNECTEDNESS, <http://familyfinding.org> [https://perma.cc/A5VN-H65H].



permanency outcomes, and involve “family”<sup>5</sup> early and often in permanency planning.<sup>6</sup>

Both Bob and Kelly have witnessed, first hand, how child welfare systems<sup>7</sup> have come together in an effort to create better outcomes for the families and youth they serve.<sup>8</sup> They have witnessed how one person can affect a child’s travel through the child welfare system by being relentless in the quest for permanency.<sup>9</sup> It is with great pleasure and pride that the authors submit this article to all professionals who work within the child welfare system. It is their hope that this article will be informative and inspirational for those professionals as well as others newly introduced to or aspiring to work within the child welfare system.

## II. INTRODUCTION

This article intends to holistically review the opportunities and actions of the entire child welfare system in order to improve the experience and outcomes of the children and families it was intended to serve. More specifically, the authors will weave together the leadership and oversight provided by courts via reasonable efforts findings with the innovative practices that child welfare agencies, advocates, and partners can take in between hearings to advance and secure the safety, permanence, and well-being of the children, parents, family members, and communities they serve.<sup>10</sup>

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<sup>5</sup> As used throughout this article, the term “family” includes all biological family members, important connections for children and youth, non-related extended family members, and others. As used in Indian Child Welfare Act (ICWA) matters, “family” also includes “extended family member[s].” 25 U.S.C. § 1903 (2012).

<sup>6</sup> See generally *NIPFC Trainings*, NAT’L INST. FOR PERMANENT FAM. CONNECTEDNESS, [http://www.familyfinding.org/trainings/trainings\\_NIPFC.html](http://www.familyfinding.org/trainings/trainings_NIPFC.html) [https://perma.cc/A3R3-EPW9].

<sup>7</sup> “Child welfare systems” refer to child welfare agencies, judicial officers, court personnel, attorneys, court appointed special advocates (CASA), service providers, parents, and children. See *How the Child Welfare System Works (Fact Sheet)*, COMPREHENSIVE YOUTH SERVICES FRESNO (May 8, 2012), <http://cysfresno.org/how-the-child-welfare-system-works-fact-sheet> [https://perma.cc/7R6M-HN24].

<sup>8</sup> The authors have worked with communities in Pennsylvania, Virginia, Wisconsin, and California among others. These communities have brought together their legal, child welfare, probation, service providers, and foster family agencies to develop Family Finding and Engagement strategies. See Children’s Home Society of North Carolina, *York County Family Finding Conference*, VIMEO (2013), <https://vimeo.com/64070556> [https://perma.cc/T6DG-3PTA].

<sup>9</sup> Based upon personal accounts shared by attendees during field trainings conducted by both authors.

<sup>10</sup> CHILD WELFARE INFO. GATEWAY, *How the Child Welfare System Works* 1 (Feb. 2013), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [https://perma.cc/H7C8-LD8G].

The article will begin by reviewing some of the history of the reasonable efforts requirements and further clarify the true intent of this enabling legislation,<sup>11</sup> followed by discussion of how the child welfare system has often missed the opportunities contained within the vague definition of the requirements.<sup>12</sup> The authors will then outline how the court can ensure that the “efforts” presented include the identification, engagement, and involvement of family members.<sup>13</sup> The article will further describe the types of efforts or innovative child welfare practices that have been created to improve relationships with youth, parents, and family members by increasing their trust in and promoting their partnership with the child welfare system.<sup>14</sup> These practices are designed to resolve the safety issues that prevent children from leaving foster care, while attending to the loneliness and lack of permanency options for many children in care.

The proposed “reasonable efforts” methodology (hereinafter methodology) presented in this article focuses on what can be accomplished between each of the hearings where a reasonable efforts finding is required, so that the child or youth is moving closer to being connected with and raised within a committed, supportive, permanent family.<sup>15</sup> Viewing the time between hearings as an opportunity to implement evidence-based and promising family engagement strategies will allow the court to more effectively review all efforts employed to create a pathway home for each child or youth.

Finally, the article will detail the responsibilities and opportunities for key child welfare system participants to contribute to the identification, engagement, and involvement of family members in the matters concerning their kin.<sup>16</sup> Their activities toward this goal should be presented to the court as evidence of reasonable efforts.

#### *A. Clarifying Reasonable Efforts*<sup>17</sup>

In 1980, Congress passed the Adoption Assistance and Child Welfare Act (The Act).<sup>18</sup> The Act sought to address several issues that Congress

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<sup>11</sup> See *infra* Sections II.A, II.B.

<sup>12</sup> See *infra* Sections II.C, II.D.

<sup>13</sup> See *infra* Sections II.D, II.E.

<sup>14</sup> See *infra* Section II.E, Part III.

<sup>15</sup> See *infra* Part III.

<sup>16</sup> See *infra* Part IV.

<sup>17</sup> In ICWA matters, the term “active efforts” is used to describe remedial services, rehabilitative programs, and preventive measures. See 25 U.S.C. § 1912(d) (2012).

<sup>18</sup> Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified in scattered sections of 42 U.S.C.).

deemed to be lacking in the child welfare system.<sup>19</sup> Some of the important issues addressed by the Act were: the unnecessary placement of children into the care of the state;<sup>20</sup> children languishing in care;<sup>21</sup> the challenges in achieving permanency for children;<sup>22</sup> and the lack of essential due process afforded to the parents in state intervention matters.<sup>23</sup> The due process standards outlined therein included the use of fundamental fairness in a planned and reasonable manner to further the goals of child permanency and effective judicial oversight.<sup>24</sup> Courts were now required to find that the state<sup>25</sup> had employed reasonable efforts at different critical stages of the child welfare proceedings in order to maximize permanency options for children.<sup>26</sup>

This legislation marked the first time that the federal government sought to define the role and responsibilities of the state.<sup>27</sup> It was also the first time that the courts were charged with determining whether the public child welfare agency (hereinafter agency) had provided services or “efforts” that would meet the needs of the child, while also monitoring the time that children were spending in care.<sup>28</sup>

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<sup>19</sup> See, e.g., J. Leonard P. Edwards, *Achieving Timely Permanency in Child Protection Courts: The Importance of Frontloading the Court Process*, 58 JUV. & FAM. CT. J. 1, 2 (2007); Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223, 223–24 (1990).

<sup>20</sup> Edwards, *supra* note 19, at 1–3; Shotton, *supra* note 19, at 223–24.

<sup>21</sup> Edwards, *supra* note 19, at 2.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> J. Leonard Edwards, *Reasonable Efforts: A Judicial Perspective*, JUDGES’ PAGE NEWSL. 5, 5 (Oct. 2007), [http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710\\_reasonable\\_efforts\\_in\\_the\\_dependency\\_court\\_issue\\_0119.pdf](http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710_reasonable_efforts_in_the_dependency_court_issue_0119.pdf) [<https://perma.cc/LQ25-J26L>].

<sup>25</sup> “State child welfare agencies” are defined as:

State agencies that are mandated to respond to reports of child abuse and neglect and to intervene as needed to protect the child. Typically, they provide a range of child welfare services for children and families, including family preservation, child protection, out-of-home care, and adoption.

*Glossary* — S, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/glossary/glossarys> [<https://perma.cc/G2SF-S2PR>].

<sup>26</sup> Edwards, *supra* note 24, at 5.

<sup>27</sup> Laura Argys & Brian Duncan, *Economic Incentives and Foster Child Adoption*, 50 DEMOGRAPHY 933, 935 (2013).

<sup>28</sup> Elisa Kawam, *Revisiting the Adoption Assistance and Child Welfare Act of 1980: Analysis, Critique, and Recommendations*, 1 WORLD J. SOC. SCI. RES. 23, 26–27 (2014).

The enactment of the reasonable efforts requirement, coupled with the explicit judicial gatekeeping requirement, resulted in confusion and frustration for those working within the child welfare system.<sup>29</sup> Contributing to this confusion was the Act's lack of a definition of the term "reasonable efforts,"<sup>30</sup> along with the absence of a recognized universal standard for the term.<sup>31</sup>

Since the Act's passage, many publications, both private and public, have sought to provide guidance or clarification for practitioners.<sup>32</sup> Indeed, one such publication by the U.S. Department of Health and Human Services (HHS) offered an explanation as to why there is no definition.<sup>33</sup> For our purposes, it is critical to consider the strength of the language contained within one paragraph of that publication:

We do not intend to define "reasonable efforts." To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any regulatory definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective.<sup>34</sup>

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<sup>29</sup> Blome, *supra* note 1, at 138; Kawam, *supra* note 28, at 30; Ernestine S. Gray, *Judicial Viewpoints on ASFA*, in CTR. FOR THE STUDY OF SOC. POLICY, UBRAN INST., INTENTIONS AND RESULTS: A LOOK BACK AT THE ADOPTION AND SAFE FAMILIES ACT 60, 60 (2009), <http://affcn.org/wp-content/uploads/IntentionsandResults.pdf> [<https://perma.cc/XZF5-NP7J>].

<sup>30</sup> See *supra* note 1 and accompanying text; Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 63 Fed. Reg. 50,058, 50,061 (Sept. 18, 1998).

<sup>31</sup> David J. Herring, *The Reasonable Efforts Requirement—A Critique and a Proposal*, JUDGES' PAGE NEWSL. 20 (Oct. 2007), [http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710\\_reasonable\\_efforts\\_in\\_the\\_dependency\\_court\\_issue\\_0119.pdf](http://www.casaforchildren.org/atf/cf/%7B9928CF18-EDE9-4AEB-9B1B-3FAA416A6C7B%7D/0710_reasonable_efforts_in_the_dependency_court_issue_0119.pdf) [<https://perma.cc/LQ25-J26L>].

<sup>32</sup> MARK HARDIN ET AL., A SECOND COURT THAT WORKS: JUDICIAL IMPLEMENTATION OF PERMANENCY PLANNING REFORMS (1995); ABA PRESIDENTIAL WORKING GRP. ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION (1993); MARK HARDIN, ESTABLISHING A CORE OF SERVICES FOR FAMILIES SUBJECT TO STATE INTERVENTION: A BLUEPRINT FOR STATUTORY AND REGULATORY ACTION (1992); NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES ET AL., MAKING REASONABLE EFFORTS: STEPS FOR KEEPING FAMILIES TOGETHER (1987); DEBRA RATTERMAN ET AL., REASONABLE EFFORTS TO PREVENT FOSTER PLACEMENT: A GUIDE TO IMPLEMENTATION (2d ed. 1987).

<sup>33</sup> Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 63 Fed. Reg. 50,058, 50,073 (Sept. 18, 1998), <https://www.gpo.gov/fdsys/pkg/FR-1998-09-18/pdf/98-24944.pdf> [<https://perma.cc/H527-BJDF>].

<sup>34</sup> *Id.*



The publication further provided examples that could be used by courts in determining what “efforts” could be considered by the judicial officer:

In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made:

- (1) Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?
- (2) Was the service plan customized to the individual needs of the family or was it a standard package of services?
- (3) Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?
- (4) Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?
- (5) Are the State agency's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the agency filed for termination of parental rights, listed the child on State and national adoption exchanges, or implemented child-specific recruitment activities?<sup>35</sup>

At the state level, legislators often sought to define reasonable efforts in order to comply with the federal guidelines and assist practitioners.<sup>36</sup> Many of the resulting state statutes, however, focused on describing the literal meaning of the two words: “reasonable” and “efforts.” For example, in Missouri, “‘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,”<sup>37</sup> whereas, in Florida,

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<sup>35</sup> *Id.*

<sup>36</sup> Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 262 (2003).

<sup>37</sup> MO. REV. STAT. § 211.183(2) (2010).

“‘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.”<sup>38</sup>

These state-legislated definitions and most others include the term “services.”<sup>39</sup> Services have been defined as efforts on behalf of the public child welfare agency to help the parent overcome the reasons for the removal.<sup>40</sup> However, these definitions provide little or no guidance regarding what efforts or services could or should be considered by the courts.

Only a few states have taken the additional step of drafting legislation or policy that includes examples of specific efforts for the judicial officer to consider and to which the child welfare agency should adhere.<sup>41</sup> For example, California has developed both statutes and rules of court that further assist the judicial officer in making this determination.<sup>42</sup>

The California Welfare and Institutions Code includes language that outlines the efforts a child welfare worker is required to employ prior to the physical removal of a child from his or her home. These efforts include:

- (1) Whether there are any reasonable services available to the worker which, if provided to the minor’s parent[s], guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of his or her parent, guardian, or caretaker.
- (2) Whether a referral to public assistance . . . would eliminate the need to take temporary custody of the minor. If those services are available they shall be utilized.
- (3) Whether a nonoffending caretaker can provide for and protect the child from abuse and neglect and whether the alleged perpetrator voluntarily agrees to withdraw from the residence, withdraws from the residence, and is likely to remain withdrawn from the residence.<sup>43</sup>

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<sup>38</sup> FLA. STAT. ANN. § 39.521(1)(f)(1) (West 2012).

<sup>39</sup> See MO. REV. STAT. § 211.183(2) (2010); FLA. STAT. ANN. § 39.521(1)(f)(1) (West 2012); ALASKA STAT. § 47.10.086(a) (2014); IOWA CODE ANN. § 232.102(10) (2014); MINN. STAT. §§ 260.012(a), 260C.301(b)(5) (2015).

<sup>40</sup> See 42 U.S.C. § 629a(a)(7)(B) (2012).

<sup>41</sup> See CAL. WELF. & INST. CODE §§ 319(a)–(b), 362–370 (West 2016); 42 U.S.C. § 601(a) (2012); HEALTH & HUMAN SERVS. AGENCY, CAL. DEP’T. OF SOC. SERVS., Manual of Policies and Procedures: Child Welfare Services § 31-066 (1993) <http://www.cdss.ca.gov/ord/entres/getinfo/pdf/cws1.PDF> [<https://perma.cc/F4DN-R7G3>].

<sup>42</sup> CAL. WELF. & INST. CODE § 306(b) (West 2016); CAL. RULES OF COURT § 5.676(a) (2013).

<sup>43</sup> CAL. WELF. & INST. CODE § 306(b)(1)–(3) (West 2016).

The California Rules of Court provide additional guidance for judicial officers, including what other efforts could be implemented *prior* to physical removal.<sup>44</sup> Likewise, these rules contain guidance when the child or youth has nonetheless been physically removed from his or her home after unsuccessful attempts.<sup>45</sup> In that instance, “information about any parent or guardian of the child with whom the child was not residing at the time the child was taken into custody and about any relative or nonrelative extended family member . . . with whom the child may be detained” must be provided to the court.<sup>46</sup>

These Rules of Court contain the court’s requirement to determine whether the child welfare agency has made reasonable efforts to prevent physical removal, and if continued physical removal is warranted, then whether there is an appropriate relative, close family friend, or another adult with whom the child can be placed.<sup>47</sup> This course of action would avoid placement with someone the child does not know or trust.<sup>48</sup>

For dependency cases involving domestic violence, the National Council of Juvenile and Family Court Judges (NCJFCJ) has published a checklist to assist judges in identifying specific factors that should be considered when making reasonable efforts determinations in situations involving domestic violence.<sup>49</sup> Some of the recommended efforts in these cases include: “Helping the adult victim find a family member or friend to stay with temporarily”; “Enlisting the support of community entities such as churches, schools, and other neighborhood organizations”; and “Providing interpreters.”<sup>50</sup>

If the child is already removed, the NCJFCJ checklist suggests “the court should ask what actions would be needed to allow the child to return home immediately and safely and what services would be needed to support the child’s return.”<sup>51</sup> Included in these recommendations is a notation to judicial

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<sup>44</sup> JUDICIAL COUNCIL OF CAL., JUDICIAL COUNCIL GOVERNANCE POLICIES 7 (2008), [http://www.courts.ca.gov/documents/appendix\\_d.pdf](http://www.courts.ca.gov/documents/appendix_d.pdf) [<https://perma.cc/4MCH-UE8N>]. This guidance includes a “description of the services that have been provided . . . and of any available services or safety plans that would prevent or eliminate the need for the child to remain in custody”). CAL. RULES OF COURT § 5.676(b)(2) (2016).

<sup>45</sup> CAL. RULES OF COURT § 5.678(a)–(b) (2013).

<sup>46</sup> CAL. RULES OF COURT § 5.676(b)(5) (2016).

<sup>47</sup> CAL. RULES OF COURT § 5.678(c)–(e) (2013).

<sup>48</sup> CAL. RULES OF COURT § 5.678(e) (2013).

<sup>49</sup> LEIGH GOODMARK, NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, REASONABLE EFFORTS CHECKLIST FOR DEPENDENCY CASES INVOLVING DOMESTIC VIOLENCE 25 (2008), <http://www.thegreenbook.info/summit/documents/rechecklist.pdf> [<https://perma.cc/2EMS-PT5N>].

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 26.

officers that the list of questions and services is not exhaustive. “In every case, the services that the adult victim will need to keep herself or her child safe will be different” and “[j]udges should also ensure that services are culturally competent, linguistically appropriate, and sensitive to the particular concerns of immigrant communities.”<sup>52</sup>

It is clear the federal government has granted courts the authority to determine what types of efforts would be appropriate, available, and reasonable for a particular family or youth.<sup>53</sup> Implicit within this authority is the court’s obligation to consider any relevant evidence that would determine whether the reasonable efforts requirement has been met for a specific family or youth.<sup>54</sup> Specific facts and circumstances of each individual case and family situation help to define reasonable efforts in each instance. With risk assessment tools used by the Child Welfare Agency to determine if removal is necessary, the family’s strengths and needs are determined and provided to the court.<sup>55</sup> Without this information, a judicial officer cannot make an accurate or reliable reasonable efforts finding. In that instance, the court should ask for additional information.<sup>56</sup> In many, if not most cases, this knowledge of familial and cultural background must be

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<sup>52</sup> *Id.*

<sup>53</sup> See J. LEONARD EDWARDS, REASONABLE EFFORTS: A JUDICIAL PERSPECTIVE 22 (2014) (ebook), <http://www.ncjfcj.org/resource-library/publications/reasonable-efforts-judicial-perspective> [https://perma.cc/T9SM-995R].

<sup>54</sup> See *id.* at 48–50.

<sup>55</sup> NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, ENHANCED RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 131 (2016) [hereinafter ENHANCED RESOURCE GUIDELINES], <http://www.ncjfcj.org/sites/default/files/%20NCJFCJ%20Enhanced%20Resource%20Guidelines%2005-2016.pdf> [https://perma.cc/F478-9J8Z]. See also *id.* at 135 (“Does the family believe that these services, interventions, and supports will meet their current needs and build upon strengths?”). Likewise, in determining whether the current out-of-home placement meets the child’s and family’s needs, the NCJFCJ provides:

Kinship caregivers should be approached from a strengths-based perspective by addressing their current situation and evaluating current and known safety risks along the same lines that child safety is evaluated to determine whether the child can return to a parent’s care. Non-relative foster care placement should be a last resort, and even if a child is placed in foster care, maintaining a connection with relatives who are important to the child and supportive of the parents is essential.

*Id.* at 137, 138.

<sup>56</sup> See EDWARDS, *supra* note 53, at 22.



obtained through conversations and engagements with the family and the youth.<sup>57</sup>

As alluded to above, what is *most* important to understand about the reasonable efforts requirement is that it is, by design and necessity, a moving target. Given the unique circumstances, needs, and strengths of each family, it must be flexible and pliable. It is a term that allows the court to consider all reasonable means available, at a particular point in time and that can be utilized to achieve an end result.<sup>58</sup> With the continued emergence and development of new and innovative child welfare practices, it behooves practitioners to insist on a specific, concrete, and “one size fits all” definition of reasonable efforts. As HHS has pointed out, the states “have a great deal of flexibility in satisfying this requirement . . . for demonstrating that judicial determinations are made on a case-by-case basis.”<sup>59</sup> With each new or redesigned program or practice made available to child welfare agencies comes the potential to broaden what efforts the judicial officer may consider to be reasonable.

*“The reasonable efforts finding is as an important an element of the case as a finding on abuse or neglect.”*<sup>60</sup>

#### *B. When Reasonable Efforts Are Required*<sup>61</sup>

A reasonable efforts finding is required at specific or federally mandated court hearings in a child welfare case.<sup>62</sup> These written findings are typically found in a pre-drafted template and completed after each hearing where the finding is required.<sup>63</sup> Often there is a box contained within this form that the judicial officer (or court clerk) will check once the hearing is complete.<sup>64</sup>

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<sup>57</sup> See ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 68, 122; NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RIGHT FROM THE START: THE CCC PRELIMINARY PROTECTIVE HEARING BENCHCARD 161 (2011) [hereinafter BENCHCARD], [http://www.ncjfcj.org/sites/default/files/CCC%20Benchcard%20Study%20Report\\_1.pdf](http://www.ncjfcj.org/sites/default/files/CCC%20Benchcard%20Study%20Report_1.pdf) [https://perma.cc/ZQ8W-EUC8].

<sup>58</sup> See 42 U.S.C. § 671(a)(15) (2012).

<sup>59</sup> Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 65 Fed. Reg. 4020, 4056 (Jan. 25, 2000).

<sup>60</sup> YOUTH LAW CTR., MAKING REASONABLE EFFORTS: A PERMANENT HOME FOR EVERY CHILD 40 (2000), [http://www.nccourts.org/Citizens/CPrograms/Improvement/Documents/making\\_reasonable\\_effort.pdf](http://www.nccourts.org/Citizens/CPrograms/Improvement/Documents/making_reasonable_effort.pdf) [https://perma.cc/ZP83-W8ZS].

<sup>61</sup> There are situations where no reasonable efforts are required. See 42 C.F.R. § 1356.21(b)(3) (2012). Under the ICWA, “active efforts” must be utilized to prevent the breakup of the Indian family, whether in a foster care placement or in termination of parental rights proceedings. See 25 U.S.C. § 1912(d), (f) (2012).

<sup>62</sup> See 42 U.S.C. § 671(a)(15)(2012); 45 C.F.R. § 1356.21 (2012).

<sup>63</sup> EDWARDS, *supra* note 53, at 1415–22.

<sup>64</sup> See *id.*

Some jurisdictions utilize a form that allows the court to fill in what efforts have been employed by the child welfare agency.<sup>65</sup>

Most often, the only evidence presented during a hearing where a reasonable efforts finding is required consists of what “services” the agency has provided or tried to provide for the child’s parent(s). Thereafter, the parent submits his or her compliance records in response to those services. The timing of the reasonable efforts finding is strategic because the court must consider efforts made prior to the child being removed from the home, at the time of removal, and in consideration of permanency goals.<sup>66</sup>

The first hearing when a reasonable efforts finding is required is the first time the court is introduced to the child and family.<sup>67</sup> This hearing is sometimes referred to as the “Shelter Care Hearing,” however it is identified as different titles depending on the jurisdiction, including “preliminary protective,” “detention,” or “emergency removal.”<sup>68</sup> This is, by far, the most crucial finding made by the judicial officer.<sup>69</sup> The finding is actually based on a two-prong test.<sup>70</sup> The court must find that the state made reasonable efforts to (1) prevent the unnecessary removal of the child from his or her home and (2) “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).”<sup>71</sup>

The evidence required at this hearing focuses on what was done in the field to prevent removal and what measures can be employed to enable the child to immediately return home.<sup>72</sup> Furthermore, the information or evidence that the court relies upon to make this finding must be “explicitly documented and must be made on a case-by-case basis and so stated in the court order.”<sup>73</sup> As suggested by the example language from the California statutes and rules of court, these efforts should include what resources and family involvement can be implemented to allow the child to remain at home.<sup>74</sup>

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<sup>65</sup> *Id.* at 1422.

<sup>66</sup> *See* 42 U.S.C. § 671(A)(15) (2012).

<sup>67</sup> ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 107.

<sup>68</sup> *Id.*; BENCHCARD, *supra* note 57, at 6–7.

<sup>69</sup> EDWARDS, *supra* note 53, at 318–19.

<sup>70</sup> 45 C.F.R. § 1356.21(b) (2012).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> 45 C.F.R. § 1356.21(d) (2012).

<sup>74</sup> *See* CHILD WELFARE INFO. GATEWAY, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN 7–8 (2016), <https://www.childwelfare.gov/pubPDFs/reunify.pdf> [<https://perma.cc/8YJN-Z6DY>].

The next hearing where a reasonable efforts finding is required<sup>75</sup> is the first federally mandated review hearing.<sup>76</sup> According to the federal regulations, the court must review the child's situation no less than once every six months from the date of entry into foster care.<sup>77</sup> Finally, the court is required to determine whether the agency has or has not made reasonable efforts to finalize the permanent plan for the child, such as whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement.<sup>78</sup>

It cannot be stressed enough that each time the court makes a determination regarding whether reasonable efforts have been made, it must do so on a case-by-case basis.<sup>79</sup> The rationale for this requirement is found within the question and answer section in the Child Welfare Policy Manual developed and maintained by the Children's Bureau, Administration for Children and Families, within HHS.

[The basis for] this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill [that became Public Law 96-272] characterized the required judicial determinations as “. . . important safeguard[s] against inappropriate agency action . . .” and made clear that such requirements were not to become “. . . a mere *pro forma* exercise in paper shuffling to obtain Federal funding . . .” We concluded, based on our review of State[] documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.<sup>80</sup>

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<sup>75</sup> It should be noted that some states have incorporated the “reasonable efforts” determination into other interim review hearings and at dispositional hearings. See EDWARDS, *supra* note 53, at 377.

<sup>76</sup> CAL. RULES OF COURT § 5.810(a) (2016) (“For any ward removed from the custody of his or her parent or guardian under section 726 and placed in a home under section 727, the court must conduct a status review hearing no less frequently than once every six months from the date the ward entered foster care.”).

<sup>77</sup> 45 C.F.R. § 1355.20 (2012) (“The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k)).”

<sup>78</sup> 45 C.F.R. § 1356.21(b)(2)(i) (2012).

<sup>79</sup> 45 C.F.R. § 1356.21(d) (2012).

<sup>80</sup> Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews, 65 Fed. Reg. 4020, 4056 (Jan. 25, 2000) (internal citations omitted).

The focus of the methodology proposed by this article centers on what is being done in between each of these critical hearings to ensure the child or youth is moving toward being connected to and raised within a family, so that his or her stay in foster care can be prevented or minimized. Viewing these periods as opportunities to build upon the services already being provided along with the use of innovative, effective family engagement strategies will allow the court to review all efforts made to achieve stable permanency for each child or youth.<sup>81</sup>

*“That undefined prescript has come to dominate practice with profound impact on the lives of children, families, social workers, administrators, judges, and attorneys in the child welfare system. The drafters of the legislation never suspected that the reasonable efforts clause would become the key mechanism for enforcing the intent of the law.”*<sup>82</sup>

### C. Missed Opportunities

The child welfare system is typically defined as a state intervention, utilized when parents abuse, neglect, or abandon their children.<sup>83</sup>

When a state intervenes with a family, the state may decide to leave the child in the home while providing services necessary to protect the child’s safety. But, where the state believes that risks existing in the home are too high, the state’s intervention can include removing the child from the home and placing the child in the *temporary* custody of the state.<sup>84</sup>

Recent national statistics captured by the Children’s Bureau cited 112,584 children in foster care for two or more years as of September 30,

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<sup>81</sup> “Effective family engagement strategies” include family-centered casework practice and family-centered practice. See *Glossary – F*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/glossary/glossaryf> [<https://perma.cc/4P7J-N9GP>]; *More About Family Finding*, NAT’L INST. FOR PERMANENT FAM. CONNECTEDNESS, <http://familyfinding.org/moreaboutfamilyfinding.html> [<https://perma.cc/SR9Q-VH89>].

<sup>82</sup> Blome, *supra* note 1, at 134.

<sup>83</sup> See CHILD WELFARE INFO. GATEWAY, DEFINITIONS OF CHILD ABUSE AND NEGLECT 1 (June 2014), <https://www.childwelfare.gov/pubPDFs/define.pdf> [<https://perma.cc/HP5Q-H782>].

<sup>84</sup> Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State’s Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L.J. 259, 265 (2003) (emphasis added).



2014, whereas approximately 22,392 aged out of foster care in 2014.<sup>85</sup> Given the poor outcomes for youth who age out of foster care,<sup>86</sup> it is important that the child welfare system be utilized as a *temporary* intervention with a goal of returning or maintaining the child at home or another permanent family-like living arrangement.<sup>87</sup> Federal legislation and guidelines promote the use of promising and evidence-based practice, along with and relative engagement strategies, to reduce lengths of stay in foster care and promote permanency.<sup>88</sup> The following review of how the child welfare system should respond to families and children in crisis, as well as how innovative practices can improve outcomes for this population, will help demonstrate the benefits of the methodology proposed later in this article.

The progression of events once the child welfare system has responded to a report of child maltreatment is as follows:

The goal of state intervention is to take those steps necessary to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to return safely home when removed. The child protection agency must show that it has made “reasonable efforts” in meeting the case plan before removing the child or permitting the child to return home.<sup>89</sup>

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<sup>85</sup> U.S. DEP’T OF HEALTH & HUMAN SERVICES, ADMIN. FOR CHILDREN & FAMILIES, THE AFCARS REPORT: PRELIMINARY FY 2014 ESTIMATES AS OF JULY 2015, at 2–3 (2015) [hereinafter AFCARS REPORT], <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf> [https://perma.cc/48RF-RXP2].

<sup>86</sup> See generally NAT’L YOUTH IN TRANSITION DATABASE, COMPARING OUTCOMES REPORTED BY YOUNG PEOPLE AT AGES 17 AND 19 IN NYTD COHORT (2014); GRETCHEN RUTH CUSICK ET AL., CRIME DURING THE TRANSITION TO ADULTHOOD: HOW YOUTH FARE AS THEY LEAVE OUT-OF-HOME CARE (2011).

<sup>87</sup> See Overview, CHILD WELFARE INFO. GATEWAY (2013) [hereinafter Overview], <https://www.childwelfare.gov/topics/outofhome/overview> [https://perma.cc/2XTK-QD4K].

Out-of-home care is intended to be temporary—the goal is to return children home as soon as possible or achieve permanency with another permanent family when this is not possible. Many of the services provided to children in out-of-home care and their families are targeted to achieving the goal of permanency.

*Id.*

<sup>88</sup> CHILD WELFARE INFO. GATEWAY, ENGAGING FAMILIES IN CASE PLANNING 7 (Sept. 2012), [https://www.childwelfare.gov/pubPDFs/engaging\\_families.pdf](https://www.childwelfare.gov/pubPDFs/engaging_families.pdf) [https://perma.cc/N94J-6ZEY].

<sup>89</sup> J. Richard Fitzgerald et al., *Using Reasonable Efforts Determinations to Improve Systems and Case Practice in Cases Involving Family Violence and Child Maltreatment*, 54 JUV. & FAM. CT. J. 97, 97 (2003).

Child welfare professionals typically interpret this definition of the state's intervention as the provision of "services" to the parent or guardian from whom the child was removed.<sup>90</sup> A review of the allegations for removal is then coupled with services to ameliorate those conditions.<sup>91</sup> However, the "case plan" as mentioned within this definition should also include the child or youth's case plan. It should ultimately include a case plan that will enable the child to return home or achieve permanency with another family.

During this period focused on reunification and the provision of services toward that goal, the child welfare worker usually meets with the parent(s) once a month to determine how they are progressing in meeting the requirements of their case plan.<sup>92</sup> A typical discussion between the child welfare worker and parent(s) may include: how many clean tests have been received; how many meetings, therapy appointments, or parenting classes were attended; and an update on visitation.

The parent(s) may also meet with their attorney to determine legal strategies or perhaps struggles or obstacles in meeting the requirements of their case plan.<sup>93</sup> The attorney for the child is required to conduct his or her own separate investigation while meeting with the child at least once a month.<sup>94</sup> A court appointed special advocate (CASA) may meet with the parents while spending as much time as possible with the child or youth.<sup>95</sup> Other service providers—such as parenting instructors, mental health professionals, substance abuse counselors, or domestic violence counselors—may meet with the parent(s) and child to assist them in meeting their case plan requirements.<sup>96</sup>

In addition to the above mentioned tasks, the child welfare worker is responsible for finding an appropriate placement for the child.<sup>97</sup> The child

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<sup>90</sup> *Id.* at 103.

<sup>91</sup> *Overview, supra* note 87.

<sup>92</sup> CHILD WELFARE INFO. GATEWAY, SUPPORTING REUNIFICATION AND PREVENTING REENTRY INTO OUT-OF-HOME CARE 6 (Feb. 2012), <https://www.childwelfare.gov/pubPDFs/srpr.pdf> [<https://perma.cc/LBX5-EFSF>].

<sup>93</sup> AM. BAR ASS'N, STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES 10, [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ParentStds.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf) [<https://perma.cc/J3XQ-ESPL>].

<sup>94</sup> *See, e.g.*, AM. BAR ASS'N, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES 7 (1996), [http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards\\_abuseneglect.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf) [<https://perma.cc/Q8MT-48RD>].

<sup>95</sup> *See id.* at 8.

<sup>96</sup> *See id.*

<sup>97</sup> *Id.* at 7.

welfare worker spends an enormous amount of time finding the first temporary placement, as well as looking for a new placement if the first one fails.<sup>98</sup> The lack of approved foster families in many communities, which has often been described as a national crisis, makes it extremely challenging and stressful for many child welfare workers to find placements for children who have been removed from their homes.<sup>99</sup>

Some jurisdictions have embraced, either voluntarily or as a result of litigation, the use of “child and family teams” that bring together family members, other supportive individuals in the community, and professional service providers to help create a “comprehensive” continuum of care for the family.<sup>100</sup> Unfortunately, the implementation of “child and family teams” often looks remarkably similar to the practice that preceded it, with various professionals making up the majority of team members.<sup>101</sup> The resulting lack of youth and family voice at the table does not conform to the intent and principles of the practice model or to the requirements of the legal settlements.<sup>102</sup>

Rather than applying all of its “efforts” or “services” toward removing those factors that brought the child and family to the attention of the child welfare system, the system should also be focused on involving “family” in a meaningful and deliberate fashion.<sup>103</sup> The stakeholders in child welfare, including the courts need to ask themselves: “How can we involve family early and often to ensure we are meeting our reasonable efforts requirements to prevent removal, to facilitate return home, and to finalize a permanent plan for the family.”

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<sup>98</sup> UNIV. OF CAL. DAVIS EXTENSION, CTR. FOR HUMAN SERVS., A LITERATURE REVIEW OF PLACEMENT STABILITY IN CHILD WELFARE SERVICE: ISSUES, CONCERNS, OUTCOMES AND FUTURE DIRECTIONS 11 (2008), <http://www.childsworld.ca.gov/res/pdf/PlacementStability.pdf> [https://perma.cc/AVS7-UAVC].

<sup>99</sup> Sarah Fay Campbell, *Retention, Not Recruitment, Key to Foster Parent Shortage*, NEWNAN TIMES-HERALD (Aug. 17, 2016, 12:25 PM), <http://times-herald.com/news/2016/08/retention-not-recruitment-key-to-foster-parent-shortage> [https://perma.cc/743H-EK4R]; Anabel Munoz, *LA County Experiencing Shortage of Foster Parents; Thousands of Kids Need Homes*, ABC NEWS (May 2, 2016), <http://abc7.com/family/la-county-experiencing-shortage-of-foster-parents;-thousands-of-kids-need-homes/1319736> [https://perma.cc/Y6LC-H996].

<sup>100</sup> First Amended Complaint for Declaratory and Injunctive Relief at 4, *Katie A. v. Bontá*, No. 02-056662 (C.D. Cal. Dec. 20, 2002), <http://www.bazelon.org/LinkClick.aspx?fileticket=zV5vRdozQrY%3d&tabid=186> [https://perma.cc/MH7C-KR2A].

<sup>101</sup> See, e.g., SAUL SINGER, CHILD AND FAMILY TEAM MEETINGS: NEVADA CASE PLANNING AND ASSESSMENT POLICIES 5, [https://www.childwelfare.gov/pubPDFs/resources/NV\\_CaseManagementTrainingFacilitator.pdf](https://www.childwelfare.gov/pubPDFs/resources/NV_CaseManagementTrainingFacilitator.pdf) [https://perma.cc/VX27-P2BE].

<sup>102</sup> See *id.* at 10.

<sup>103</sup> See *id.* at 8.

*D. Filling in the Gaps*

Since the passage of the Act in 1980, the child welfare system has failed in many ways to adhere to the spirit of the legislation.<sup>104</sup> Subsequent federal legislation has been passed to fill in the gaps of missed opportunities or where statute has failed to clearly delineate that family and youth should be involved at all stages of the “temporary” child welfare process.<sup>105</sup>

In 1997, Congress passed the Adoption and Safe Families Act (ASFA) due to concerns that implementation as outlined in the Act was not occurring, resulting in a growing number of children being raised in foster care without permanency.<sup>106</sup> ASFA sought to maintain the family unit and prevent the unnecessary removal of a child, effect the expeditious reunification of the child who is in temporary out-of-home placement, and effect an alternative permanency goal in a timely manner.<sup>107</sup> This legislation notably introduced the concept and terminology of “Concurrent Planning.”<sup>108</sup>

In 2006, Congress passed the Child and Family Services Improvement Act.<sup>109</sup> This federal legislation required the court (or court approved administrative body) conducting a required permanency hearing for a foster child to consult with him or her in an “age-appropriate manner” regarding

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<sup>104</sup> Nat’l Coal. for Child Prot. Reform, *The Unreasonable Assault on “Reasonable Efforts,”* in *ISSUE PAPERS ON FAMILY PRESERVATION, FOSTER CARE AND REASONABLE EFFORTS* (2015), <http://www.nccpr.org/reports/9Efforts.pdf> [<https://perma.cc/2PHT-MD72>]; Theodore J. Stein, *The Adoption and Safe Families Act: How Congress Overlooks Available Data and Ignores Systemic Obstacles in Its Pursuit of Political Goals*, 25 *CHILD. & YOUTH SERV. REV.* 669, 672 (2003), [http://ac.els-cdn.com/S0190740903000665/1-s2.0-S0190740903000665-main.pdf?\\_tid=47827a66-9ac8-11e6-afbe-00000aabb0f26&acdnt=1477409746\\_a5864f6cfd573a91c35e0a53a72ff3f6](http://ac.els-cdn.com/S0190740903000665/1-s2.0-S0190740903000665-main.pdf?_tid=47827a66-9ac8-11e6-afbe-00000aabb0f26&acdnt=1477409746_a5864f6cfd573a91c35e0a53a72ff3f6) [<https://perma.cc/Q3NA-DCB6>].

<sup>105</sup> See Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.) (providing funding in part for the provision of technical assistance to support the goal of effecting more adoptions, including models fast tracking children under the age of one year); Child and Family Services Improvement Act of 2006, Pub. L. No. 109-288, 120 Stat. 1233 (codified in scattered sections of 42 U.S.C.) (providing funding in part for the purposes of coordinated child and family services programs and addressing the increased prevalence of methamphetamine and its impact on children in the foster care system); Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, 122 Stat. 3949 (2008) (providing funds in part for the purpose of establishing an updated transition plan for children aging out of the foster care system).

<sup>106</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

<sup>107</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 101, 111 Stat. 2115, 2116 (1997).

<sup>108</sup> Adoptions and Safe Families Act of 1997, Pub. L. No. 105-89, § 473A(i)(2)(B), 111 Stat. 2115, 2124 (1997).

<sup>109</sup> Child and Family Services Improvement Act of 2006, Pub. L. No. 109-288, 120 Stat. 1233 (2006).

the proposed plan to find a permanent home for the child or help the child transition to independent living.<sup>110</sup>

In 2008, the Fostering Connections to Success and Increasing Adoptions Act was passed in 2008.<sup>111</sup> There are many components of this major legislation, but for our purposes, the main modification to the current structure of the child welfare system is that now the “State” is required to identify and notice relatives when a child is removed from the home.<sup>112</sup> These requirements were grounded in research that children experience better outcomes if they are placed with or connected to kin, rather than languishing in care that was found in many cases to be harmful to children.<sup>113</sup> The law also required states to make reasonable efforts to place siblings removed from their home in the same foster care, adoption, or guardianship placement, or facilitate visitation or ongoing contacts with those who cannot be placed together, unless it is contrary to the safety or well-being of any of the siblings.<sup>114</sup>

In 2011, the Child and Family Services Improvement and Innovation Act was passed.<sup>115</sup> This legislation required states to describe what activities they will implement to reduce the length of time that children under the age of five are without a permanent family.<sup>116</sup>

Then in 2014, the passage of the Preventing Sex Trafficking and Strengthening Families Act eliminated the use of Another Planned Permanent Living Arrangement (APPLA) for children under the age of 16 and severely restricted its usage for youth 16 and older.<sup>117</sup> It further authorized children 14 and older to participate in the development of their

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<sup>110</sup> Child and Family Services Improvement Act of 2006, Pub. L. No. 109-288, § 10, 120 Stat. 1233, 1255 (2006).

<sup>111</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

<sup>112</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 103(3)(A)–(B), 122 Stat. 3949, 3956 (2008).

<sup>113</sup> See, e.g., CHILD FOCUS & N. AM. COUNCIL ON ADOPTABLE CHILDREN, KINSHIP ADOPTION: MEETING THE UNIQUE NEEDS OF A GROWING POPULATION 12 (2010), [http://childfocuspartners.com/wp-content/uploads/CF\\_Kinship\\_Adoption\\_Report\\_v5.pdf](http://childfocuspartners.com/wp-content/uploads/CF_Kinship_Adoption_Report_v5.pdf) [<https://perma.cc/ZZ5C-V7LV>].

<sup>114</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 206(3)(A)–(B), 122 Stat. 3949, 3962 (2008).

<sup>115</sup> Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, 125 Stat. 369 (2011).

<sup>116</sup> Child and Family Services Improvement and Innovation Act, Pub. L. No. 112-34, § 101(a)(3)(C), 125 Stat. 369, 369 (2011).

<sup>117</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, §§ 112, 475A, 128 Stat. 1919, 1926–27 (2014).



own case plans, including consultation with up to two members of a “case planning team.”<sup>118</sup>

Despite the ongoing efforts to encourage and promote timely attainment of permanence via judicial oversight and to ensure increased family involvement and promotion of youth and family voice, children still unnecessarily languish in care, are aging out without sufficient supports, and are living unhealthy lifestyles once leaving care.<sup>119</sup> Despite the steep reduction in child welfare intake and total enrollment in child welfare nationally, the number of youth aging out did not reflect the same decline proportionately, and in fact increased over this eight year period, prior to the establishment nationally of extending foster care beyond eighteen via the Fostering Connections Act.<sup>120</sup>

Adoption and Foster Care Statistics, United States, 1940–2015<sup>121</sup>

Year	Entered	Total Enrollment	Aged Out
2004	298,087	517,000	23,121
2005	307,173	513,000	24,407
2006	304,872	510,000	26,517
2007	293,233	491,000	29,730
2008	280,423	463,792	29,516
2009	255,027	420,415	29,471

<sup>118</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub L. No. 113-183, § 113, 128 Stat. 1919, 1928 (2014).

<sup>119</sup> See PEW CHARITABLE TRUSTS, TIME FOR REFORM: AGING OUT AND ON THEIR OWN MORE TEENS LEAVING FOSTER CARE WITHOUT A PERMANENT FAMILY 5–6 (2007) [hereinafter AGING OUT], [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster\\_care\\_reform/kidsarewaitingtimeforreform0307pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/kidsarewaitingtimeforreform0307pdf.pdf) [https://perma.cc/F66F-XDEY].

<sup>120</sup> Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

<sup>121</sup> See Wm. Robert Johnston, *Historical Statistics on Adoption in the United States, Plus Statistics on Child Population and Welfare*, JOHNSTON’S ARCHIVE (Oct. 15, 2016), <http://www.johnstonsarchive.net/policy/adoptionstats.html> [https://perma.cc/8DRG-LCN7].

2010	255,278	405,330	27,854
2011	251,388	397,885	26,286
<b>Avg</b>	280,685	464,803	27,113

A key step necessary to close this gap is to increase the partnership, interaction, and accountability of both the judicial and service branches within the child welfare system. This will create an alignment that will not only meet legislative intent, but will improve the experience of those who are served by the system, as well as prevent unnecessary entries and reduce the length of stay in the system.

#### *E. The Shift*

How do we move away from the status quo of prioritizing stable but temporary shelter, foster, and group placement to a more consistent attainment of the legislative intent to promote family involvement and timely permanence with family? It can be argued the lack of national accountability of both child welfare agencies and courts (i.e., lack of attention in IV-E court audits to meeting requirements for family finding, family involvement, and youth participation), along with archaic funding streams that allow or even promote divided efforts, work to discourage system participant collaboration.<sup>122</sup> And while efforts are underway to re-envision child welfare funding,<sup>123</sup> measures can be taken immediately and within the current system to move closer, and faster, to the desired outcomes.

Individuals can begin an immediate shift in their daily practice by establishing a default thought process of family involvement.<sup>124</sup> The focus of the courts and professionals providing or overseeing service delivery to young people and their families must embrace the notion that the primary and most undervalued asset available are the very families they are obligated

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<sup>122</sup> CHILDREN'S DEF. FUND, RECOMMENDATIONS FOR FINANCING CHILD WELFARE MADE BY THE PEW COMMISSION ON CHILDREN IN FOSTER CARE 6-8 (2004), [http://cdf.childrensdefense.org/site/DocServer/pew\\_financing\\_recommendations.pdf?docID=791](http://cdf.childrensdefense.org/site/DocServer/pew_financing_recommendations.pdf?docID=791) [<https://perma.cc/4DCP-TZQP>].

<sup>123</sup> See, e.g., *New Georgia Law Creates Major Reforms for Child Welfare*, UNITED METHODIST CHILD. HOME (May 16, 2015), <http://www.umchildrenshome.org/2015/05/14/new-georgia-law-creates-major-reforms-for-child-welfare> [<https://perma.cc/M5D3-VXXP>].

<sup>124</sup> "Families" refers to healthy and safe family members, including those defined in note 5, *supra*.

to serve. Family members can play a variety of roles to help avert unnecessary out of home placements, to minimize and heal trauma, to limit loneliness and disconnection, and to maintain a sense of hope in the face of crisis.<sup>125</sup> They can work together with child welfare professionals and volunteers to restore acceptable functioning of birth parents in order to reunify or support the establishment of strong relationships with kin.<sup>126</sup>

The court, as the system's gatekeeper and overseer of the agency's efforts both before entering care and continuing throughout the child or youth's participation in the child welfare system,<sup>127</sup> has the responsibility to ensure that all available efforts (models) that promote family involvement are being implemented.<sup>128</sup> Thus, the court can utilize its authority to ensure that the agency has met its legal mandates (i.e., preventing removal, return home or permanency planning) by supporting and requiring family involvement, while also authorizing the participation of all stakeholders in these efforts which will ultimately assist in reaching these overarching goals for each child.

The court is required to make specific reasonable efforts findings and it must do so by reviewing and considering all relevant evidence.<sup>129</sup> This evidence can be viewed as the "key" to permanency, since these findings and orders will ultimately determine the path the child will follow.<sup>130</sup> Children and youth need to be surrounded by a network of loving people where they can feel loved, secure, and safe, as well as provided with a sense of belonging.<sup>131</sup> Minimizing disconnection from their "support system" and reducing the time away from "family" should be the priority.<sup>132</sup> The practice models discussed below, along with each of their components, are an indication of what can be accomplished outside the courtroom to move children closer to permanency.<sup>133</sup> The checklist attached as Appendix A is a shorthand version of these programs which can be used a checklist during each hearing where reasonable efforts is required.<sup>134</sup>

If all child welfare professionals commit to the attainment of certain and specific legal mandates early and often, while utilizing innovative child welfare practices that promote safety, permanence, and well-being, each

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<sup>125</sup> See Rose Marie Wentz & Kelly Lynn Beck, *Unlocking "Reasonable Efforts" Kinship is Key*, 46 CLEARINGHOUSE REV. 99, 105–107 (2012).

<sup>126</sup> See *id.*

<sup>127</sup> Edwards, *supra* note 19, at 2.

<sup>128</sup> Wentz & Beck, *supra* note 125, at 112.

<sup>129</sup> ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 302–07.

<sup>130</sup> Edwards, *supra* note 19, at 10.

<sup>131</sup> See ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 109.

<sup>132</sup> *Id.*

<sup>133</sup> See *infra* Section III.B.

<sup>134</sup> See *infra* Appendix A.

child or youth's chances for early and safe permanency will be greatly enhanced.<sup>135</sup> Safety, permanence, and well-being can be viewed as a three-legged stool where the intersecting constructs rely on the stability of each leg. When children and adults are not well connected, they are vulnerable to experiencing both physical and psychological challenges.<sup>136</sup>

Human and social capital research indicates that supportive networks provide alternatives to and discouragement from delinquency.<sup>137</sup> Young people who age out of foster care without social and emotional supports are subject to a plethora of poor outcomes, many of which have been cited by numerous studies in order to drive system reform.<sup>138</sup> When foster youth are able to develop relationships characterized by trust and commitment, their outcomes during and after placement are greatly improved.<sup>139</sup> This is especially true when children and their caregivers are assisted in building or accessing a supportive network of family members that can be there for them over the long term. When young people have at least some connection to their parents, along with a close relationship with grandparents, they suffer from fewer emotional and behavioral problems and develop better social skills that help reduce aggressive behavior on the part of the young person.<sup>140</sup>

The work being done inbetween the hearings where reasonable efforts is required must be geared toward family involvement, placement, and support. This is the evidence needed for the judicial officer to make a "reasonable efforts" finding.<sup>141</sup>

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<sup>135</sup> See generally Edwards, *supra* note 19. See also Wentz & Beck, *supra* note 125, at 101.

<sup>136</sup> John T. Cacioppo & Stephanie Cacioppo, *Social Relationships and Health: The Toxic Effects of Perceived Social Isolation*, 8 SOC. & PERSONALITY COMPASS 58, 58 (2014), <http://onlinelibrary.wiley.com/doi/10.1111/spc3.12087/epdf> [<https://perma.cc/2PCL-BPCN>].

<sup>137</sup> Mikaela J. Dufur et al., *Examining the Effects of Family and School Social Capital on Delinquent Behavior*, 36 DEVIANANT BEHAV. 511, 515 (2015), <http://www.tandfonline.com/doi/pdf/10.1080/01639625.2014.944069?needAccess=true> [<https://perma.cc/6DLW-TCRY>].

<sup>138</sup> MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26, at 13-17 (2011), [https://www.chapinhall.org/sites/default/files/Midwest%20Evaluation\\_Report\\_4\\_10\\_12.pdf](https://www.chapinhall.org/sites/default/files/Midwest%20Evaluation_Report_4_10_12.pdf) [<https://perma.cc/J8Y9-AB7B>]; Ruth Massinga & Peter J. Pecora, *Providing Better Opportunities for Older Children in the Child Welfare System*, 14 FUTURE CHILD. 150, 151 (2014), [http://futureofchildren.org/publications/docs/14\\_01\\_FullJournal.pdf](http://futureofchildren.org/publications/docs/14_01_FullJournal.pdf) [<https://perma.cc/UQD5-JSNN>].

<sup>139</sup> Delilah Bruskas, *Developmental Health of Infants and Children Subsequent to Foster Care*, 23 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 231, 231 (2010), <http://onlinelibrary.wiley.com/doi/10.1111/j.1744-6171.2010.00249.x/epdf> [<https://perma.cc/88S8-23M3>].

<sup>140</sup> Ann Lukits, *Grandparent Power: Bonds with Seniors Help Stabilize Teens*, WALL STREET J. (Aug. 31, 2016, 11:41 AM), <http://www.wsj.com/articles/grandparent-power-bonds-with-seniors-help-stabilize-teens-1441035672> [<https://perma.cc/E7L8-2CAW>].

<sup>141</sup> See *supra* note 35 and accompanying text.

## III. OVERVIEW OF PROPOSED APPROACH

The goal of the proposed reasonable efforts methodology is to incorporate the latest and most innovative, family-focused child welfare practices, which are designed to build a supportive network for the youth and family and intertwine those practices with a sound legal approach.<sup>142</sup> This will generate more of a “family as the solution” approach to child welfare work. Innovative practices are particularly effective in engaging and involving family members.<sup>143</sup> These practices are designed to proactively reach out to family members, invite them to participate in planning for the future of their kin, and welcome them to the resulting process of discussion and problem-solving.<sup>144</sup> It is important to note that there are other programs and processes that support family involvement, and if those programs include some of the same components as the practices described in this article, they too should be included in reasonable efforts discussions and activities.<sup>145</sup>

It is posited that the best practice model presented here would prevent unnecessary removals, safely maintain a child’s sense of belonging with family without unnecessary disruptions, and establish a more seamless process of maintaining family connections.<sup>146</sup> The proposed methodology not only embraces and incorporates other family-focused legislative requirements, such as fostering connections,<sup>147</sup> relative placement preference,<sup>148</sup> and concurrent planning,<sup>149</sup> but it helps child professionals and the courts to meet those requirements.<sup>150</sup>

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<sup>142</sup> JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, SOCIAL CAPITAL: BUILDING QUALITY NETWORKS FOR YOUNG PEOPLE IN FOSTER CARE 1–2, [http://www.lawyersforchildrenamerica.org/matriarch/documents/Issue\\_Brief\\_Social\\_Cap.pdf](http://www.lawyersforchildrenamerica.org/matriarch/documents/Issue_Brief_Social_Cap.pdf) [https://perma.cc/A7ZB-7E7J].

<sup>143</sup> See *infra* Section III.B.

<sup>144</sup> See *infra* Section III.B.

<sup>145</sup> See, e.g., ANNIE E. CASEY FOUND., THE KINSHIP DIVERSION DEBATE: POLICY AND PRACTICE IMPLICATIONS FOR CHILDREN, FAMILIES AND CHILD WELFARE AGENCIES 10 (2013), <http://www.aecf.org/m/pdf/KinshipDiversionDebate.pdf> [https://perma.cc/HV27-7TGK].

<sup>146</sup> *Id.* at 4.

<sup>147</sup> EMILY STOLTZFUS, CONG. RESEARCH SERV., CHILD WELFARE: THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, at 3 (2008).

<sup>148</sup> CHILD WELFARE INFO. GATEWAY, PLACEMENT OF CHILDREN WITH RELATIVES 2–5 (2013), <https://www.childwelfare.gov/pubPDFs/placement.pdf> [https://perma.cc/X652-FLYD].

<sup>149</sup> See *id.* at 22.

<sup>150</sup> See *id.* at 3.



*A. Proposed Methodology*

During the time of initial investigation, up to and including the first formal court hearing,<sup>151</sup> the focus is to maintain the child or youth at home with his or her family by the agency, another partner agency, or both.<sup>152</sup> Family engagement, relative search, and other family centered practices as outlined below should be incorporated. Involving healthy and safe family members and important connections may allow the child to either stay at home with safety plans in place or to stay temporarily with those others identified.

If after consideration of available means to prevent removal from family, the child or youth is legally removed from his or her parents, the focus of the work, practices, or efforts implemented during this next time period (between each crucial hearing) should be on returning the young person to family.<sup>153</sup> No longer would this period be a time to “wait and see”: (1) if the parent(s) complete(s) their case plan; (2) if any relatives will show up to help; or (3) if the child can maintain his or her placement.<sup>154</sup> During this time frame, the focus should be on the efforts required to maintain family connections and build a family support network that will always be there for the child. But what is needed to make this happen?

Once the child or youth is removed from their home, the child welfare process often takes on a life of its own. A variety of published flow charts used throughout the United States show a layout of the entire child welfare experience.<sup>155</sup> At the top of the chart is the child’s removal, followed by the hearings and possible outcomes during the case, until the bottom of the chart is reached where the child ages out of the system or the matter is dismissed by the court.<sup>156</sup> Many flow charts show just the hearings that will most likely be encountered during the court dependency experience<sup>157</sup> or when

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<sup>151</sup> See BENCHCARD, *supra* note 57, at 6; ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 107.

<sup>152</sup> See BENCHCARD, *supra* note 57, at 12.

<sup>153</sup> See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 503 (1980).

<sup>154</sup> See Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500, 511 (1980).

<sup>155</sup> See, e.g., JUDICIAL BRANCH STATISTICAL INFO. SYS. MANUAL, JUVENILE DEPENDENCY FLOW CHART (Jan. 1, 2012), [http://www.courts.ca.gov/documents/Dependency\\_Flow\\_chart.pdf](http://www.courts.ca.gov/documents/Dependency_Flow_chart.pdf) [<https://perma.cc/4CHH-4F7E>].

<sup>156</sup> See *id.*

<sup>157</sup> See, e.g., TRIAL NOTEBOOK FOR CHILD WELFARE ATTORNEYS IN GEORGIA’S JUVENILE COURT DEPENDENCY CASES 25 (Mary Hermann & Karen Worthington eds., 2014), [http://abuse.publichealth.gsu.edu/files/2014/10/dependency\\_notebook\\_2014-3-31.pdf](http://abuse.publichealth.gsu.edu/files/2014/10/dependency_notebook_2014-3-31.pdf) [<https://perma.cc/ZG9N-EV75>].

reasonable efforts findings are required.<sup>158</sup> The following is an example of a chart that summarizes the hearings where reasonable efforts determinations are required to be made by the court:<sup>159</sup>

STAGES IN THE CASE AT WHICH JUDICIAL REASONABLE EFFORTS DETERMINATIONS MUST BE MADE <sup>22</sup>		
Removal/Shelter/ Detention Hearings	Review Hearings	Permanency Hearings
<ul style="list-style-type: none"> <li>■ A finding that continuance in the home of the parent or legal guardian would be contrary to the child's welfare, (42 U.S.C. § 672(a)(1)), must be made at the time of the first court ruling authorizing the removal, even temporarily, of the child from the home. 45 C.F.R. § 1356.21(c)</li> <li>■ Placement and care are the responsibility of the State Agency. 42 U.S.C. § 672 (a)(2); 45 C.F.R. § 1356.71(d)(1)(iii)</li> <li>■ A judicial determination whether reasonable efforts were or were not undertaken to prevent a child's removal from the home must be made no later than 60 days from the date the child was removed. 45 C.F.R. § 1356.21(b)(i)</li> </ul>	<ul style="list-style-type: none"> <li>■ Judges must review the child's status and safety no less frequently than once every six months from the date that the child entered foster care, in order to determine:               <ul style="list-style-type: none"> <li>• whether the child's safety needs have been met and whether placement remains necessary and appropriate;</li> <li>• the extent of the agency compliance with the case plan in making reasonable efforts to return the child home safely or, if there is a court finding that reasonable efforts at reunification are not necessary, whether the agency has made reasonable efforts to complete steps necessary to finalize the permanency plan for the child; and</li> <li>• the likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another planned permanent living arrangement. 42 U.S.C. 671(a)(15)(B),(C); 42 USC 675(5)(B); 45 CFR 1355.34(c)(2)(ii); 45 CFR 1355.20.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ A permanency hearing must be held 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. 45 C.F.R. § 1356.21(b)(2)(i); (42 U.S.C. § 675(5)(C) and (F); 45 C.F.R. § 1355.20)</li> <li>■ In those dependency cases where no reunification services are required or offered, the permanency hearing must be held within 30 days of the determination. 45 C.F.R. § 1356.21(h)(2)</li> <li>■ At the permanency hearing, the state must obtain a judicial determination that it made reasonable efforts to finalize the permanency plan that is in effect.</li> </ul>

<sup>158</sup> See *id.*

<sup>159</sup> Fitzgerald et al., *supra* note 89, at 100.

A key aspect of the proposed methodology, and what is unique from the traditional flow chart approach, is the work that can be accomplished prior to and in between each crucial hearing to bring the child or youth closer to being with family. So what are the promising or innovative services that can be incorporated and implemented to close the gaps in practice and increase the level of connection for the youth?

It has been established that the federal government has provided the essential legal mechanism(s) to include innovative practice areas as they develop or are incorporated in state statutes, policies, and programs.<sup>160</sup> Allowing the court to determine reasonable efforts on a case-by-case basis leaves room for these types of innovative practices to be utilized prior to the time of removal and at the same time as reunification services are being offered, in order better ensure permanency for the child.

Viewing the time prior to the first hearing and the periods between subsequent hearings as opportunities to incorporate any aspects of the innovative practice models described below would begin a true focus on family involvement and movement toward permanency.<sup>161</sup> Further, by recognizing and utilizing the power of the reasonable efforts finding, the court can review what has been done pursuant to these innovative practice models and either find that reasonable efforts have or have not been met (i.e., cases where the practices were not utilized). Absent such an intentional approach that reinforces the urgency of attention and effort to children and families in crisis, we will continue to fall short in achieving permanency for large numbers of children.

### *B. Innovative Practice Areas*

Innovative child welfare practices have emerged that, when combined with an active and attentive judicial approach to enforce reasonable efforts standards, attend to the legislative intent in the federal child welfare statutes discussed above.<sup>162</sup> The following are notable child welfare practices, which should be implemented:

#### *1. Front End Practice Which Emphasizes Safety*<sup>163</sup>

A number of child welfare practices have emerged to improve the industry's ability to identify and mitigate harm and danger, and direct child

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<sup>160</sup> See *supra* Part II.

<sup>161</sup> See Appendix A.

<sup>162</sup> See *supra* note 105 and accompanying text.

<sup>163</sup> HEATHER MEITNER & MARGIE ALBERS, INTRODUCING SAFETY ORGANIZED PRACTICE 1 (2012), <http://bayareaacademy.org/wp-content/uploads/2013/05/SOP-Handout-Booklet-9-20-12.pdf> [<https://perma.cc/8WUL-XQ57>]; *About Action*, ACTION 4 CHILD PROTECTION, <http://action4cp.org/our-story/about-action> [<https://perma.cc/V78C-YUBH>].

welfare professionals to increase and improve their engagement with family (blood relatives and connections) to promote the child to safely remain within the family.<sup>164</sup> These practices begin by amassing as many family connections as possible upon identification that children are or may be harmed in order to clarify the danger and determine if the “family” can mitigate the risk without the oversight of the court or the Department of Social Services.<sup>165</sup> These practices value family involvement and recognize that families know much more about the nature of and possible solutions to their problems, so that their voices are of critical importance (inclusive of children and youth).<sup>166</sup> They also value the entire experience of families and strive to learn what resources and strategies families use to prevent harm to children.<sup>167</sup> Key tools, questions, and techniques associated with these practices include: (1) three houses (good things, dreams, and worries); (2) safety circles; (3) harm and danger statements; (4) how many people can be in your living room in an hour?; and (5) getting to know people outside of their problems.<sup>168</sup>

## 2. *Family Finding*<sup>169</sup>

The goal of Family Finding is to create a robust asset base of support for every young person and family touched by the child welfare system, so that the asset base can be respectfully engaged, welcomed, and encouraged to participate in the support of the young person while developing and determining plans for the child’s future.<sup>170</sup> This outcome can be achieved for every child at risk of entering or in the process of entering the system, as well as for children languishing in foster care.<sup>171</sup> Key questions that guide the direction of tools, techniques, and strategies associated with Family Finding include: (1) Who can safely care for the child to avert entering care including non-custodial parent?; (2) Who is related to or connected to this child and family on the planet?; (3) Who can safely be/stay involved and connected to this child and family?; (4) Who can come to the table and participate in planning and decision making to promote safety, permanency, and well-being?; and (5) Who will remain a part of the support network and how can they best contribute?

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<sup>164</sup> MEITNER & ALBERS, *supra* note 163, at 1.

<sup>165</sup> *See id.* at 4.

<sup>166</sup> *See id.* at 2, 4.

<sup>167</sup> *See id.* at 1–2.

<sup>168</sup> *Id.* at 5. *See also* Appendix A.

<sup>169</sup> *See More About Family Finding*, *supra* note 3.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

### 3. *Dr. Darla Henry's 3-5-7 Model*<sup>172</sup>

The 3-5-7 Model was developed and created to work with children and young people in the foster care system to assure that they were ready for permanency.<sup>173</sup> The model has evolved into a core practice model for work with all families towards their readiness to parent in a committed relationship that assures permanency for the well-being of their children.<sup>174</sup> “The 3-5-7 Model incorporates 3 tasks, 5 conceptual questions and 7 interpersonal skill elements to support this work. The three (3) tasks of the model engage children, individuals and families, guiding practices that support their work of grieving and building relationships.”<sup>175</sup> The three tasks are: (1) clarification: to explore life events and form identity security; (2) integration: to make sense of all important relationships to establish the permanency of a relationship; and (3) actualization: to firmly recognize and feel secure within a permanent relationship.<sup>176</sup> The 3-5-7 Model is notable for its focus on:

- a. Providing fundamental instruction, practice, and guidance towards building healing relationships that explore losses through grief work with children, parents, extended and chosen family members.<sup>177</sup>
- b. Emphasizing 24/7 interaction and response to behaviors that are indicators of the pain being experienced from losses.<sup>178</sup>
- c. Identifying a framework to support grief and relationship-building work through the tasks of clarification, integration, and actualization towards readiness for decisions to be made for permanency in relationships.<sup>179</sup>
- d. Recognizing and supporting the advanced development of the skills (7) of all those who engage with families and young people in supporting their work.<sup>180</sup>

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<sup>172</sup> 3-5-7 Model Overview, DARLA L. HENRY & ASSOCIATES (2016), <http://darlahenry.org/overview> [<https://perma.cc/7C6J-FPNJ>].

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *See id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*



#### 4. *Family Group Conferencing/Decision Making (FGDM)*

Family group decision making is a collaborative practice designed to mitigate the inherent power imbalance between large government institutions such as a child welfare agency, and the children, youth, and families they serve.<sup>181</sup> The establishment of a neutral facilitation process enhances the voice and participation of those served by separating the authority from the facilitation role, and allows more equal footing for all team members to brainstorm and develop plans to meet the safety, permanency and well-being needs of children and youth served.<sup>182</sup>

FGDM processes position the family group to lead decision making, and the statutory authorities agree to support family group plans that adequately address agency concerns. The statutory authorities also organize service providers from governmental and non-governmental agencies to access resources for implementing the plans. FGDM processes are not conflict-resolution approaches, therapeutic interventions or forums for ratifying professionally crafted decisions. Rather, FGDM processes actively seek the collaboration and leadership of family groups in crafting and implementing plans that support the safety, permanency and well-being of their children.<sup>183</sup>

Core elements of the FGDM process are:

- a. An independent (i.e., non-case carrying) coordinator is responsible for convening the family group meeting with agency personnel.<sup>184</sup>
- b. The child protection agency personnel recognize the family group as their key decision-making partner, and

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<sup>181</sup> AM. HUMANE ASS'N & THE FGDM GUIDELINES COMM., GUIDELINES FOR FAMILY GROUP DECISION MAKING IN CHILD WELFARE (2010), [http://www.ucdenver.edu/academics/colleges/medicalschoo/departments/pediatrics/subs/can/FGDM/what\\_is\\_FGDM/Documents/FGDM%20Guidelines.pdf](http://www.ucdenver.edu/academics/colleges/medicalschoo/departments/pediatrics/subs/can/FGDM/what_is_FGDM/Documents/FGDM%20Guidelines.pdf) [<https://perma.cc/RN7U-S9YA>].

<sup>182</sup> See *Family Group Decision Making in Child Welfare: Purpose, Values and Processes*, KEMPE CTR. FOR PREVENTION & TREATMENT CHILD ABUSE & NEGLECT (May 2013), <http://www.ucdenver.edu/academics/colleges/medicalschoo/departments/pediatrics/subs/can/FGDM/Documents/FGDM%20Purpose%20Values%20and%20Processes.pdf> [<https://perma.cc/XG73-CN3B>].

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

time and resources are available to convene this group.<sup>185</sup>

- c. Family groups have the opportunity to meet on their own, without the statutory authorities and other non-family members present, to work through the information they have been given and to formulate their responses and plans.<sup>186</sup>
- d. When agency concerns are adequately addressed, preference is given to a family group's plan over any other possible plan.<sup>187</sup>
- e. Follow-up processes after the family group decision making meeting occur until the intended outcomes are achieved, to ensure that the plan continues to be relevant, current and achievable, because family group decision making is not a one-time event but an ongoing, active process.<sup>188</sup>
- f. Referring agencies support family groups by providing the services and resources necessary to implement the agreed-upon plans.<sup>189</sup>

##### 5. *Family Acceptance Project*<sup>190</sup>

The Family Acceptance Project works to prevent mental and health health risks for lesbian, gay, bisexual, and transgender (LGBT) children and youth, in the context of their cultures, families, and faith communities.<sup>191</sup> It utilizes a research-based, culturally grounded approach to help ethnically, socially, and religiously diverse families to support their LGBT children.<sup>192</sup> The project was designed to:

- a) Study parents', families' and caregivers' reactions and adjustment to an adolescent's coming out and LGBT identity.
- b) Develop training and assessment materials for health, mental health, and school-based providers, child

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Overview, FAM. ACCEPTANCE PROJECT [hereinafter FAM. ACCEPTANCE], <https://familyproject.sfsu.edu/overview> [https://perma.cc/4VTL-EKZ4].

<sup>191</sup> Welcome to the Family Acceptance Project, FAM. ACCEPTANCE PROJECT, [https://perma.cc/RH7H-XJL3].

<sup>192</sup> *Id.*

welfare, juvenile justice, family service workers, clergy and religious leaders on working with LGBT children, youth and families.

- c) Develop resources to strengthen families to support LGBT children and adolescents.
- d) Develop a new model of family-related care to prevent health and mental health risks, keep families together and promote well-being for LGBT children and adolescents. Findings are being used to inform policy and practice and to change the way that systems of care address the needs of LGBT children and adolescents.<sup>193</sup>

Actions can be taken in accordance with each of these models to exponentially increase family involvement, address trauma, and improve the depth and quality of relationships. Utilization of the activities and strategies contained within these practice models will bring the child and youth closer to the establishment of safe and affirming relationships that improve well-being and maintain the family's connection to kin. Many of these activities and strategies can be levied prior to the family's involvement in the system to prevent unnecessary entries, or to reduce trauma if removal is required.<sup>194</sup> These strategies and activities can also be applied throughout the course of child welfare involvement to meet the legislative intent noted above. The actions or components outlined above, if implemented in a meaningful way, could and should be considered during court proceedings where a reasonable efforts finding is required. The attached checklist could be utilized by the court or any stakeholder to discuss activities that have been used.<sup>195</sup>

To date we have not taken the time and effort needed to ensure all information about family notification and involvement is before the judicial officer at each of the crucial hearings where reasonable efforts is required.<sup>196</sup> We can alter this trajectory by working to maintain the youth and family's existing support network early in the case, while continuing to build upon that support network throughout the life of the case and provide that information during these hearings. At every possible opportunity, we should ask: What can we be doing right now to ensure this child can safely remain with family?

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<sup>193</sup> FAM. ACCEPTANCE, *supra* note 190.

<sup>194</sup> *See id.*

<sup>195</sup> *See* Appendix A.

<sup>196</sup> *See* ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 109; EDWARDS, *supra* note 53, at 277.

*C. Preparing Ourselves*

Typically, the child welfare system's focus is on the parent's ability to reunify, which is the preferred permanent plan.<sup>197</sup> Meanwhile, the child is languishing in care.<sup>198</sup> As a result, there is often a failure to provide for children's short-term and long-term emotional needs when the state intervenes in the lives of their parents.<sup>199</sup> Because children are unable to maintain a sense of belonging, self-worth, and connectedness,<sup>200</sup> they leave care worse off than when they entered.<sup>201</sup>

When we recognize that some of the work we so passionately pursue is not moving a youth toward permanency, it is critical to take a brief pause or step back to refocus and align our time with the youth and family. First, every child welfare professional who works with the youth and family must understand what permanency truly is (i.e., a sense of belonging) and what it means to that particular youth and family. Because permanency is not a term that families typically use, the development of meaningful dialogue is essential to understanding the people and relationships that are important to this youth.<sup>202</sup> From a practice perspective, it is important to help facilitate a discussion in which the child and adults determine what they want and need to (1) promote reciprocal and sustainable relationships and (2) meet the child's needs for belonging and identity.

Second, child welfare professionals need to truly believe that permanency is possible for every child they serve.<sup>203</sup> Then, they must plan accordingly and relentlessly advocate for it. With every contact we have with the family and youth, we need to ask about "family."

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<sup>197</sup> See Adoptions and Safe Families Act of 1997, Pub. L. No. 105-89, § 101, 111 Stat. 2115, 2116 (1997).

<sup>198</sup> See AFCARS REPORT, *supra* note 85.

<sup>199</sup> See FROM PLACE TO PLACE (Porch Productions 2011); ANNIE E. CASEY FOUND., WHAT YOUNG PEOPLE NEED TO THRIVE: LEVERAGING THE STRENGTHENING FAMILIES ACT TO PROMOTE NORMALCY 2, 5 (2015), <http://www.aecf.org/m/resourcedoc/aecf-whatyoungpeopleneedtothrive-2015.pdf> [<https://perma.cc/G8CJ-BGAD>].

<sup>200</sup> MADELYN FREUNDLICH & JANA BOCKSTEIN, PERMANENT SOLUTIONS: SEEKING FAMILY STABILITY FOR YOUTH IN FOSTER CARE 110–11 (2008), [http://www.childrensrights.org/wp-content/uploads/2008/06/permanent\\_solutions\\_seeking\\_family\\_stability\\_for\\_youth\\_in\\_foster\\_care.pdf](http://www.childrensrights.org/wp-content/uploads/2008/06/permanent_solutions_seeking_family_stability_for_youth_in_foster_care.pdf) [<https://perma.cc/H4JG-PLFN>].

<sup>201</sup> See AGING OUT, *supra* note 119, at 5.

<sup>202</sup> Rosemary J. Avery, *An Examination of Theory and Promising Practice for Achieving Permanency for Teens Before the Age Out of Foster Care*, 32 CHILD. & YOUTH SERVICES REV. 399, 399 (2010).

<sup>203</sup> Rosemary J. Avery, *Identifying Obstacles to Adoption in New York State's Out-of-Home Care System*, 78 CHILD WELFARE LEAGUE AM. 653, 654–55 (1999).

Finally, we need to ensure that the necessary leadership is in place and committed to this plan of permanency.<sup>204</sup> Of special importance is judicial leadership, particularly at the most critical times in a child welfare case, such as the shelter-care hearing,<sup>205</sup> the six-month review hearing, and the permanency hearing.<sup>206</sup>

#### IV. STRATEGIES FOR SYSTEM STAKEHOLDERS

Start in your community by building a system collaborative.<sup>207</sup> All child welfare stakeholders, including the court, must work together to discuss how family members can be incorporated into the reasonable efforts findings and orders. Since these findings are made on a case-by-case basis, the collaborative could develop a systematic approach to which family engagement strategies and activities discussions would be the norm. This standard approach must be designed to enhance and embrace family involvement which will ensure that children do not enter the foster care system, unless it is a necessity.<sup>208</sup> When, as a last resort, a child or youth needs to come into care, the court must lead the way to ensure that the young person can live with an appropriate relative and/or important connection.<sup>209</sup> Each participant in the child welfare system should follow recommended strategies.”

##### A. Judicial Officer

In its role as gatekeeper, the court can intercede whenever a child is at risk of “foster care drift.”<sup>210</sup> By requiring a more thorough discussion with all stakeholders about how family is involved and requiring these actions for a favorable reasonable efforts determination, the judicial officer will be setting a clear path to permanency for all those who come to the attention of the child welfare system. Thus, the court can stop the flow of needless

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<sup>204</sup> SHIRLEY DOBBIN ET AL., BUILDING A BETTER COLLABORATION: FACILITATING CHANGE IN THE COURT AND CHILD WELFARE SYSTEM 11–12 (2004), <http://www.ncjfcj.org/sites/default/files/Building%20a%20Better%20Collaboration.pdf> [https://perma.cc/Z86D-S82M].

<sup>205</sup> BENCHCARD, *supra* note 57, at 6; ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 107.

<sup>206</sup> ENHANCED RESOURCE GUIDELINES, *supra* note 55, at 25.

<sup>207</sup> DOBBIN ET AL., *supra* note 204, at 12; Peter Watson, *Improving Child Welfare/Court Collaboration* 1–8 (2009), <http://muskie.usm.maine.edu/helpkids/rcpdfs/cwmatters9.pdf> [https://perma.cc/8UUC-2DGJ].

<sup>208</sup> Edwards, *supra* note 19, at 13–14.

<sup>209</sup> YOUTH TRANSITION FUNDERS GRP., CONNECTED BY 25: EFFECTIVE POLICY SOLUTIONS FOR VULNERABLE YOUTH 20 (2010), <http://www.ytfgconnectedby25.org/YTFGConnectedby25FullIssueBriefApril2010.pdf> [https://perma.cc/LG48-X2CK].

<sup>210</sup> J. Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUV. & FAM. CT. J. 1, 28 (1992).



removals and placements that perpetuate situations where children and youth are unlikely to ever achieve permanency.<sup>211</sup> For the child welfare system to truly meet the needs of vulnerable children and their families, judicial determinations from the onset must be as thoughtful, evidence-informed, and permanency-focused.

### *B. Attorney for Child/Youth*

The attorney for the child has an additional duty to seek out information and conduct an independent investigation of potential family supports.<sup>212</sup> It is incumbent upon the attorney to discuss with the child who is important to him or her, whether kin, family friends, or other involved individuals in the community.<sup>213</sup> This can be accomplished through probative type questioning.<sup>214</sup> Identifying relatives, important connections, and people who the child trusts is critical not only for keeping the child connected in the early stages of the child welfare intervention process, but for helping the child to build/maintain a lifelong network of supports.

### *C. Attorney for Parent*

The attorney for either the mother, father, or child's guardian also has the opportunity to discuss with his or her client about how large their family might be. Rather than asking the parent who would be able to take their child for placement, the attorney can find out who the parent trusts or looks to for support to generate a list of important connections to support the parent throughout their involvement with the child welfare system and beyond. This information can be especially crucial if the parent is seeking reunification.

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<sup>211</sup> NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, KEY PRINCIPLES FOR PERMANENCY PLANNING FOR CHILDREN 1 (2011), [http://www.ncjfcj.org/sites/default/files/keyprinciples.final\\_permplanning.pdf](http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf) [https://perma.cc/E7QG-CJU7].

<sup>212</sup> JENNIFER L. RENNE, LEGAL ETHICS IN CHILD WELFARE CASES 7 (2004), [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/2004\\_LegalEthics.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/2004_LegalEthics.authcheckdam.pdf) [https://perma.cc/K779-9ZZS].

<sup>213</sup> BRITT WILKENFELD ET AL., NEIGHBORHOOD SUPPORT AND CHILDREN'S CONNECTEDNESS (Feb. 2008), [http://www.childtrends.org/wp-content/uploads/2013/03/Child\\_Trends-2008\\_02\\_05\\_ConnectednessFS.pdf](http://www.childtrends.org/wp-content/uploads/2013/03/Child_Trends-2008_02_05_ConnectednessFS.pdf) [https://perma.cc/6GFA-U596].

<sup>214</sup> ABA STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES 12–13 (Feb. 5, 1996), [http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards\\_abuseneglect.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/family/reports/standards_abuseneglect.authcheckdam.pdf) [https://perma.cc/9S68-QA7G]; see Robert G. Lewis & Communities for People, *The Family Bound Program: A Toolkit for Preparing Teens for Permanent Family Connections*, <http://rglewis.com/Family%20Bound%20Program%20Description.pdf> [https://perma.cc/33H9-BKER].

*D. Court Appointed Special Advocate (CASA)*

The CASA can continuously advocate for and support connectedness and permanency for the child in a variety of ways. These may include: (1) helping to support contact with siblings and extended family; (2) promoting curiosity about and enhancing discovery of family members by asking who else has loved or cared for the child; (3) holding hope for the child to thrive and succeed; (4) acting as a convener to help build an unconditionally committed permanency team; and (5) helping to ensure that the child's needs are identified and at the center of all planning and interventions.<sup>215</sup> The CASA should always be asking: What are we doing to address the child's need and desire to belong?

*E. Child Welfare Worker*

For child welfare workers, meeting the intent of federal legislation requires a recognition that safety and well-being cannot exist without permanency.<sup>216</sup> From a practice perspective, this means adopting a laser-like focus on establishing and embracing an asset base of support for young people and their parents as a primary intervention from their first involvement with the child welfare system. When government intervention is determined to be necessary, the worker can strategize with known family and connections to minimize trauma and disconnection from parents and loved ones. By recognizing that placement is a system-driven need rather than an individual need for young people, the child welfare worker can emphasize the establishment of enduring natural support networks to promote permanency for children and youth, rather than relying upon a smaller and less committed pool of placement options. Workers must embrace the belief that families can solve their problems and that permanency is possible for every young person.<sup>217</sup> By respecting and treating family members as experts in their own matters, the child welfare worker will create ample opportunity for kin to participate safely in the lives of children at risk of profound and debilitating loneliness. Since the quality of relationships is critical to the success of permanency planning efforts, workers must increase their time spent on getting to know people outside of their problems. By shifting from a role that decides the fate of young people in care to one that encourages and nourishes natural support networks to

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<sup>215</sup> *What Does It Mean to be a CASA Volunteer?*, CT. APPOINTED SPECIAL ADVOCOS. (2017), [http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.6350721/k.112A/What\\_Does\\_It\\_Mean\\_To\\_Be\\_a\\_CASA\\_Volunteer.htm](http://www.casaforchildren.org/site/c.mtJSJ7MPIsE/b.6350721/k.112A/What_Does_It_Mean_To_Be_a_CASA_Volunteer.htm) [https://perma.cc/AP2D-6XFG].

<sup>216</sup> See Avery, *supra* note 202, at 399.

<sup>217</sup> See *id.* at 402.

solve family challenges, the child welfare worker and their agencies will manifest the honor and respect that families deserve.

## V. CONCLUSION

The reasonable efforts requirement has been in effect for over thirty-five years in child welfare law; however, it continues to be underutilized, misinterpreted, and in many cases, ignored.<sup>218</sup> To fulfill the intent of this vital federal legislation, the courts, child welfare agencies, and other stakeholders should embrace and implement a clear approach that incorporates family-centered, evidence-informed practices designed to support children to remain safely at home, return to family, or remain with family and kin at the earliest point possible.

While there may indeed be children and youth who require the state to assume the role of parent because there is no other alternative, most young people have relatives, family friends, neighbors, and important connections that are underutilized or ignored in the prevention of removal and the permanency planning process. If system professionals are able to identify and reach out to these adults early and often, not only will they have met the reasonable efforts requirements, but they will have helped to build lifelong family support networks that enable young people to thrive during and well beyond childhood.<sup>219</sup>

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<sup>218</sup> Blome, *supra* note 1, at 141; Shotton, *supra* note 19, at 223–26; EDWARDS, *supra* note 53, at 23; RATTERMAN ET AL., *supra* note 32, at 13.

<sup>219</sup> YOUTH TRANSITION FUNDERS GRP., *supra* note 209, at 20.

**APPENDIX A**

<b>Name of Program</b>	<b>X</b>	<b>Highlighted Components</b>
<b>Signs of Safety/Safety Organized Practice</b>	<input type="checkbox"/>	Three Houses (good things, dreams, worries)
	<input type="checkbox"/>	Safety Circles
	<input type="checkbox"/>	Harm and Danger Statements
	<input type="checkbox"/>	How many people can be in your living room in an hour?
	<input type="checkbox"/>	Getting to know people outside of their problems
<b>Family Finding</b>	<input type="checkbox"/>	Who can safely care for the child to avert entering care including non-custodial parent?
	<input type="checkbox"/>	Who is related to or connected to this child and family on the planet?
	<input type="checkbox"/>	Who can safely be/stay involved and connected to this child and family?
	<input type="checkbox"/>	Who can come to the table and participate in planning and decision making to promote safety, permanency and well-being?
	<input type="checkbox"/>	Who will remain a part of the support network and how can they best contribute?
<b>Dr. Darla Henry's 3-5-7 Model and Program</b>	<input type="checkbox"/>	Providing fundamental instruction, practice, and guidance towards building healing relationships that explore losses through grief work with children, parents, extended and chosen family members
	<input type="checkbox"/>	Emphasizing 24/7 interaction and response to behaviors that are indicators of the pain being experienced from losses
	<input type="checkbox"/>	Identifying a framework to support grief and relationship-building work through the tasks of clarification, integration, and actualization towards readiness for decisions to be made for permanency in relationships

	<input type="checkbox"/>	Recognizing and supporting the advanced development of the skills (7) of all those who engage with families and young people in supporting their work
<b>Family Group Counseling/Decision Making</b>	<input type="checkbox"/>	An independent (i.e., non-case carrying) coordinator is responsible for convening the family group meeting with agency personnel
	<input type="checkbox"/>	The child protection agency personnel recognize the family group as their key decision-making partner, and time and resources are available to convene this group
	<input type="checkbox"/>	Family groups have the opportunity to meet on their own, without the statutory authorities and other non-family members present, to work through the information they have been given and to formulate their responses and plans
	<input type="checkbox"/>	When agency concerns are adequately addressed, preference is given to a family group's plan over any other possible plan
	<input type="checkbox"/>	Follow-up processes after the family group decision making meeting occur until the intended outcomes are achieved, to ensure that the plan continues to be relevant, current and achievable, because family group decision making is not a one-time event but an ongoing, active process
	<input type="checkbox"/>	Referring agencies support family groups by providing the services and resources necessary to implement the agreed-upon plans
<b>Family Acceptance Project</b>	<input type="checkbox"/>	Study parents', families' and caregivers' reactions and adjustment to an adolescent's coming out and LGBT identity
	<input type="checkbox"/>	Develop training and assessment materials for health, mental health, and school-based providers, child welfare, juvenile justice, family service workers,

		clergy and religious leaders on working with LGBT children, youth and families
	<input type="checkbox"/>	Develop resources to strengthen families to support LGBT children and adolescents
	<input type="checkbox"/>	Develop a new model of family-related care to prevent health and mental health risks, keep families together and promote well-being for LGBT children and adolescents. Findings are being used to inform policy and practice and to change the way that systems of care address the needs of LGBT children and adolescents







# Kinship Promising Practices

ABA Center on Children and the Law | Generations United

Federal law, policy, and practice is shifting toward a kin-first culture, a child welfare system that consistently promotes immediate kinship placements, helps children in foster care maintain connections with kin, and tailors services and supports for kinship families. To help jurisdictions successfully implement a kin-first culture shift, national kinship technical assistance partners have gathered promising kinship practices from across the country. The following kinship practice examples, organized by seven main topics, can help jurisdictions change policy and practice to promote kin placement and permanency.



## Identification, Notification, and Engagement of Kin

1

*Identify and engage maternal and paternal kin for placement and support. Federal law requires child welfare agencies to send written notice to any identified relatives within 30 days of a child coming into care and custody of the agency. Kin should be provided resources and tools to engage them in support of the family.*

### Promising Practice:

#### Dedicated kinship staff trained to locate, engage, support, and assist kin

Jurisdictions find it beneficial to assign dedicated kinship staff to ensure families and kin caregivers fully understand their options to care for children and support kin caregivers as they work through system requirements and processes.

### State Examples:

- **New Mexico** has a Kinship Unit dedicated to supporting kinship placements. Staff work to support family search and engagement efforts, support kin throughout the process of placement, which includes the licensing process, and help kin explore and achieve the most appropriate permanency option. This unit completes genograms, works with tribal and rural communities, trains community providers, and engages nonplacement kin resources to create a support network for the family.
- **New York** requires each county to have a “Kin Champion” who, after training, acts as an onsite advocate for a kin-first culture, provides kinship expertise for colleagues, and supports kin caregivers.
- Other jurisdictions, such as **Florida** and **Connecticut**, also have dedicated staff who assist kin caregivers.

## Promising Practice:

### Family-finding efforts

Efforts to identify and notify relatives are a federal requirement. However, some jurisdictions have gone beyond the federal requirements by implementing family finding throughout the life of the case or using extra efforts to identify relatives.

### State Examples:

- **Pennsylvania** state law requires family finding when a child is accepted for services and then annually throughout the child's involvement in foster care. The state law requires courts, at every stage of a case, to inquire and make a finding on the family-finding efforts made by the agency.
- **Missouri** increased family finding through Extreme Recruitment and 30 Days to Family. Extreme Recruitment is a 12–20-week intensive intervention to identify kin for the hardest to place children by using staff and a private investigator to mine records of the children to identify and locate relatives and kin to be explored for potential placement. Introducing private investigators to the program increased contact with relatives from 23% to 80%. The process involves weekly meetings of the youth's team and follow-up until the youth achieves permanency. 30 Days to Family in Missouri builds off the success of Extreme Recruitment and focuses on entry into foster care rather than focusing on youth once they are deemed hard to place while in care. This program places equal focus on finding maternal and paternal relatives. The goal is primary placement with kin in addition to locating two-to-three backup kinship placements.
- **Ohio** uses [Kinnect to Family](#), a specialized intense family search and engagement program that is similar to Missouri's 30 Days to Family program. Kinnect to Family expands on 30 Days to Family by allowing all foster youth, not just those entering care, to be eligible. The program works with families before children are removed so they avoid foster care entry when possible.

## Promising Practice:

### Meaningful kin engagement

Federal guidance, [ACYF-CB-IM-19-03](#), emphasizes the importance of meaningfully engaging families and youth, including kin caregivers, by giving them the opportunity to be heard and considering their input in critical decisions that affect their lives. Their ability to participate in all aspects of child welfare decision making can increase engagement and empower families and youth.

### State Examples:

- **Hawaii** uses Ohana Conferencing to bring together extended family and hanai family (defined as family formed when children are taken informally under custom and usage into another's home, but not formally adopted), agency staff, service providers, and the support system of the children. This strength-based, solution-focused group conferencing honors the voice of the family and youth in care by creating opportunities for the family to work with the agency to make the best decisions for the safety of the children. The conferencing results in a plan for strengthening the family and exploring possible roles for family members to support the child.
- **Virginia** uses Family Partnership Meetings to explore and discuss the family's needs, strengths, and challenges. These meetings often begin before a child is removed from their parents.

### Promising Practice:

#### Expanded definition of “relative”

Research shows that placement with kin has several benefits, such as increased permanency, reduced placement moves, improved behavioral health, and increased likelihood of remaining with siblings and staying connected to communities. Remember when thinking about a kin-first culture that both fictive kin and relatives are included in efforts. The definition a jurisdiction uses for “relative” may impact eligibility for services and supports. The definition varies by jurisdiction and sometimes even within the same jurisdiction, based on individual laws and policies. Definitions of “relative” sometimes include only blood or adoptive relatives and may leave out fictive kin, such as family friends, coaches, teachers, or other adults with whom the child has a positive relationship. Approximately 24 jurisdictions have expanded the definition of “relative” to include fictive kin in some or all their child welfare laws and policies. Jurisdictions should strive to include fictive kin in the definition of relative in all relevant laws and policies.

### State Example:

- **Virginia** has included fictive kin in their statutory definition of “relative” for purposes of child welfare policies, including licensing requirements. To make notification of “relatives” manageable, policies only require a certain number of fictive kin to be notified. This flexibility is allowed by federal law and allows jurisdictions to be more supportive of all kinship families.



## Placement with Kin

2

*When children can no longer remain with their parents, a kin-first culture prioritizes placement with kin over other placement options. There are many options for placement with kin. It is important to ensure staff, stakeholders, and kin caregivers understand these options.*

Placement options for kin caregivers vary by jurisdiction. In several states, kin caregivers who step up after the child welfare agency has removed the child from their parents have the option to become licensed foster caregivers. There are benefits to all options, including varying financial assistance, eligibility for public assistance such as Medicaid, access to services and supports, and permanency options.

### Promising Practice:

#### Kinship firewall

Several jurisdictions use kinship firewalls to ensure placement with kin whenever possible by treating non-kinship placements as exceptions that require approval by agency leadership. Such kinship firewall policies make placement with kin the presumptive placement option.

### State Examples:

- Four jurisdictions, **Tennessee, New York, Connecticut, and Oklahoma**, currently implement some version of a kinship firewall.

- **New York's [firewall policy](#)** requires a high-level review of efforts to achieve a kinship placement before any non-kinship placement is made. This high-level review is required at the child's initial removal and any time there is a placement change into a non-kinship placement.
- **Washington [House Bill 1747](#)**, signed into law in March 2022, was proposed to prohibit the child welfare agency from moving children out of a kin placement unless a court finds a change in circumstances requires a placement change.

### Promising Practice:

#### Written materials to train staff and inform kin of options

Creating written materials about kinship placement options and their various benefits and supports can assist in training staff and can be used to inform kin of their options.

#### State Examples:

- **Georgia** supplemented their written materials with the development of a kinship website and by creating a short video providing a high-level overview of the kinship foster care approval and payment process, as well as a [video on kinship care](#) generally.
- Other written training materials developed by states include:
  - **Colorado:** [Kinship Care in Colorado Options and Resources Brochure](#);
  - **Texas:** [Kinship Manual](#); and
  - **New York:** [ABA Kin Options Full Options Chart](#).

### Promising Practice:

#### Using data to drive practice and address inequities

Jurisdictions can disaggregate and analyze kin-specific data to drive practice changes and measure improvements.

#### State Examples:

- **Virginia, Pennsylvania, and New York** use data to encourage kin-first cultures and increase kin placements by informing counties of their kinship numbers based on age, race, and gender, as compared to other counties.
- **Connecticut** uses [disaggregated data](#) by race and placement to identify social determinants impacting kinship placement and offer targeted interventions.
- **New York** posted the [NY Kinship Report](#) online to share data on a variety of kinship variables for the state and by county. Data can often inform and catalyze practice change. It is important to monitor ongoing efforts and achievements in creating a kin-first culture.
- **Pennsylvania** has seen an increase in kinship placements, part of which can be attributed to efforts by the state to inform the counties on their progress to increase the use of kin based on age, race, and gender, as compared to other counties in the state.



*Financial assistance for kinship families varies depending on the jurisdiction and placement type.*

Kin caregivers may receive financial assistance depending on a variety of factors, including whether the child is in the legal custody of the child welfare system, if the caregiver is a licensed foster parent, the type of permanency outcome achieved, and where the family resides. Generally, kin caregivers caring for children outside of the child welfare system may qualify for public assistance such as Temporary Assistance for Needy Families (TANF). Kin caregivers caring for children inside the child welfare system and licensed as a foster parent should be receiving the same foster care maintenance payments and other financial assistance as non-kin foster parents. If the child has achieved permanency with kin and has exited the child welfare system under adoption assistance or the guardianship assistance program (GAP), the child may qualify for an ongoing monthly subsidy. If the child welfare system is involved and the child is eligible, significant financial assistance derives from federal Title IV-E funding, as well as the required state or local funds.

### Promising Practice:

#### Child-only financial assistance

Child-only TANF is available around the country for children cared for by kin outside of the child welfare system. The grant amount, application process, and whether the caregiver's income is considered varies by jurisdiction, but the monthly amount is almost always significantly less than foster care maintenance payments.

### State Examples:

- In **Minnesota**, kinship caregivers can access child-only assistance through the Minnesota Family Investment Program, which combines cash assistance with SNAP benefits through a waiver from the U.S. Department of Agriculture.

### Promising Practice:

#### Additional subsidy for kin

Some states provide an additional subsidy for kin to keep children out of the child welfare system.

### State Examples:

- **Illinois** has an [Extended Family Support Program \(EFSP\)](#) that aims to support and stabilize caregivers who have cared for relative children for more than 14 days and have kept the family out of the child welfare system. The EFSP provides support for obtaining guardianship – including assistance with caregiver attorney fees, enrolling children in school, and obtaining the TANF child-only grant, subsidized day care and other benefits. The EFSP also provides cash assistance to support stabilization when necessary.
- **Tennessee** recently passed [Senate Bill 2398](#), effective January 1, 2023, which will provide a monthly stipend to reduce the financial strain on designated relative caregivers who have final custody orders for children in their care. The Tennessee Department of Children's Services will be required to pay the caregivers an amount equal to 50% of the full nonrelative foster care board rate if certain conditions are met.



- **Virginia** has the Relative Maintenance Support Payment Program, which provides an additional \$200 per child per month in TANF funding for kin caregivers who have been certified by the child welfare agency as having kept the child out of foster care.
- The [Kinship Care Subsidy Program](#) in **New Jersey** provides eligible kinship legal guardians \$250 a month, multiplied by the number of eligible children in the home, minus all combined countable income of the eligible children, such as any child support payments.
- In **Louisiana**, specifically listed qualified relative caregivers with legal or provisional custody (or who obtain it within one year of certification) and who have an annual income of less than 150% of the federal poverty threshold may receive \$450 per month for each eligible child as part of the [Kinship Care Subsidy Program](#).

### Promising Practice:

#### Financial assistance for licensed kin foster parents

In most jurisdictions, kin who choose to become licensed foster parents will receive the same financial assistance as non-kin foster parents. Some states have specific programs for kin caregivers caring for children in the legal custody of the child welfare system, who are not fully licensed.

### State Examples:

- **California's** [Approved Relative Caregiver \(ARC\) Funding Option Program](#) allows either approved relative caregivers caring for a nonfederally eligible foster child, or relatives who cannot get licensed but care for children under a court-ordered placement to receive per-child, per-month payments, if their county opts into the program. The funding is equal to the amount licensed foster parents receive. If a county has not opted into ARC, kin caregivers receive CalWORKs, California's TANF program, which provides less financial assistance to the families.
- **Arizona, Maine, Nebraska, Michigan, and Washington** equitably support all kin caring for children in foster care, regardless of whether they are licensed or not.
- **Arkansas, Illinois, Iowa, and Ohio** also provide support for nonlicensed kin at a lesser rate.



## Emergency Licensing Procedures

4

*Emergency licensing, also known as provisional licensing, is a way for child welfare agencies to immediately and safely place children with kin, while the kin pursue full licensure.*

Jurisdictions often use emergency licensing to allow a child in their legal custody to be immediately placed with kin. The full licensing process for a home can be lengthy and may encounter delays. Emergency licensure allows the child to be placed immediately with kin, as opposed to waiting until full licensure, resulting in improved placement stability and supporting the notion that the child's first and only placement should be with kin.

If using emergency licensure, look at your jurisdiction's definitions of "relative" and "kin" to ensure that non-blood related significant persons are also eligible to provide this type of placement. Agencies tend to be risk-adverse, which can deter placement with kin and negate the benefits and importance of immediate kin placements. To effect a culture shift and increase the use of immediate kinship placements, jurisdictions should explore ways to license more kin rather than focusing on reasons to deny them licensing.

In most jurisdictions that use this process, children are immediately placed with kin after a safety assessment is completed. The kin then must complete full licensure within a specific time period (60, 90, or 120 days). Some states do allow for a limited extension of this time period.

### Promising Practice:

#### Expedited background/fingerprint checks

While traditional background checks and finger printing may take several days or longer, some jurisdictions are looking for ways to speed up this process.

### State Examples:

- **Connecticut's** Criminal History Request System uses a global security company, in close partnerships with local law enforcement, to provide background history results within hours, as opposed to days.

### Promising Practice:

#### Private agency support

Kin caregivers may require specialized attention and kin-specific supports in ways that traditional foster family homes do not. To help provide kin-specific services, such as emergency licensing or expediated licensure, some jurisdictions rely on private agencies. Private agencies may have an increased capacity to work closely with kin to help them achieve full licensing within the required time period.

### State Examples:

- In **Louisiana**, the public agency conducts initial safety and background checks for kin and then seeks the assistance of private agencies to help them complete the requirements for full licensure.
- In **Pennsylvania**, A Second Chance is a nonprofit organization that partners with county child welfare agencies to provide family finding, kinship emergency services at initial placement, kinship family assessments, training for kin caregivers to meet licensing requirements, and permanency planning.

### Promising Practice:

#### Financial assistance during emergency license

Traditionally, only kin who are fully licensed receive the maximum financial assistance. However, a benefit of emergency licensure can be to provide financial assistance while kin are pursuing full licensure.

### State Examples:

- **Tennessee** uses state dollars to pay a care rate per child/per day. For states where this is not an option, kin must be made aware and encouraged to apply for public benefits – including TANF child-only grants and Medicaid. These benefits will help support the family while the kinship caregiver is pursuing full licensure.
- In **Oklahoma**, if full licensure is not achieved within 60 days of placement and the delay is due to the agency, policy dictates that the state immediately support the kinship caregiver with the full foster care maintenance payment rate.



*When kin become fully licensed, they are eligible for financial assistance and support to be long-term placement resources. Additionally, full licensure is required for federal guardianship assistance (also known as GAP) to be a permanency option.*

Jurisdictions have varying licensing requirements, such as background checks, health checks, home safety assessments, references, and training. These licensing requirements can be confusing, take a long time, and are often geared toward traditional foster family homes. To increase licensing of kin, several jurisdictions have implemented kin-specific supports or paths toward licensure.

### Promising Practice:

#### Dedicated kin staff or kinship champions

To increase kinship placements, at least eight jurisdictions (Washington, Florida, North Carolina, Georgia, Hawaii, Connecticut, Virginia, and New York) have seen success by creating kin-specific units or specialized staff to assist in finding kin placements, kinship licensing, and kinship permanency. These staff are trained on kin-specific processes and practices so they can promote a kin-first culture and be a resource for kin caregivers.

### State Examples:

- **Washington** has a “Kinship Caregiver Engagement Unit (KCEU),” which is almost a concierge kinship licensing unit that provides one-on-one assistance to kin caregivers through the licensing process. The unit contacts kin caregivers 48 hours after placement to discuss needs, connect to resources, and help early in the process before the child’s case is transferred to a foster care worker. The KCEU is in its early days, with a set of accompanying administrative code changes and an electronic portal rolling out in fall 2022.
- **Florida** has a specialized team that within 48 hours of placement walks families through the licensure process and the various benefits and requirements of the state’s Level 1 or Level 2 licensing options.
- **North Carolina** is piloting a program to license kin as therapeutic foster parents in three counties through partnerships with private agencies. For more information on this pilot program, please see this [handout](#).
- In **Connecticut**, the foster care division is split into traditional foster care workers and kinship licensing workers. The kinship licensing workers assist kin caregivers with licensing, and training for licensing, while fostering a kin-first culture.

Even in jurisdictions with kin-specific staff or units, it is important that all staff understand the importance of kin, the nuances of kinship placement and permanency options, and the various public benefits, supports, and financial differences. Staff appreciate short lists, easily accessible packets of information, and access to someone with in-depth kinship knowledge as a resource.

- **Connecticut** has found it is worth taking extra time to train staff in small groups to increase understanding and allow for questions. The state has also moved its training online and has seen an increase in staff participation and capacity to offer more trainings.

### Promising Practice:

#### Waivers and exceptions for kin

Federal child welfare law allows jurisdictions to waive or create variances or exceptions for non-safety licensing requirements for relatives, to allow for increased licensed kinship placements. Several jurisdictions (Nevada, Georgia, Texas, Florida, Oklahoma, Louisiana, Arkansas, and Iowa) routinely waive certain non-safety criteria for kin that would not normally be waived for non-kin foster families.

Jurisdictions have a lot of flexibility to define “safety” and “non-safety” and can waive non-safety licensing standards as they see fit, provided they do not waive any of the specific requirements of the federal Adam Walsh Child Protection and Safety Act. The types of non-safety criteria being waived include sleeping arrangements, such as bunk beds or number of rooms; income requirements; training timeframes; and crimes not included in the Adam Walsh Act. Often jurisdictions have specific procedures for these waivers that either require county agency or state agency approval.

#### State Examples:

- **California** passed CA Bill SB354, effective in 2022, that broadens the list of criminal convictions that qualify for exemptions for licensing kinship foster homes if the court finds that placement does not pose a risk to the health and safety of the child, allows case-by-case waivers of financial requirements for kin caregivers, and allows for child-specific approval for kin caregivers.
- **New Jersey** allows local area managers to give a verbal waiver for emergency placement where there is a history of criminal conviction for crimes not included under the Adam Walsh Act. Following the verbal waiver there is a follow-up conference with the director of the child welfare agency within one business day to continue the presumptive eligibility.

### Promising Practice:

#### Child-specific or two-tier foster home licensing standards

Child-specific licensing and two-tier licensing standards are approaches child welfare agencies use to support expedited placement of children with kin and avoid unnecessary placements with non-kin while kinship caregivers become licensed.

Kinship caregivers often become foster parents due to the removal of a specific related child, rather than as a preplanned choice to pursue the role of foster parent. Therefore, unlike typical foster families, kin caregivers are usually not licensed before being called on to care for a child(ren). Child-specific licensing allows a kinship placement to become licensed only to care for a specific child with whom they have a kinship relationship, but not any other child.

#### State Examples:

- **Utah** administrative code R501-12-15 allows a kinship caregiver applicant to be licensed for the placement of a specific foster child or sibling group, recognizing the importance of preserving family and cultural connections for children in foster care. The regulation also allows for

emergency placement with a probationary license and waiver of non-health or safety related licensing requirements.

- **Washington** recently passed [SB 5151](#), which will allow relatives or suitable persons to be licensed to care for a specific child/sibling group by meeting minimum qualifications set out in child-specific licensing standards that are under development.

Two-tiered licensing standards have been developed by some states to distinguish between requirements for kinship foster home applicants and non-kinship applicants. The difference between the two tiers is often the availability of a waiver of non-safety related requirements.

- **Florida's** state regulation Chapter 65C-45 provides for a two-level foster care licensing structure. It provides child-specific licensing for kinship caregivers under level I licensure and allows for waivers of non-safety related requirements set forth for level II non-child specific licensure. However, Florida's level I licensure provides a lower level of financial and other supports to caregivers.
- In **New Jersey**, under administrative code N.J.A.C. 10:122C, all foster parents must meet level I licensure requirements, however level II requirements can be waived on a case-by-case basis for a specific child(ren) in a kinship placement. Additionally, a child may be placed with a kinship caregiver prior to a license being issued under certain circumstances.

### Promising Practice:

#### Kin-specific training requirements

For various reasons kin caregivers experience the foster care system differently than traditional foster parents. Acknowledging these differences, several jurisdictions provide kinship caregivers with kinship specific training, which addresses things like family dynamics and can be tailored specifically to each family's needs. Often these kin-specific trainings are more accessible and shorter.

### State Examples:

- **Arkansas** created a four-day kin-specific training modeled after the non-kinship licensing training that requires nine weeks to complete. This training program, called "Arkansas Kinship Pride Connect," is customized to include kin-specific needs and is given virtually or in-person.
- **Hawaii** created their kin training after soliciting feedback from caregivers through focus groups. The result is a separate kin training with reduced required hours, trauma-informed content, and online availability.
- In **Florida**, kin complete a two-hour basic kinship training followed by training that is customized to the family's needs.





*When kin are caring for children involved in the child welfare system for whom reunification with parents is no longer possible or in their best interests, there are different options for permanency with kin.*

### Promising Practice:

#### Written materials and trainings about permanency options

Written materials specifically about permanency options for kin can assist with informed decision making and ensure families are choosing the best option for their individual circumstances.

### State Examples:

- **North Carolina** developed a [Foster Care and Beyond Kinship Care flyer](#) for kin caregivers.
- **New York** requires kin caregivers to receive the state's [Know Your Permanency Options: The Kinship Guardianship Assistance Program Brochure](#).
- **Maine's** new publication, [A Guide to Kinship Care & Minor Guardianship in Maine](#), provides an overview of the options and concrete steps to pursue guardianship.
- **New Mexico's** child welfare agency partnered with Generations United and the American Bar Association Center on Children and the Law to create an [adoption and guardianship comparison chart](#). Similar charts have been and can be created for other jurisdictions, thanks to support from the Dave Thomas Foundation for Adoption (contact Generations United at [gu@gu.org](mailto:gu@gu.org) for more information).
- **Virginia** created a brochure, [Kinship Care: Exploring options for relatives and close family friends of children in foster care](#).
- **New Mexico** and **Vermont** offer annual trainings for kin caregivers that include resources for caregivers and information about GAP as a permanency option.
- **Florida** uses a peer-to-peer approach to help families better understand the tangible benefits and long-term supports of guardianship assistance.

### Promising Practice:

#### Increase use of kinship guardianship assistance

Kinship Guardianship Assistance Program (GAP), also known as subsidized guardianship, is a permanency option created in federal law to provide permanency with kin without requiring termination of parental rights and adoption. Most jurisdictions offer this type of guardianship as an option for kin caregivers if reunification and adoption are not in the best interests of the child. Federal law sets out the minimum eligibility requirements for GAP; however, jurisdictions are allowed to create additional eligibility criteria beyond the federal requirements. To increase use of GAP, jurisdictions should remove any extra eligibility criteria beyond federal requirements.

### State Examples:

- **New Mexico** recently removed their age limit for children.
- **Alabama** eliminated state law requiring written parental consent for guardianship.

- **Washington** is prioritizing guardianship assistance through the passage of [House Bill 1747](#), which requires their Department of Children, Youth and Families to prioritize guardianships over termination of parents' rights when children are placed with kin.
- To increase eligibility, at least **27 jurisdictions** have state funded guardianship assistance for children who are not IV-E eligible (AK, AR, CA, CO, CT, DC, HI, ID, IL, LA, MA, MD, ME, MI, MO, MT, NE, NY, NJ, OK, PA, RI, SD, TN, TX, VT, WI). For more information about best practices for Kinship Guardianship Assistance, see [Guardianship Assistance Program \(GAP\): Barriers and Key Considerations](#).

### Promising Practice:

#### Post-permanency supports

Post-permanency services and supports should be provided to assist kin caregivers after they adopt or enter into guardianship or custody to prevent disruption and maintain these permanent homes. When children exit care to an adoptive home or guardianship the safety net and supports provided by the child welfare system often abruptly end. If properly supported as soon as an issue arises, stability can be maintained for the child and the family.

### State Examples:

- **Michigan** has tied post-guardianship supports to their post-adoption support program, allowing kin caregivers who receive guardianship assistance to access additional supports after they have been granted guardianship.
- **Pennsylvania** took a similar route and offers post-adoption and post-guardianship support, which includes case advocacy, respite care, and support groups.
- **Maine** provides post-permanency supports to kin caregivers through [Adoptive & Foster Families of Maine, Inc. & the Kinship Program](#).
- **Ohio's** Department of Jobs and Family Services oversees [OhioKAN](#), a statewide kinship and adoption navigator program organized into regional offices offering support specific to a family's location and individual circumstances, including post-permanency. OhioKAN staff maintain a comprehensive information hub of all resources and programs available statewide. Staff use the information hub to provide one-on-one support to help families develop personalized resource plans specific to their needs and provide follow-up to ensure they receive their eligible supports.



## General Kin Support

7

*Regardless of placement or permanency type, kin caregivers face unique challenges and may need different support than traditional foster families.*

### Promising Practice:

#### Support for kin caring for children with increased needs

Several jurisdictions support kin caregivers who are caring for children with increased needs by developing targeted tools and resources.

### State Examples:

- Dr. Joseph Crumbley has created a [video series](#) on specific challenges kin caregivers face. To determine kinship families' unique needs, consider using a needs assessment tool.



- **Virginia** uses such a tool to assess which families need additional financial support for children with increased needs.
- **Colorado** uses this [needs assessment tool](#) to determine supports for kin families.

### Promising Practice:

#### Kinship navigator programs

Most jurisdictions have kinship navigator programs, which help caregivers navigate the many systems that impact them, help connect them to services, and support their access to public benefits. Ideally, these programs should serve all kin caregivers, regardless of child welfare system involvement. Jurisdictions may choose to serve only kin caregivers outside the child welfare system, only kin caregivers within that system, or both.

### State Examples:

- In **Georgia** all kin who care for children involved in the child welfare system are referred to the kinship navigator program for intake and needs assessment. When a kin caregiver finishes working with the navigator the caregiver completes a survey to determine if their needs were met, their level of understanding of what kinship care is, and the quality of kinship care being provided.
- **Washington's** kinship navigator program, a 20-year-old program, is for kin in and outside the child welfare system and is jointly managed with their department of aging and child welfare agencies. Washington is also piloting and evaluating an enhanced kinship navigator program. The program's [website](#) includes videos on the [community of kinship care](#) and [navigating kinship care](#).
- **Florida's** [Children's Home Network](#) has a kinship navigator program for kin caregivers who are either inside or outside the child welfare system. The program's unique features include a single e-application, peer-to-peer support, and interdisciplinary team support for kin caregivers.
- **Maine, Montana, Vermont, and Wyoming** are working together as part of a Kinship Navigator Collaborative with support from Generations United, Casey Family Programs, and the University of Washington, to develop a Kinship Navigator Program model with an evaluation.

### Promising Practice:

#### Websites and apps with information, supports, and resources for kin

Several jurisdictions have created websites and phone apps to easily provide updated information, supports, and resources to kin.

### State Examples:

- **Hawaii** has a [resource family app](#), which is used to build a support network for kin caregivers. The app connects kin caregivers to mentors and other kin caregivers and provides access to the state's kinship navigator warmline to ask questions.
- **Georgia** has created a [website](#) with information and a [video](#) on kinship care generally.

## Promising Practice:

### Public-private/ community partnerships and legal services

Supporting kin caregivers involves engaging and partnering with several different stakeholders, including courts, community-based service providers, and other public agencies.

## State Examples:

- As part of their Kinship Navigator services, **New Mexico** has a contract with statewide legal agencies and relative success centers to provide legal services to kin caregivers.
- **Alabama's** iCAN initiative connects county child welfare agencies and courts to work together to improve outcomes for children, with a special focus on improving kinship practices.
- **Colorado's** Rocky Mountain Children's Law Center (RMCLC) is partnering with the city of Denver to provide workshops on Kinship Legal Options for kin caregivers. It is also piloting a limited representation legal model through which RMCLC attorneys will support kin caregivers by reviewing documents to be submitted to court.
- **Michigan's** kinship navigator program, the [Kinship Care Resource Center](#) (KCRC), is a program of the School of Social Work at Michigan State University. KCRC participates in the Michigan Kinship Care Coalition, a cross-systems collaboration advocating for, educating, and raising awareness about kinship care. Partners include the Guidance Center, Michigan's Children, Oakland Livingston Human Service Agency, and Fostering Forward Michigan. The Coalition is divided into three committees: communications, policy and advocacy, and mobilizing the field.
- In 2008, **Massachusetts** legislation created a permanent 15 member [Commission on the Status of Grandparents Raising Grandchildren](#), which fosters collaboration between entities working on kinship issues, acts as a liaison between government and private interest groups, and assesses programs and practices of state agencies for their impact on grandparents raising grandchildren.



This resource was developed in partnership with the ABA Center on Children and the Law and Generations United, with support from Casey Family Programs. Visit [www.grandfamilies.org](http://www.grandfamilies.org) for more resources.



## **An Attorney Advocacy Guide for Reducing Reliance on Institutional Placements**

Research, best practices, and federal law point to a common understanding that most youth in foster care experience better outcomes when they grow up in family settings. Services to support and strengthen individuals and families are best provided in the home and in their community, whenever that is safely possible. If a youth is removed from the home, federal and state statutes require placement in the least restrictive, most family-like setting to meet their needs.<sup>1</sup> Yet, statistics reveal reality is not consistent with the law, policy, and best practices.<sup>2</sup> Attorneys play a critical role in changing this practice and improving outcomes for youth and families.

This guide was created to provide a framework for attorneys' advocacy efforts to keep youth in families and family settings. It is based on multi-disciplinary research, as well as other resources and guidelines, and draws on best practices for professionals within the child welfare field.<sup>3</sup> Attorneys are encouraged to familiarize themselves with the cited references, as well as the resources and research on the *Every Kid Needs a Family* site, to further strengthen their legal advocacy.

The guide starts with the premise that every kid needs a family. A young person should grow up in a family unless there is a well-documented, professionally recommended clinical and/or behavioral need that is beyond the ability of a family to meet, even with appropriate community services in place. Youth engagement and voice is also critical; although not dispositive, youth preferences and opinions should guide the determination of whether institutional care is appropriate in a particular case. The cornerstone question is whether institutional care<sup>4</sup> is necessary and appropriate to meet the youth's needs.

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<sup>1</sup> See, e.g., 42 USC § 657 (5) (A).

<sup>2</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, [A National Look at the Use of Congregate Care in Child Welfare](#) (2015)

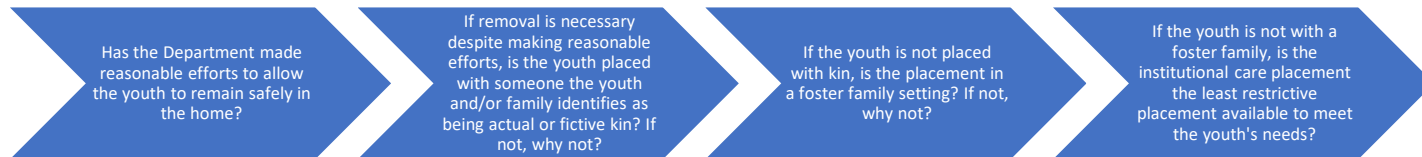
<sup>3</sup> See, e.g., Annie E Casey Foundation, [Every Kid Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success, Kids Count Policy Report](#) (May 2015); Building Bridges Initiative, [Best Practices for Residential Interventions for Youth and their Families: A Resource Guide for Judges and Legal Partners with Involvement in the Children's Dependency Court System](#) (February 2017).

<sup>4</sup> For purposes of this toolkit "institutional care" includes group homes, institutions, emergency shelters, residential treatment facilities, or other congregate care settings.



## I. Guiding Questions for Attorneys Regarding Placement Advocacy

The four questions below guide inquiry and analysis of placement at any stage of the case. After a thorough, independent investigation of the facts, attorneys should gather applicable laws and social science research to prepare to assert arguments to the court.<sup>5</sup>



### 1. Has the Department made reasonable efforts to allow the youth to remain safely in the home?<sup>6</sup>

- A. Did the Department make reasonable efforts to prevent the removal of the youth from the home? Did the Department provide services and support that would have allowed the youth to remain safely in the home and eliminate the need for placement? Were there such services and supports that could/should have been explored? Why/why not?
- B. Did the Department offer services that were appropriately tailored to the family? Especially if Title IV-E funding was used to fund such prevention services, were the services trauma-informed, evidence-based, and rendered by a qualified clinician?
- C. What efforts did the Department make to engage the family in services? How many engagement attempts did the Department make? How were services offered/delivered?
- D. What protective factors were explored/recommended to the family? Were family supports considered (as respite, temporary placement, caregiving support, etc.)?
- E. Did the Department provide/offer/design services with the family's preferred language and culture in mind?
- F. Did the Department make efforts to address any economic barriers (assistance with public benefit applications; referrals to job placement programs; exploration of childcare options; referrals to housing programs and services)?

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<sup>5</sup> Relevant statutes, statistics, data, social science, and other research can be found throughout the *Every Kid Needs a Family* site.

<sup>6</sup> For resources regarding the harm of removal and preventing removal, see Vivek Sankaran, ["A Cure Worse Than the Disease? The Impact of Removal on Children and Their Families."](#) Christopher Church and Monique Mitchell, co-authors. *Marq. L. Rev.* 102, no. 4 (2019): 1163-94; Shanta Trivedi, [The Harm of Child Removal](#), 43 *NEW YORK UNIVERSITY REVIEW OF LAW & SOCIAL CHANGE* 523 (2019); Judge Mary Tabor, [Transformation in Child Welfare](#), *The Iowa Lawyer* (June 2020): 10-12.



- G. Did the Department refer the family to a civil legal aid provider to help prevent removal, for example through advocacy in housing, family law, domestic violence, or public benefits matters?
- H. Did the Department ask the youth whether they wanted to remain in the home? Does the youth want to remain in the home? Why/why not? Does the youth feel safe in the home? Why/why not?

**2. If removal is necessary despite making reasonable efforts, is the youth placed with someone the youth and/or family identifies as being actual or fictive kin? If not, why not?**

- A. Has the Department asked the youth and parents to identify close relatives?
- B. Has the Department explained who can qualify as a relative under local law/Department policy, and asked the youth and parents about non-relatives they consider to be kin (step-family members, godparents, friends, neighbors, community members, church members, etc.)?
- C. If no kin were identified, has the Department conducted a diligent search, and if so, how recently? What steps did the diligent search include? Has the diligent search been comprehensive, to include public records, social media, etc.? Was the diligent search tailored to this particular family or did the Department follow the steps it does for every family?
- D. Have maternal AND paternal relatives been identified and contacted (even if either parent is absent)?
- E. If there are identified kin, but none are currently serving as a placement, what are the barriers? Can those barriers be addressed and ameliorated by the court and/or Department (e.g., licensing waivers, services for the kinship provider and/or youth, assistance with school transportation)?
- F. Are there services or supports that might support or accelerate the youth's placement with kin (e.g. kinship navigator services)?
- G. Did the Department ask the youth where they would like to be placed? Does the youth want to be placed with kin? Why/why not?
- H. Has the Department re-explored kinship placement possibilities throughout the case, particularly when a placement disrupts, and considered the changing circumstances of the youth, family, and kinship options?

**3. If the youth is not placed with kin, is the placement in a foster family setting? If not, why not?**

- A. Is there a foster family available and willing to serve as a placement?
- B. How was the foster family identified? Was a matching process completed? What was the process? What factors were used to determine that the placement would be a good match for the youth?



- C. Has the Department shared appropriate, relevant background information about the youth with the foster family? Is the foster family willing and able to meet the youth's needs and foster their strengths?
- D. Did the Department ask the youth their opinions about placement with the foster family? Were those opinions factored into the placement decision?
- E. Did the youth have the opportunity to attend pre-placement visits with the family?
- F. Does the available foster family support the youth's culture and identity?
- G. Does the available foster family support and encourage the youth's connection to their biological family? Is the foster family willing to facilitate family time, phone calls, relationships, etc.?
- H. Where is the foster home in relation to the youth's community, school, family, activities, services, etc.? Are there any transportation barriers to be addressed?
- I. Are there supports that might allow the youth to live in a family setting?
- J. Does the youth need a therapeutic foster home which can address identified needs, and what efforts have been made to identify one?

**4. If the youth is not with a foster family, is the institutional care placement the least restrictive placement available to meet the youth's needs?<sup>7</sup>**

***\*Note: many of the questions in this section invoke the attorney's independent duty to investigate the proposed placements.***

**A. What is the basis of the determination?**

- i. Is the institutional care decision based on a qualified, independent assessor's recommendation?<sup>8</sup>
  - 1. Did the assessor use a functional, age-appropriate, evidence-based, and validated assessment tool?
  - 2. Were all parties provided with a copy of that assessment tool and the recommendations?
  - 3. Did the assessor consult with the youth, family, permanency team, and all relevant professionals?<sup>9</sup>
  - 4. What behaviors or needs did the assessor identify that cannot be met within a family setting?
  - 5. What short and long term mental and behavioral health goals did the assessor identify?

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<sup>7</sup> See Section II for more guiding questions tailored to institutional care facilities.

<sup>8</sup> The term "independent assessor" comes from the Family First Prevention Services Act (FFPSA). An attorney's state may not have opted into FFPSA provisions concerning institutional care. Although it is important to know whether FFPSA applies in your jurisdiction, the relevant language in this guide can still provide a useful framework to attorneys in institutional care advocacy.

<sup>9</sup> FFPSA defines this to include "all appropriate family, relatives, and fictive kin of the child, as well as relevant professionals (ex. teachers, medical or mental health providers, clergy)" and requires that the input is solicited "at a time and place convenient for family." Pub. L. 115-123.

6. Was there an opportunity to cross-examine the professional who conducted the evaluation on the record?
- ii. What is the youth's opinion on being placed in an institutional care placement? Was the opinion considered in the determination? Why/why not?<sup>10</sup>
- iii. Have all community-based services been utilized before considering an institutional care setting? If not, why not? What services will the youth receive in an institutional care setting that they cannot receive in the community?
- iv. What is driving the decision to place the youth in an institutional placement – safety concerns? Lack of available/willing foster homes? Mental health needs? Educational needs?

**B. What type of institutional placement is proposed and what does it provide?<sup>11</sup>**

- i. How does this placement meet the federal standard for the least-restrictive, most family-like setting, and how is it appropriate to meet the youth's needs?
- ii. Is there a child-specific, best interest reason to support this placement?
- iii. Is the placement able to offer the type and frequency of treatment recommended by the independent assessor?
- iv. Does the placement utilize a trauma-informed model?
- v. What treatment modalities does the placement offer? How do they choose what modality to use with each youth? Are decisions regarding treatment modalities individualized based on the youth's needs?
- vi. What assessments or evaluations are conducted during the placement?
- vii. What tools is used to determine the youth's baseline functioning at admission, during treatment, and at discharge?
- viii. How is a youth's progress gauged during the placement? Is it a level system (based on behavioral modification) or are there other assessments or tools that are used?
- ix. What is the average length of stay in the placement?
- x. How far away from the youth's home, family, and school is the placement being considered? How will the youth's family be able to visit and/or be meaningfully involved in the treatment team?

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<sup>10</sup> Under FFPSA, if a Qualified Residential Treatment Program (QRTS) is recommended over the objection of the child or parent, the reasons why must be documented in the case plan. Pub. L. 115-123.

<sup>11</sup> Some of the language in this section comes from FFPSA and its requirements for qualified residential treatment programs (QRTSs). An attorney's state may not have opted into FFPSA provisions concerning institutional care. Although it is important to know whether FFPSA applies in your jurisdiction, the relevant language in this guide can still provide a useful framework to attorneys in institutional care advocacy.





- xi. What is the peer group like? What are the ages and needs of the other youth at the placement? How many youth are placed at the facility?
- xii. What is the ratio of staff to youth?
- xiii. What staff members will be working with the youth and what are their qualifications? Who is responsible for ensuring that the youth's treatment objectives are being met?
- xiv. Does the placement provide regular and consistent training and supervision to staff?
- xv. What are the placement's disciplinary policies and procedures?
- xvi. Does the placement implement standards and procedures to hold itself accountable? Does the placement have operating principles that are publicly available?
- xvii. Is the placement licensed by the state? Is it accredited by an approved organization, per FFPSA? How does the state or other licensing body monitor the facility?
- xviii. Have there been any complaints lodged concerning the placement? Is there any disciplinary history regarding the placement? What concerns have been cited? How have they been resolved?

## **II. GUIDING QUESTIONS FOR ATTORNEYS REGARDING INSTITUTIONAL CARE PLACEMENTS**

Suppose that after the attorney's thorough and independent investigation, they determine that institutional care is necessary, or despite arguments to the contrary, the youth is placed in institutional care. What now? It is crucial to determine and advocate for the best possible placement, given the youth's needs, for the shortest period of time to meet those needs. Below are questions the attorney can ask to ensure the institutional care placement is safe, effective, and appropriate to meet the youth's needs, as well as compliant with federal law, and if not, argue for a different placement.

### **1) Does the program provide high-quality treatment?**

- a. Has the program drafted a treatment plan for the youth? Does the attorney have a copy of it? How often it is updated/by whom?
- b. Has the program set long- and short-term goals for the youth's treatment? What are those goals? How does the treatment plan promote those goals? What is the expected timeline for achieving them?
- c. How often are treatment team meetings held? Who participates?
- d. What services is the youth receiving? Are they evidence-based? Trauma-informed? Are expressive therapies (art, music, dance, etc.) provided? How often are services provided? What are the qualifications of the service/treatment providers?
- e. Where will the youth receive medical care? Does the program have medical staff onsite? How often are medical staff available?



- f. Are trauma assessments completed for the youth? Are trauma assessments completed by the parents and other family members involved in the youth's transition home?
- g. Does the staff receive regular training on trauma and evidence-based strategies?
- h. Is there a protocol for using evidence-based strategies related to trauma?

**2) Does the program authentically engage/involve youth?**

- a. How does the program engage/involve youth in their treatment plan and goals?
- b. Does the program provide youth with the opportunity to connect with peers? What activities, sports, and/or recreational opportunities are provided? Are youth taken into the community? How often?
- c. Does the program ensure the youth can attend their court hearings?
- d. Has the youth's attorney been provided with a way to contact the youth?
- e. Does the program facilitate communication with the youth's attorney and other members of the youth's professional team? How and how often?
- f. If the program is far from the youth's home, is the youth provided with meaningful opportunities to engage with family and others in their support network? How often?

**3) Does the program authentically engage parents and families?**

- a. Does the program involve/engage family and parents in treatment team meetings, treatment planning, and treatment? What efforts does the Department make to engage the family in treatment at the program?
- b. Is family therapy offered? Who is included in family therapy?
- c. Are all important people in the youth's life allowed contact with the youth at the program? Has the family been provided all contact information for the program and key staff? How often are phone calls? How often are visits?
- d. How does the program engage/involve parents in all key decisions at the program?
- e. Does the program communicate with the youth's family and family members? How and how often?
- f. Does the Department provide financial support for families to travel to the program? How often?

**4) Does the program focus on permanency?**

- a. Does the program have a commitment to every youth having a permanent family?
- b. What efforts will the program make to identify and engage a family placement if the youth does not already have one identified?
- c. Does the program/Department have a plan for pre-discharge visits to the identified family placement/permanency option?

**5) Does the program provide the youth with a quality education?**

- a. Where will the youth attend school? Their home school? Another public school? At the program?
- b. Is the school accredited/approved/recognized/certified by the state?



- c. What is their academic curriculum?
- d. What is their student-to-teacher ratio?
- e. Does the school have the youth's transcript, credits, IEP, 504 plan, etc.?
- f. If the youth has an IEP, is the school implementing it?
- g. Is the youth earning credits towards high school graduation? If the youth is in an out-of-state placement, will those credits transfer?
- h. Does the program provide access to and support with SAT preparation and test-taking, college applications, financial aid, college preparation, etc.?

**6) Does the program provide culturally humble and linguistically appropriate services?**

- a. Does the youth have an opportunity to engage in religious and/or cultural traditions?
- b. Is the program able to meet the cultural and linguistic needs of the youth?
- c. What are the demographics of the staff? Does the staff reflect the racial, cultural, and linguistic identity of the youth?
- d. What are the demographics of the other youth at the program? Do the residents reflect the racial, cultural, and linguistic identity of the youth?
- e. Are all programs and services provided in the youth's preferred language?
- f. Does the staff engage in cultural humility, implicit bias, and racial equity trainings? How often?

**7) Does the program ban seclusion and restraint?**

- a. Does the program have a policy regarding the use of seclusion and restraints? Have all parties and relevant family members been given a copy?
- b. What restraints are used? Under what conditions? Who performs them? What is their training?
- c. Is physical restraint banned? If it is used, under what circumstances? What types?
- d. Is chemical restraint banned? If it is used, under what circumstances? What types?
- e. Is seclusion banned? If it is used, under what circumstances? Under what conditions? For how long?
- f. Does the program use debriefing techniques after seclusion and restraint?
- g. What documentation is required after the use of seclusion or restraint? Is there a policy requiring the youth's team/family to be notified?
- h. Is the staff required to undergo regular training on seclusion and restraint? How often?
- i. Does the program collect, monitor, and track data on seclusion and restraint usage?
- j. Does the program create an environment grounded in knowledge of trauma and apply it to policies concerning seclusion and restraint?
- k. Has the youth been subjected to seclusion or restraint and if so, why? What was tried to de-escalate the situation prior to the use of seclusion or restraint? How long did the seclusion or restraint last and was that the least amount of time necessary to safely reduce the threat? Was a de-briefing conducted with the youth (and staff) after the seclusion or restraint? Was the youth's team/family notified? Provided documentation?



**8) Does the program have an informed practice on the use of psychotropic medication?**

- a. Is the youth currently on any psychotropic medication? What kind? What dosage? What is the medication prescribed for? Is that consistent with the youth's diagnoses? How many medications is the youth prescribed?
- b. Does the program have a psychiatrist on staff or as a regular part of the treatment team? How often does the youth meet with the psychiatrist for a medication assessment?
- c. Does the prescribing psychiatrist weigh the risks and benefits of medications and explain those to the youth and parents/medical decision maker?
- d. Does the psychiatrist conduct on-going reassessments of medication? How often?
- e. Does the program engage the parent in all medication decisions? Does the program ensure the parent consents to medication (unless the parent is no longer the medical decision maker)?
- f. Does the program know who the medical decision maker is? Does the program have a process for obtaining informed consent for medication? Does the program have copies of any relevant court orders regarding the administration of psychotropic medication to the youth?
- g. Is the youth informed about the medication/engaged in decisions about what medications are prescribed?
- h. What amount of medication does the program provide upon discharge? Does the program help ensure a smooth transition to ensure the prescriptions are maintained appropriately?

**9) Does the program support youth in transition to adulthood?**

- a. Does the youth have a transition plan?
- b. Does the program teach youth the skills needed to be successful in adulthood?
- c. Has an adult connection or connection to a support network been established for the youth?
- d. Is there a mechanism at the program for the youth to learn budgeting, open a bank account, save money, etc.?
- e. Does the program utilize peer mentors to teach and model skills?
- f. Does the program connect youth to post-transition resources?
- g. Does the program facilitate job-training, resume writing, interviewing skills training, etc.?
- h. Does the youth have a place to live and a means of financial support in place upon discharge?

**10) Does the program focus on outcomes?**

- a. Does the program have a process by which it tracks data to measure and improve outcomes?
- b. In addition to tracking systemic outcomes, how does the program measure and ensure outcomes for the individual youth?
- c. Has the program determined what outcome data is critical to collect and implemented a method for data collection and benchmarking its performance?



- d. Does the program ensure that practice and process indicators are measured?
- e. Does the program collect functional outcome data and uses it to inform on-going performance?
- f. Does the program share its data with external constituents?

**11) Does the program engage in robust discharge planning?**

- a. Does discharge planning begin as soon as the youth enters the program?
- b. Is there a discharge plan that identifies anticipated duration of intervention and the treatment targets?
- c. Is there a plan to transition the youth from institutional care to their home or to another family setting?
- d. What are the steps to transition the youth from institutional care to a permanent living arrangement? Is that Department's work sufficient to meet the reasonable efforts requirement?
- e. How are the youth and parents involved in the transition plan?
- f. Is there an aftercare or step-down program associated with the program? Does the program provide discharge services?<sup>12</sup>
- g. Does the Department and/or program ensure the youth has what they need once discharged (medication, therapeutic services, school placement, in-home supports, etc.)?

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<sup>12</sup> Under FFPSA, QRTPs are required to provide six months of post-discharge services. Pub. L. 115-123.

<b>ACF</b>  <b>Administration for Children and Families</b>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Title IV-B, Title IV-E, Court Improvement Program	

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act, and State and Tribal Court Improvement Programs.

**SUBJECT:** Achieving Permanency for the Well-being of Children and Youth

**LEGAL AND RELATED REFERENCES:** Titles IV-B and IV-E of the Social Security Act (the Act).

**PURPOSE:** To provide information on best practices, resources, and recommendations for achieving permanency for children and youth in a way that prioritizes the child's or youth's well-being. Using an analysis of child welfare data, this Information Memorandum (IM) also outlines typical patterns in exit outcomes for children and youth in foster care. This IM reviews the permanency goals of reunification, adoption, and guardianship and emphasizes the importance of state and tribal child welfare agencies and courts focusing on each child's unique needs, attachments, and connections when making permanency decisions.

This IM is organized as follows:

- I. Background
- II. Key Data Observations Regarding Permanency
- III. Best Practice Guidance for Achieving Permanency and Well-Being across Permanency Goals – Reunification, Guardianship, Adoption
- IV. Conclusion

## I. BACKGROUND

In previous IMs, the Children's Bureau (CB) provided recommendations for implementing primary prevention networks aimed at strengthening families (ACYF-CB-IM-18-05)<sup>1</sup>, ensuring appropriate family time during foster care placement (ACYF-CB-IM-20-02)<sup>2</sup>, and utilizing foster care as a support for families (ACYF-CB-IM-20-06)<sup>3</sup>. This IM builds on those best practices

<sup>1</sup> <https://www.acf.hhs.gov/sites/default/files/cb/im1805.pdf>

<sup>2</sup> <https://www.acf.hhs.gov/sites/default/files/cb/im2002.pdf>

<sup>3</sup> <https://www.acf.hhs.gov/sites/default/files/cb/im2006.pdf>

and key principles with a continued focus on the importance of preserving family connections for children as a fundamental child welfare practice. CB believes that efforts to achieve permanency for children and youth must include safe and deliberate preservation of familial connections in order to successfully ensure positive child well-being outcomes. This focus on family connections is imperative in the work done by agencies and courts because it can mitigate the effects of trauma that children and youth in foster care have already experienced and can also reduce further trauma.

Children have inherent attachments and connections with their families of origin that should be protected and preserved whenever safely possible. This is what fuels CB's commitment to two overarching goals: (1) strengthening families through primary prevention to reduce child maltreatment and the need for families to make contact with the formal child welfare system; and (2) dramatically improving the foster care experience for children, youth, and their parents when a child's removal from the home and placement in foster care is necessary. While focused on achievement of permanency, this IM outlines best practices which also influence each of these goals. Emphasizing a child's attachments and connections while ensuring safety, rather than solely prioritizing timeframes in efforts to achieve permanency will serve to strengthen and preserve families; prevent future maltreatment from occurring after permanency is achieved; and significantly improve a child's foster care experience.

We believe there is much to learn from the patterns we see in the data available to CB from the Adoption and Foster Care Analysis and Reporting System (AFCARS), as well practice trends in the qualitative data gathered through the Child and Family Services Reviews (CFSR). Since reunification is the primary goal for nearly all children entering foster care, we are particularly concerned about what the data reveal regarding the likelihood of achieving reunification. An analysis of AFCARS data on exits for children and youth entering foster care, shows us that while over 85 percent of children and youth will eventually achieve permanency through reunification, guardianship or adoption (after four to five years), less than 50 percent will return to their families of origin through reunification<sup>4</sup>. Additionally, data gathered through round three of the CFSR<sup>5</sup> indicate that agencies and courts made concerted efforts to achieve reunification in a timely manner in 49 percent of the applicable cases.

Federal law and regulation clearly emphasize the importance of working to preserve families and for agencies to make reasonable efforts to prevent removal and finalize permanency goals.<sup>6</sup> The law also emphasizes preserving family and community connections for children and youth in foster care. CFSR findings<sup>7</sup> related to these requirements indicate that states need to make improvements in these areas. In order to improve permanency outcomes and preserve

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<sup>4</sup> This analysis can be found the "Context Data" that are provided to supplement the Statewide Data Indicators that are distributed semi-annually.

<sup>5</sup> See [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_aggregate\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_aggregate_report_2020.pdf)

<sup>6</sup> "Reasonable efforts" are a title IV-E agency requirement to obtain a judicial determination that the child welfare agency has made efforts: (1) to maintain the family unit and prevent the unnecessary removal of a child from the home, as long as the child's safety is ensured, and (2) to make and finalize a permanency plan in a timely manner (sections 471(a)(15) and 472(a)(2)(A) of the Act).

<sup>7</sup> See [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_aggregate\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_aggregate_report_2020.pdf)



connections for children, it is critical that courts provide active judicial oversight over agency efforts to:

- Thoroughly explore existing familial relationships and maternal and paternal relatives as possible placements (section 471(a)(29) of the Act);
- Safely place children with relatives or fictive kin and people who they know, when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards (section 421 and 471(a)(19) of the Act);
- Make all reasonable efforts to keep siblings together unless such a joint placement would be contrary to the safety or well-being of any of the siblings (section 471(a)(31) of the Act);
- Keep children in their communities, including in their schools, and connected to classmates and teachers, if remaining in such school is in their best interests, (section 471(a)(30) and 475(1)(G) of the Act);
- Thoroughly review the status of each child during periodic reviews and permanency hearings, specifically assessing: 1) the safety of the child and the continuing necessity for the child's placement in foster care; 2) progress made toward alleviating or mitigating the causes necessitating placement in foster care; and 3) the extent of compliance with the case plan (including the agency's provision of appropriate services for the child and parents to improve the condition of the parent's home) (sections 475(1)(B), and (5)(B) and (C) of the Act); and
- Apply the exceptions for filing a petition for termination of parental rights when, at the option of the state, the child is placed with a relative/fictive kin, when there is a documented compelling reason not to file based on the best interest of the child (which would include consideration of a child's key attachments), or when the state has not provided such services to the family as the state deems necessary for the safe return of the child to the child's home (section 475(5)(E) of the Act).

These requirements are intended to preserve a child's family connections and support meaningful efforts toward reunification. Data analysis presented later in this IM reveals that children whose parents' parental rights have been terminated may have longer durations in care that may not result in a finalized adoption. Therefore, we must carefully consider on an individual basis for each child and family, whether terminating parental rights is truly in the best interest of the child. This IM seeks to emphasize the importance of safely guarding and protecting family relationships while pursuing permanency for children and youth. Agencies and courts must be certain that termination of parental rights is necessary to achieve what is best for the long-term well-being of children and youth.

As CB continues to advance national efforts to transform the child welfare system into one that promotes primary prevention, family well-being, and healing, we must pause and consider the trajectory we have been on, the outcomes that children and youth are experiencing, and where

course correction may be needed. While we are mindful of the length of time children spend in foster care, and do not want to unnecessarily prolong that, timeliness should not be the primary driver when considering how to best achieve permanency for children and youth. We believe that we will see reunification achieved more often, and with more expedience, by improving efforts to place children with relatives/fictive kin at the onset of foster care placement, nurturing children's relationships with their parent(s) during foster care placement, and making concerted efforts to provide parents with the services and supports they need to achieve reunification. We believe that this will result in improvements in outcomes related to both permanency and child and family well-being. When reunification cannot be achieved safely, focusing on family connections can improve the likelihood that children exit foster care to guardianship or adoption with relatives/fictive kin. When a child's experience in foster care is marked by safety, meaningful family time, preserved and nurtured connections, and high quality, family-centered, trauma-informed service provision, children and youth have a better chance of achieving meaningful permanency in a way that enhances their well-being.

## **II. Key Data Observations Related to Permanency**

Using AFCARS data, CB conducted three separate analyses which are referenced in this IM. All three analyses are based on an entry cohort approach in which all children who enter care within a fiscal year are selected to establish a cohort, and multiple unique entry cohorts are established by identifying entries from multiple fiscal years.

The first set of analyses selected entry cohorts for each year from FY 2013 to FY 2018 (six entry cohorts in total) and follows children in the cohorts from their entry date to their date of discharge, or September 30, 2019 (the end of FY 2019), whichever comes first.<sup>8</sup> Children are not observed beyond FY 2019 because FY 2019 is the most recent year for which we have complete data. The purpose of this analysis is to describe the exit outcomes of children when maximal time is allowed to observe exits, and to observe how these exit outcomes vary.

The second set of analyses selected entry cohorts for FY 2015 to FY 2017 (three entry cohorts in total) and followed each child for exactly two years from their date of entry. In contrast to the first set of analyses that allowed maximal time to observe exits, this approach uses a standard amount of time (two years) so that each entry cohort, and each child in each cohort, is followed for the same amount of time. The purpose of this analysis is to describe the exit outcomes children experience within two years of entry, rather than eventual exit outcomes with maximal time to observe exits.

The third set of analyses selected entry cohorts for FY 2013 to FY 2015 (three entry cohorts in total) and follows children to September 30, 2019, or their date of discharge, whichever comes first. In that respect, it is identical to the first set of analyses. The primary difference in the third set of analyses is that children are distinguished based on whether their parents' parental rights

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<sup>8</sup> Each subsequent entry cohort is followed by one fewer full years than the preceding entry cohort because each entry cohort has the same endpoint (September 30, 2019), but the entry cohorts are separated by a year. For example, the 2013 entry cohort is followed for up to seven years, the 2014 entry cohort is followed for up to six years, and so on.

were terminated or not. The purpose of this analysis is to describe the population of children who become legally free and to characterize what their eventual exit outcomes are.

Taken together, the three sets of analyses allow us to make objective statements about the most frequent, or typical, exit outcomes for children who enter foster care when a maximum amount of time is allowed to observe outcomes (the first and third analyses), or when a fixed, abbreviated amount of time is allowed to observe outcomes (the second analysis). These analyses allow us to identify patterns that have been typical for children who have entered foster care in recent years, and to use those patterns to project what we might expect for children who newly enter care. These patterns then provide critical context for the best practice considerations outlined in the next section.

We refer to the first two sets of analyses to establish what exit outcomes have been typical. We focus first on answering the following questions based on allowing for maximal time to observe exits:

- What exit outcomes are most likely for children and youth entering care?
- What differences are observed when the data are disaggregated by age at entry?

Secondly, to examine the typical outcomes within two years of entry, we answer the following question:

- What exit outcomes can be observed within two years or less of entry into care?

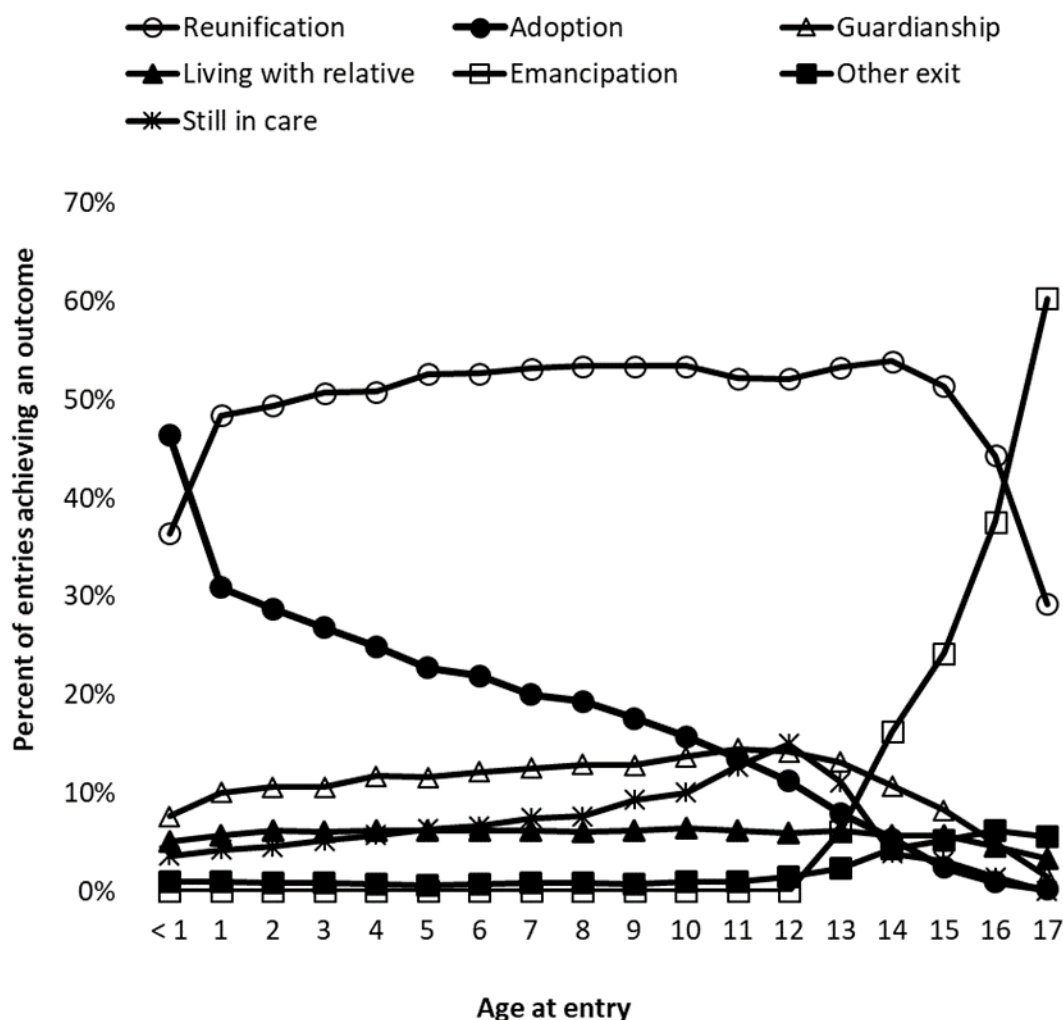
#### What exit outcomes are most likely for children and youth entering care?

- Typically, just under 50 percent of children and youth who enter care are reunified.
- Typically, just under 25 percent of children and youth who enter care are adopted.
- Typically, about ten percent of children and youth who enter care exit to guardianship.
- Typically, about six percent of children and youth exit to live permanently with relatives other than the ones from whom the child was removed. (These exits could also include guardianship by a relative).
- Typically, about eight percent of all children and youth who enter care are emancipated.

What differences are observed when the data are disaggregated by age at entry?<sup>9</sup>

The graph below displays the outcomes typically experienced by children and youth who entered care in FY 2015 and were followed for up to five years following their entry, displayed by their age at entry.

**Figure 1: Exit Patterns for Children/Youth Entering Care in FY 2015, by Age at Entry**



Based on what typically happens to children who enter care, we can extrapolate to what is likely to happen to children who enter care. The following observations of likely outcomes are derived from the graph above:

<sup>9</sup> An earlier version of this graph appeared in Beyond Common Sense: Child Welfare, Child Well-Being, and the Evidence for Policy Reform, F. Wulczyn, R.P. Barth, Y.T. Yuan, B.J. Harden, and J. Landsverk, 2005, in which the authors make the case that child welfare outcomes should be understood from a developmental perspective, and child welfare policies should reflect that perspective.

- Generally, reunification is the most likely outcome for children and youth who enter care between the ages of 1 and 16 years.
- Children less than age 1 who enter care are the only group for whom adoption is the most likely outcome. The likelihood of exiting to adoption decreases the older the child is when they enter care.
- The likelihood of exiting to guardianship increases the older the child or youth is when they enter care, until approximately age 13.
- Children and youth most likely to still be in care after four years are those who enter care between the ages of 9 and 13 years.
- For youth who enter foster care between the ages of 13 and 17 years, the likelihood of exiting to emancipation significantly increases the older the youth is when they enter care.

(“Other exit” noted in the graph includes discharges to run away, death of child, and transfer to another agency. These are mostly observed at older ages except for death of child, which can occur at any age.)

Turning to the second analysis, which looks to see how many children/youth achieve permanency within two years of their entry, we asked the following question:

What exit outcomes can be observed within two years or less of entry into care?

- Sixty-five percent of children and youth entering care will achieve permanency of some kind within two years.
- Forty-four percent of children and youth who enter care exit to reunification within two years.
- Nine percent of children and youth who enter care exit to adoption within two years.
- Eight percent of children and youth who enter care exit to guardianship within two years.
- Five percent of children and youth who enter care exit to live permanently with relatives within two years.
- Except for adoption, most exits to permanency are achieved within the first 12 to 18 months of entry into care.

Taken together, the first two sets of analysis reveal the following patterns:

- Although permanency was the most frequent outcome, it can take some time. Within two years of entry, 65 percent achieved permanency and 88 percent of entrants achieve permanency within seven years.
- Most reunifications occur within the first two years of entry, after which reunifications became less likely.
- Children who entered foster care between the ages of 9 and 13 who do not reunify within the first two years may stay in foster care longer – either waiting to be adopted or aging out.
- For youth entering at age 16 or older, emancipation is the most likely outcome. Additionally, those who are not reunified within the first year are much less likely to be reunified in subsequent years when compared to younger children who enter care and do not reunify in the first year.

We refer to the third set of analyses to describe the experiences of children whose parents' parental rights were terminated after the child entered care. We answer the following questions based on allowing for maximal time to observe exits.

- How frequently do children and youth who enter foster care have their parents' parental rights terminated and what differences are observed by age at entry?
- What exit outcomes are observed for children and youth who have had their parents' parental rights terminated and what differences are observed by age at entry?
- After entry, how long does it take for children and youth to have their parents' parental rights terminated and what differences are observed by age at entry?

How frequently do children and youth have their parents' parental rights terminated and what differences are observed by age at entry?

- About a quarter of children and youth who enter care have their parents' parental rights terminated.
- Over half of the newborns (0 to 3 months at entry) who enter care have their parents' parental rights terminated.
- Just under a quarter of children who enter between the ages of 6 and 10 have their parents' parental rights terminated.
- Just over 10 percent of the children who enter between the ages of 11 and 16 have their parents' parental rights terminated.

What exit outcomes are observed for children and youth who have had their parents' parental rights terminated and what differences are observed by age at entry?

- Children who enter care and have their parents' parental rights terminated more frequently fail to discharge and stay in care longer than children whose parent's parental rights are not terminated. As the age at entry increases, the likelihood of these children staying in care also increases.
- Typically, 95 percent or more of the infants (under age 1) who have their parents' parental rights terminated are adopted.
- Typically, 90 percent of children who enter care between the ages of 1 and 5, and have their parents' parental rights terminated, are adopted.
- Typically, 85 percent of children who enter care between the ages of 6 and 10 and have their parents' parental rights terminated, are adopted. Those in this age group who are not adopted are most likely to stay in care when compared to younger children or children of the same age whose parents' parental rights are not terminated.
- Typically, 55 percent of children who enter care between the ages of 11 and 16, and have their parents' parental rights terminated, are adopted. And 28 percent of the children and youth in this age group who are not adopted age out of care.

How long does it take for children and youth to have their parents' parental rights terminated and what differences are observed by age at entry?

- Most children and youth who have had their parents' parental rights terminated experienced that within two years of entry.
- Of children who enter care under age 1 and have their parents' parental rights terminated, 32 percent have parental rights terminated within one year. In contrast, of those children who are between the ages of 1 and 5 years at entry, and have their parents' parental rights terminated, 21 percent have parental rights terminated within one year. This pattern continues as age at entry increases.

## **Placement of Siblings**

It is important to note that children may enter foster care as sibling sets, but we are unable to ascertain whether exits to permanency occur in the same way (same goal, same timeframe) for siblings based on current AFCARS data. Placing siblings together is a critical aspect of securing permanency for children and must be prioritized. Data from round 3 of the CFSR<sup>10</sup> indicates that children were placed with their sibling in only 46 percent of the 1,547 applicable cases. While it was determined that a valid reason for separation existed in 65 percent of cases, we urge agencies and courts to consider the lifelong implications of separating siblings and make every

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<sup>10</sup> See [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_aggregate\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_aggregate_report_2020.pdf)



effort to reunite siblings, especially in their permanent homes. Permanency plans that result in severing sibling attachments do not support the lifelong connections and relationships associated with permanency and well-being for children and youth. It is a grievous consequence of foster care that we must prevent at all cost.

### **III. Best Practice Guidance for Achieving Permanency and Well-Being across Permanency Goals – Reunification, Guardianship, Adoption**

The term “permanency” is used to define one of three outcomes we aim to achieve for children in foster care. All three interconnected outcomes (safety, permanency and well-being) allow a child to truly thrive; therefore it is important that our efforts to achieve permanency do not sacrifice safety or well-being. For children in foster care, experiencing permanency and well-being should be one and the same. The statute is clear that the best interest of the child is paramount in permanency planning and is a compelling reason not to terminate parental rights in certain circumstances. CB strongly urges agencies and courts to remain mindful of child development needs, and the unique needs of an individual child, and ensure that those needs are not eclipsed by haste to comply with timelines and process. Such haste may be contrary to the best interest of children.

We do not want children to stay in foster care longer than is absolutely necessary to keep them safe, and we also do not believe that it is in a child’s best interest to sever parental attachments and familial connections in an effort to achieve “timely permanency.” Timeliness is but one of a host of considerations when meeting the needs of children and should not be the lone or primary driver for determining what is best for children. Placing timeliness above the substance of thorough execution of case plans and reasonable or active efforts to achieve them runs the risk of placing process over substance and promoting shortcuts in practice that can be harmful to children and families.

By focusing on preserving a child’s connections and nurturing parental attachment while a child is in foster care, we can steward a child’s time in foster care in such a way that true healing can occur, and families can be reunited safely. In situations where guardianship or adoption is determined to be the most appropriate goal for a child’s long-term well-being, agencies should consider how they can safely preserve the child’s original family attachments through adoption or guardianship with relatives/fictive kin.

Children in foster care should not have to choose between families. We should offer them the opportunity to expand family relationships, not sever or replace them. We recognize that reunification is not always possible<sup>11</sup>; however, CB believes that the vast majority of children in foster care have relative or fictive kin relationships that are of great value to them. When we nurture and protect relationships with siblings, family, and fictive kin, we increase the chances for youth to achieve permanency. When these relationships are prioritized, protective factors are increased, which promotes current and future well-being. The most critical factors for

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<sup>11</sup> Note that in instances where aggravated circumstances and severe physical/sexual harm exists it may not be appropriate for parental or family involvement to continue as described in this IM. There are also instances of children who are abandoned. Statistically these situations make up a very small percentage of the foster care population.

consideration in permanency planning should be the safety of the family home and a child's key attachments and family connections. These factors, rather than the number of months spent in foster care, or even a child's new attachment to resource parents, should drive permanency decisions. By keeping the focus on what really matters for positive child outcomes, we believe agencies, tribes and courts can dramatically improve the likelihood of reunification and permanency with relatives for the vast majority of children and youth in foster care, reduce the duration of time children and youth spend in foster care and improve the well-being of children and youth during and after foster care.

There are critical aspects of practice that serve to protect and preserve a child's core identity and sense of belonging. These include things like crafting meaningful plans for family time (with siblings and parents) at the onset of placement, conducting exhaustive and ongoing kin searches, doing the difficult work of supporting resource parents to co-parent rather than replace a parent, and making placement decisions that carefully consider a child's connections to their community. When agencies and courts don't invest time and effort in these practices, we prevent children from experiencing true permanency and well-being. Research also indicates that kinship placement, early stability, and intact sibling placement are predictors of permanency achievement.<sup>12</sup> Agencies and courts cannot afford to settle for available placements that separate siblings, or make case plan decisions that take children and youth away from all that they know and love and unnecessarily terminate parent-child relationships.

While children who have had their parents' parental rights terminated no longer have legal parents, they most often still have living parents, other relatives that they are connected to, and fictive kin with whom they have existing relationships. Children and youth in foster care have stories and memories that make up who they are, and they deserve to have all of those things safely preserved for them while they endure the trauma of being removed and displaced from all that they know. This is why Permanency Outcome 2 (and the five items that comprise it) in the CFSR aims to ensure the preservation of connections and continuity of family relationships. It is a child welfare outcome for states to achieve for all children in foster care because of how critically important each practice (shared below) in that outcome is:

- Place siblings together in foster care (CFSR, Item 7);
- Ensure frequent and meaningful family time experiences for children with their parents and with siblings who are placed separately (CFSR, Item 8);
- Preserve key connections such as a child's school, neighborhood, community, faith, extended family, Tribe, and friends (CFSR, Item 9);
- Place children with relatives (CFSR, Item 10); and

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<sup>12</sup> Becci A. Akin, Predictors of foster care exits to permanency: A competing risks analysis of reunification, guardianship, and adoption, *Children and Youth Services Review*, Volume 33, Issue 6, 2011, Pages 999-1011, ISSN 0190-7409, <https://doi.org/10.1016/j.childyouth.2011.01.008>.

- Make efforts to promote, support, and/or maintain a positive relationship between children and their parents through activities that go beyond visitation (CFSR, Item 11), such as:
  - Encouraging parents to participate in school activities, extracurricular activities, and health appointments (and providing transportation for parents to be able to participate).
  - Providing therapeutic opportunities to help parents strengthen their relationship with their child.
  - Encouraging resource parents to mentor or serve as support role models for parents.
  - Facilitating contact with a parent unable to participate in family time due to distance or other barriers.

These permanency practices are the key to ensuring that children have positive, healthy, and nurturing attachments and relationships with their parents, siblings, and others. These healthy relationships become the foundation for lifelong thriving — we must ensure that all children and youth exit care with this foundation. Over the past four years, through multiple roundtable discussions and meetings, CB leadership has met routinely with young people around the country, to include the recent completion of 12 regional roundtables with young leaders across the United States.<sup>13</sup> We heard directly from young people who described their experience in foster care as missing these critical attachments and relationships. Youth recounted experiences of being separated from siblings, some losing contact altogether. Still others aged out of care only to find that they had relatives and kin living in close proximity to them, yet no efforts were made to preserve those connections. These youth often reference ‘relational permanency’ as something they need to thrive. Legal permanence alone doesn’t guarantee secure attachments and lifelong relationships. The relational aspects of permanency are critically important and fundamental to overall well-being.

We must work to safely preserve children’s key attachments and support them as they build new attachments with resource parents and new permanent caregivers. Children do not need to have previous attachments severed in order to form new ones<sup>14</sup>. In fact, they will be better positioned to develop new relationships if we work to preserve their original connections, sparing them from additional grief and loss.

What ultimately matters for permanency are relationships and connections, so we must ensure that our efforts to achieve permanency reflect this understanding. We must work to ensure that the expectations outlined in CFSR Permanency Outcome 2 are put into practice (preserved connections should be routinely assessed in case planning meetings, court hearings and reviews because of the influence they have on achieving permanency and well-being). These practices must not be thought of as ‘extra’ things that are only applicable for children with a goal of reunification, but they should be viewed as some of the most important things children need to thrive long-term with any permanency goal.

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<sup>13</sup> See [CB Letter](#) summarizing roundtables.

<sup>14</sup> Centre for Parenting & Research Research, Funding & Business Analysis Division. (2006). The importance of attachment in the lives of foster children. [https://earlytraumagrief.anu.edu.au/files/research\\_attachment.pdf](https://earlytraumagrief.anu.edu.au/files/research_attachment.pdf)

CB has been promoting system transformation with the priority of keeping families safely together. This value of preserving families must be present at every stage of the work in our child welfare systems if we want to improve outcomes for children and families. It must be the compass that guides our path to achieving the permanency goals of reunification, adoption, and guardianship so that the well-being of every child is also achieved.

## **Achieving Reunification**

The analysis in section II of this IM indicated that children and youth who enter foster care have a less than 50 percent chance of being reunified. This pattern reveals that our efforts to strengthen and preserve families have been profoundly inadequate. Outside of situations of egregious abuse and neglect to children by their parents, a finding of aggravated circumstances, or abandonment, the goal for a child placed in foster care is most often reunification. Federal law<sup>15</sup> requires title IV-B/IV-E agencies to provide reasonable efforts to make it possible for children to reunify with their parents safely. The qualitative data we gather through the CFSR, which considers the circumstances for the child, and the nature of the efforts made by the agency and courts, also confirms that significant improvement is needed. Round three results<sup>16</sup> of the CFSR found that agencies made concerted efforts to achieve reunification within 12 months of the child's entry into foster care in 49 percent of foster care cases.

As we consider the best practices that are required to achieve reunification, we must start with assessing the parent-child relationship, including attachment, and prioritizing that in services. Some parents working toward reunification may need the support of a trauma-informed counselor or therapist who can help them learn to work through their own past trauma, along with the trauma their children have experienced from abuse or neglect and removal, as they seek to repair and restore parent-child attachments and relationships. Parents love their children deeply, but may not have experienced healthy parent-child attachment for various reasons. Assessing and supporting the parent-child relationship is critical to enable safe and timely reunification, but is often missing from the array of services offered to parents. Round three CFSR<sup>17</sup> results related to service array noted that trauma-informed services, transportation, and visitation services were often insufficiently available.

The analysis in section II of this IM noted that infants have the least opportunity to be reunified as termination of parental rights and adoption are pursued quickly for that population in particular. While we recognize that infants are the most vulnerable to abuse and neglect, we also want to ensure that parents are given every opportunity to reunify with their infant children. For parents struggling with substance abuse in particular, treatment opportunities that allow them to have their children live with them offer the kind of support that parents need to overcome addiction while safely developing and demonstrating their parenting skills. It is critical that parents of infants be given ample opportunities to safely bond with their children and develop attachments that are critical for those children to thrive.

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<sup>15</sup> Section 471(a)(15)(B)(ii) of the Act

<sup>16</sup> [https://www.acf.hhs.gov/sites/default/files/cb/cfsr\\_aggregate\\_report\\_2020.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cfsr_aggregate_report_2020.pdf)

<sup>17</sup> Ibid

The results of our analyses that are described in section II suggest that another population that may benefit from focused attention is children and youth who entered care between the ages of 9 and 13 years. This age group is most likely to still be in care after four years, so agencies and courts should ensure that adequate efforts are being made to work toward reunification and ensure connections are being preserved in a meaningful way to support their well-being while they are in care.

This work of repairing and supporting attachment and relationships during foster care takes time, particularly when parents may also be dealing with other issues such as poverty, housing instability, substance use disorders, or domestic violence. But this is the distinctive and challenging work of child welfare. Agencies must emphasize the importance of these efforts at all times and frontline staff must see it as a critical responsibility. Agency culture, policy and practice must be designed and implemented to provide parents the time and resources they need to effectively work through all that is necessary to bring healing to their families. If agencies have done the work to improve the child's experience in foster care, by preserving their connections, implementing meaningful family time, and utilizing foster care as a support for families, then the length of time the child stays in foster care will facilitate healing.

In addition to practices focused on supporting the parent-child relationships, preserving connections, and utilizing foster care as a support for families, there are a few other critical practice areas and systemic processes assessed in the CFSR<sup>18</sup> outcomes and systemic factors that influence concerted efforts to achieve reunification:

- Agencies conducted a comprehensive assessment of parents' needs and provided appropriate services to address needs of parents in 42 percent of foster care cases (Well-Being Outcome 1, Item 12B).
- Children and parents were adequately engaged in case planning in 55 percent of foster care cases (Well-Being Outcome 1, Item 13).
- Agencies conducted frequent, quality caseworker visits with parents in 41 percent of foster care cases (Well-Being Outcome 1, Item 15).
- Two states achieved substantial conformity with the Case Review systemic factor.
  - 37 states received a strength rating for ensuring timely periodic reviews and permanency hearings; however, concerns noted with agency efforts in working with children and parents in Permanency Outcomes 1 and 2 and Well-Being Outcome 1 signal opportunities for courts to improve the quality of reviews and hearings to assess these efforts as required.

States must ensure that parents receive adequate comprehensive assessments of their needs in order to properly inform service planning. Successful engagement of parents is critical for obtaining the information needed to inform a proper assessment of a parent's needs.

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<sup>18</sup> Ibid

Engagement must be nurtured through frequent, meaningful worker contact. The very act of assessment also serves to reinforce engagement – as parents are asked to share their stories and workers demonstrate empathy and care in response, trust is built. This trust builds rapport and provides the best foundation for effective ongoing case planning.

Stakeholders interviewed through the CFSR report that some agencies contract out an assessment of parents and, as a result parents, may go months before having any of their needs, their history or their relationships assessed. Many parents have experienced their own trauma, have been in foster care themselves as children, or have compounding needs that leave them feeling overwhelmed. Additionally, CB leadership has met regularly with parents across the country who have lived experience and expertise to share related to having a child involved with the child welfare system. These meetings have reinforced the need for robust parental supports and services to help support parental resiliency, protective capacities, and healing. It is vital that the child welfare workforce be trained, supported, resourced, and equipped to do the work of engaging parents and assessing their needs, even if additional outside assessments are needed. This aspect of case practice is so critical because of its implications for developing a trusting relationship. Outsourcing assessments completely can prevent effective parental engagement from occurring which can negatively impact outcomes.

The initial opening of a case is the most critical time for engaging parents. Agencies should convey to parents that the goal of the agency and court is to keep families safely together, clearly explain what makes their family home unsafe for their child, and share the steps for how they can address those safety threats. Agencies should demonstrate in written case plans and through verbal explanations to parents: 1) why placement is necessary for safety; 2) how foster care will be used as a support for their family; 3) how the agency and court will ensure that they have everything that they need to achieve reunification; 4) how changes in the safety of the home will be assessed; and 5) how family time will be arranged to offer them as much time with their children as safely possible. That approach of clear communication, focused on what matters most, indicates to parents that the agency and court are invested in preserving and supporting their relationship with their child. That can help buffer the grief parents experience due to separation, which often is displayed as anger toward the child welfare agency. Many parents have expressed to CB that when agencies approached them as people who love their children, but are in need of help, rather than treating them punitively and assuming they don't care about their children, they were much more receptive to being engaged.

Ensuring high quality legal representation for parents and children is critical to preventing unnecessary parent child separation, promoting the well-being of children and parents, ensuring that reasonable efforts<sup>19</sup> and active efforts are made, and achieving all forms of permanency when a child or youth becomes known or involved with the child welfare system.<sup>20</sup> Research

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<sup>19</sup> “Reasonable efforts” are a title IV-E agency requirement to obtain a judicial determination that the child welfare agency has made efforts (1) to maintain the family unit and prevent the unnecessary removal of a child from the home, as long as the child’s safety is ensured, and (2) to make and finalize a permanency plan in a timely manner (sections 471(a)(15) and 472(a)(2)(A) of the Act).

<sup>20</sup> The CB issued Informational Memorandum [ACYF-CB-IM-17-02](#) that provides details on representation concepts, benefits, and resources that are helpful for developing or strengthening legal representation programs. See also, [Technical Bulletin](#) on Frequently Asked Questions: Independent Legal Representation for more information.

makes clear that high quality legal representation, particularly multi-disciplinary legal representation,<sup>21</sup> is impactful in helping to achieve and expedite reunification.<sup>22</sup>

### *Reinstatement of Parental Rights*

A review of exits from foster care over the past three years reveals that 15 percent of youth who aged out of care<sup>23</sup> had their parents' parental rights terminated prior to their exit from foster care. The analysis shared in section II on children and youth who have had their parents' parental rights terminated showed that that group is more likely to still be in care than children and youth who have not had parental rights terminated (over 25 percent will go on to age out of care). In many instances, this results in children staying in foster care for long periods of time, often without the important connections to familial support that are necessary for their well-being. Together these data points demonstrate that there are groups of children or youth who will enter care, have their parents' parental rights terminated, and then will have longer stays in care that will end without permanency. As of current AFCARS reporting for 3/31/2020, there are 73,200 children and youth in foster care who have had their parents' parental rights terminated but have still not achieved permanency. For some of these children and youth who are still in foster care, there may be just cause to reconsider reunification with one or both parents. That is, we should consider the possibility that reunification may be a viable option for these children and youth.

Currently, 22 states have laws that allow for reinstatement of parental rights.<sup>24</sup> These statutes are most often grounded in the best interest of the child legal standard and are grounded in the understanding that life circumstances can and do often change for the positive for parents. A parent or parents who may not have been able to safely or adequately care for a child in the past may become a safe and appropriate option in the future.<sup>25</sup> Numerous state statutes also speak to the age and maturity level of children and youth, length of time in care, and failure of agencies to achieve stated permanency goals despite making reasonable efforts.<sup>26</sup> Inherent in these laws is the recognition that the nature of the safety issues that may have existed at the time of termination for a young child may no longer pose the same threats to safety for an older child or youth, or that concerns that existed at the time of termination may no longer exist due to successful parental recovery or other forms of sustained progress. Reinstatement of parental rights and reunification with a parent or parents may be particularly appropriate for older youth in foster care as they are better able to express their preferences and concerns and have better developed protective capacities than younger children.

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<sup>21</sup> See <https://familyjusticeinitiative.org/advocacy/high-quality-representation/>

<sup>22</sup> An important [study](#) conducted in New York City in 2019 provides especially compelling evidence of the effectiveness of the multi-disciplinary approach in achieving reunification. A companion, [qualitative study](#) released in 2020 lends further support to the model. See, [ACYF-CB-IM-17-02](#) for a summary of additional research demonstrating the connection between legal representation and reunification.

<sup>23</sup> There are differences across states based on whether children who transition to extended foster care are considered to "age out" when they turn 18, or when they discharge from extended foster care. This figure includes all emancipations, regardless of whether the child was over 18. Of these emancipations, 16 percent were over 18 at the time of emancipation.

<sup>24</sup> See <https://www.ncsl.org/research/human-services/reinstatement-of-parental-rights-state-statute-sum.aspx>

<sup>25</sup> Id.

<sup>26</sup> Id.



In light of the fact that permanency is focused on relationships and connections, and recognizing that many parents may not have received adequate supports to achieve reunification before termination, while others may have experienced significant positive changes in their life since the time of termination, reinstatement of parental rights and reestablishment of the legal connection is an important addition to the permanency continuum that can promote well-being.

CB encourages states that have such statutes to exercise the option actively when appropriate. CB further strongly encourages states that do not currently have reinstatement of parental rights statutes in place to give thoughtful consideration to crafting and enacting legislation to provide this important permanency option for children and youth.

## **Achieving Guardianship**

Guardianship is an appropriate permanency goal. This is particularly true in cases where parental rights should not be terminated but the best plan for the child based on case circumstance is that he or she not be reunified. This permanency goal legally preserves parental rights while ensuring another caregiver bears the responsibility for direct care and custody of the child. The following parental rights are transferred to the legal guardian per section 475(7) of the Act: protection, education, care and control of the person, custody of the person, and decision making. There are a number of circumstances where parents themselves may decide that guardianship with a relative is best for their child, or a relative caregiver may indicate a desire to pursue this permanency option. For youth who do not want their parents' parental rights terminated, but desire to have another legal caregiver, guardianship may offer just what they need. If safety concerns exist with maintaining parental rights, adoption would be the more appropriate permanency goal to pursue.

Guardianship can be achieved with a relative or non-relative and may include a subsidy<sup>27</sup>. All of these benefits should be discussed with families to determine what would contribute to the best long-term outcome for the child. Whether guardianship occurs with relatives or non-relatives, all guardians should have access to post-guardianship services to ensure that they can meet the needs of the children in their care. Unfortunately, children can still experience instability after guardianship, so concerted efforts must be made to prepare families for this permanency option and offer a range of supportive services that families can access even after guardianship is legalized. Families must be educated about all of the services older youth are eligible for, including eligibility for the John H. Chafee Foster Care Program for Successful Transition to Adulthood and Educational Training Vouchers (section 477 of the Act).

For children with a permanency plan of guardianship, federal law (section 475(1)(E) and (F) of the Act) requires agencies to document, in the child's case plan, the steps the agency is taking to place the child with a legal guardian, and to legalize the guardianship. At a minimum, the law requires that the documentation must include: information about the child-specific recruitment efforts that have been conducted; steps that the agency took to determine that it is not appropriate for the child to be reunified or adopted; reasons why guardianship is in the child's best interests; reasons for any separation of siblings during placement; the child's eligibility for title IV-E

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<sup>27</sup> Section 473(d) of the Act

kinship guardianship assistance; efforts made to discuss adoption by relative as a more permanent alternative to guardianship; and efforts made by to discuss with the child's parents the guardianship arrangement. An assessment of these required efforts should occur during periodic reviews and permanency hearings to ensure appropriate progress is being made in achieving the goal.

To ensure successful guardianships, efforts must be made to help potential guardians understand the child's needs, particularly as it relates to the impact of trauma, issues of attachment, and the losses associated with foster care placement (removal, any loss of connections, inability to reunify, etc.) that may impact children differently due to age and circumstances. CB funded the National Adoption Competency Mental Health Training Initiative (NTI)<sup>28</sup> to provide comprehensive training on these issues to child welfare workers, supervisors and mental health practitioners in order to improve outcomes for children being cared for by resource families, adoptive families, and guardianship families. By training the workforce who supports those pursuing guardianship, potential guardians can be better prepared to know how to understand and address behaviors that are likely linked to trauma, attachment or loss.

As with any permanency goal, intentional efforts to preserve a child's key connections can strengthen and support the positive outcomes that can be achieved through guardianship. Visitation with parents, as appropriate, and frequent time with siblings, should be included as part of final guardianship orders to ensure that those connections continue. Post-permanency services and community-based supports are critical to the long-term success of guardianship. Access to those services should also be noted in final orders to ensure that agencies and courts have thoroughly considered and provided all that the family needs.

## **Achieving Adoption**

Adoption is a critically important permanency option for children in foster care who are unable to be reunified with their parents. While child welfare agencies and courts should strive to ensure that children are safely preserved with their own families whenever possible, we acknowledge that there will be circumstances where a child must be permanently removed from harmful family dynamics and unsafe relationships. Adoption provides the permanent security of a new forever home for children who need that.

For children with a permanency plan of adoption, federal law (section 475(1)(E) of the Act) requires agencies to document, in the child's case plan, the steps the agency is taking to place the child with an adoptive family and finalize the adoption. At a minimum, the law requires that the documentation must include information about child-specific recruitment efforts that have been conducted. An assessment of these required efforts should occur during periodic reviews and permanency hearings to ensure appropriate progress is being made in achieving the goal.

Adoption may occur with a child's relatives or with unrelated resource parents. In either case, adoption should be viewed as an opportunity to expand a child's experience of family rather than

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<sup>28</sup> <https://adoptionsupport.org/nti/>

replace their previous family. Unless safety concerns prevent connections from being preserved, adoptive families should acknowledge the child's previous family connections and relationships and work to sustain those. Many state laws (currently 29 states and the District of Columbia)<sup>29</sup> allow for continuing to support relationships with parents through open adoption and post adoption contact agreements and this can include siblings and extended family.

Federal law (section 471(a)(31) of the Act) requires that every effort should be made to have siblings adopted by the same family. When that cannot occur, there should be a clear plan in place for how sibling relationships will be preserved through consistent and quality contact. Ongoing sibling relationships, regardless of the age of the child, should always be preserved for children. Relationships with parents and other extended family may also be preserved when ongoing connection does not pose a threat to safety and preserving those relationships is best for the child. In situations where children had been having regular contact with parents prior to termination, that contact should continue with support from a counselor to help the parents and child adapt to new roles.

Pre-adoptive families who wish to sever the child's family connections for any reason other than safety should receive training and supportive counseling to understand the impact that will have on the child. Decisions for adoption finalization should be contingent upon whether the family will in fact support what is best for the child in preserving connections. Agencies and courts should insist on protecting a child's key connections even if it means losing a potential adoptive family. Agencies must proactively prepare potential adoptive families to understand the importance of connections and the impact that has on child well-being.

Adoptive families have the unique privilege of stewarding a child's past in a way that can promote healing and positive outcomes for their future. By committing to love and nurture a child forever, adoptive families accept all that a child is, including their family history. Honoring that history will look different for each child, depending on case circumstances and the child's needs, but it must be carefully considered.

Similar to guardianship, there are risks to stability in adoption as well. Researchers estimate that between five and 20 percent of children and youth who exit to guardianship or adoption experience some form of instability.<sup>30</sup> To ensure successful adoptions, efforts must be made to help adoptive parents understand the child's needs, particularly as it relates to the impact of trauma, issues of attachment, and the losses associated with foster care placement (removal, any loss of connections, inability to reunify, etc.) that may impact children differently due to age and circumstances. There may be a tendency for adoptive parents to assume that offering to adopt a child and give them a new family will significantly or automatically change a child's sense of connection with their birth families. They must be prepared to understand how attachment and connection works for children so they can have appropriate expectations and know how to best support their child through the transition.

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<sup>29</sup> <https://www.childwelfare.gov/pubpdfs/cooperative.pdf>

<sup>30</sup> White, K. R., Rolock, N., Testa, M., Ringeisen, H., Childs, S., Johnson, S., & Diamant-Wilson, R. (2018). Understanding post adoption and guardianship instability for children and youth who enter foster care. Washington, DC: Office of Planning, Research, and Evaluation, the Administration for Children and Families, U.S. Department of Health and Human Services.

The National Adoption Competency Mental Health Training Initiative<sup>31</sup> is a tremendous resource for working with adoptive families. All adoptive families should be referred to an adoption competent therapist who can be an ongoing resource as their child experiences developmental changes so they can be prepared to understand and address behaviors that are likely linked to trauma, attachment or loss. Parents who adopt infants and younger children may not see the impact of trauma and attachment issues in behaviors until the child gets older but it's important that they begin to implement parenting techniques that take into account the child's history of trauma and can help form and support healthy attachment.

As the research and related resources for trauma and attachment have continued to grow in recent years, there is growing understanding in the field that many families who adopted children from foster care years ago may not have been provided adequate training and support related to these issues. As a result, CB has heard of situations where parents were left unprepared to handle the significant behaviors that their children experienced. Many of these families have been in crisis with nowhere to turn. Young people from the ACF Youth Engagement Team,<sup>32</sup> in addition to other youth CB has spoken to, have echoed the importance of providing trauma-informed services to adoptive families. It is critical that agencies and courts ensure that families are adequately connected to an array of post-adoption services so that they have access to what they need at any time. These services could include support groups, adoption-competent therapeutic supports, and attachment specialists.

### *Reinvigorating and Reinvesting in Efforts to Achieve Permanency for Older Youth*

To achieve the legal requirements around permanency and well-being, CB urges states to evaluate and invest in their continuum of permanency services. The continuum of services should be centered on supporting and strengthening family and kinship bonds, as well as include services to develop new supportive relationships when needed. The continuum should include services that can be delivered as system prevention services and services that can help maintain permanency following an exit from the system. Given the large numbers of older youth who continue to leave the system without permanency, 20,000 annually<sup>33</sup>, and the increasing likelihood, shown in the AFCARS analysis, that youth who enter care at age 15 or older will emancipate, it is crucial that states evaluate their continuum of permanency practices and services to ensure that they are effective for older youth and their families.

All children and youth need the benefit and foundation of family to experience healthy child and adolescent development. All the research available, as well as the voices of young people, demonstrate that permanency is crucial to a successful and secure transition to adulthood. Agencies should evaluate their permanency continuum to ensure that services to support reunification, adoption, and guardianship are tailored to adolescents and young adults,

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<sup>31</sup> <https://adoptionssupport.org/nti/>

<sup>32</sup> The ACF Youth Engagement Team was developed in 2020 in order to gather expertise from former foster youth in identifying key recommendations for the ALL-IN Foster Adoption Challenge and state and federal efforts toward achieving permanency for all waiting children and youth.

<sup>33</sup> The AFCARS Report <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport27.pdf>

including their families and support networks. This means, first and foremost, listening to young people as a group of experts that can guide agencies in improving practice and as individuals in their own cases. Federal law requires that youth 14 and older be consulted about their case plans and have a case planning team (section 475(1)(B) of the Act). The law also requires youth age 14 and older be consulted title about IV-E guardianship (section 473(d)(3)(A)(iv) of the Act).

Young people overwhelmingly say that they want permanency, but they want their voices to be heard about who they care about and who is important to them. Young people want to work towards permanency with skilled professionals who they can build trust with and who will show them respect. Valuing and listening to the voices of young people allows agencies to increase the odds that both legal and relational permanency can be achieved for older youth. As states and agencies evaluate and build their continuum of permanency services, we encourage states to consider the following:

1. Integrate practices that uphold the expectation that permanency must be achieved for older youth and is central to a successful transition to adulthood (communicated across the agency, including by those in leadership positions).
2. Establish processes that provide youth-centered and youth-led permanency and transition planning and that actively engage the community and family the youth identifies.
3. Train caseworkers on how to engage young people in the permanency planning process and the work necessary to achieve permanency. This should at least include: training in insights from adolescent brain development, the impact of trauma on permanency and relationship building; practical strategies for engaging youth in the discussion of permanency; and steps for repairing and building trust and relationships. Agencies should have mechanisms in place to determine if meaningful engagement is occurring, such as surveys, data collection, and youth advisory councils. Youth should be members of leadership committees and workgroups to ensure that engagement is occurring system wide.
4. Provide a wide array of permanency services to young people, including, but not limited to: reunification and family preservation services; family finding and engagement; child specific recruitment that focuses on family; kin and non-kin; grief and loss counseling; family counseling; and post-permanency services.
5. Establish processes, such as case reviews, team meetings and executive approval, to ensure the continued pursuit and finalization of permanency efforts, including reunification, adoption, and guardianship.
6. Establish processes to ensure that the option of having youth reside with a parent or guardian as an allowable supervised independent setting, is being exercised, when that would be the most appropriate option for a young person.<sup>34</sup>
7. Ensure that practices and services are in place to increase the odds that joint placement can occur for siblings, that regular visitation occurs when joint placement is not possible

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<sup>34</sup> See [CWPM section 8.3A.3 Question/Answer #3](#)

due to safety issues, and that therapeutic supports are provided to nurture sibling relationships when needed.<sup>35</sup>

8. Schedule ongoing agency-wide planning opportunities for where young people lead and help to develop innovative and effective ways to provide legal and relational permanency to older youth. This planning should build upon existing discussions and work in the field being led by alumni groups. Child welfare agencies and courts are encouraged to take action to make the existing permanency plans (reunification, adoption, and guardianship) more responsive to the needs of adolescents and young adults and to be open to new and creative ways that allow young people to establish and maintain multiple strong, long-lasting, and nurturing relationships that provide them the love, support and family identity they need as they age.

### *Timeliness*

All permanency planning and practices require thoughtful attention to timeliness. The statutory requirements for timelines, most notably, the termination of parental rights timelines<sup>36</sup> (TPR), were established in part to prevent children and youth from remaining in foster care longer than necessary. However, the statute also contains specific provisions allowing for: exceptions to the timelines in the form of aggravated circumstances that allow for expedition in certain circumstances; and documentation of compelling reasons why terminating parental rights is not in the best interest of the child (section 475(5)(E)(ii) of the Act). These options were included in the law in recognition that all families are unique and that there must be flexibility in the law to make prudent decisions based on the individual circumstances of each family and child. While timeliness is essential, and it is critical not to cause undue delay in the lives of children and families, CB cautions agencies not to place timeliness before the substance of what best supports familial relationships and the best interest of the child.

On June 23, 2020, CB issued a letter strongly encouraging all child welfare agencies to thoughtfully consider decisions of whether to file for termination of parental rights in instances where services and supports have been interrupted, are not available to meet specific needs, where family time has been inadequate, or where court operations are unable to offer hearings of needed due to COVID-19.<sup>37</sup> The letter emphasized that such decisions should always be made on the individual child and family's unique circumstances. Although the letter was issued to provide guidance during the COVID-19 pandemic and public health emergency, the legal requirements it highlights are equally important during times of normalcy and times of natural disasters or public health crises. A child welfare agency may choose not to file a petition for termination of parental rights if the agency documents compelling reasons for determining it is not in the best interest of the individual child, including instances where a child is living with a relative (section 475(5)(E)(ii) and (iii) of the Act) or when guardianship would be an appropriate

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<sup>35</sup> See also sections 473(d)(3)(B) and (e)(3) related to siblings and the title Iv-E adoption assistance and guardianship programs.

<sup>36</sup> Sec 475(5)(E) of the Act. These timelines were first added to statute by Adoption and Safe Families Act (ASFA) Public Law 105-89. Timeliness is also reflected in the requirement that a permanency plan be established within 60 days (see 45 CFR 1356.21(g)).

<sup>37</sup> CB Letter issued June 23, 2020: [https://www.acf.hhs.gov/sites/default/files/cb/parental\\_rights\\_adoption\\_assistance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/parental_rights_adoption_assistance.pdf)

permanency goal. The consistency and availability of services, supports, and family time, and how such availabilities impact parents, children and their relationship, are important factors in decision making.

#### **IV. Conclusion**

Child welfare systems have a high duty and legal responsibility to achieve and support improved permanency outcomes for children and youth in foster care. The first step toward improvement requires that stakeholders agree that family relationships and connections are key to child well-being, family relationships and connections directly influence a child's sense of permanency, and that more meaningful efforts toward reunification should be an urgent priority. Child welfare systems must center all work on preserving and creating such relationships as a critical component of child and family well-being. We strongly encourage all title IV-B/IV-E agencies to commit to the practices that ensure the preservation and continuity of family relationships and connections for all children and youth in foster care. Prioritizing those efforts will ensure that we achieve permanency for children in a way that strengthens their connections, healthy attachments, and sense of belonging to support lifelong thriving. To implement this approach successfully, agency and court leaders must mobilize service providers, attorneys, and resource families in every community to promote this view of permanency. We must make every effort to protect and preserve connections for all children and youth in foster care.

**Inquiries:** [CB Regional Program Managers](#)

/s/

Elizabeth Darling  
Commissioner  
Administration on Children, Youth and Families

Disclaimer: IMs provide information or recommendations to States, Tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

#### **Resources**

Partnering with relatives to promote reunification. Child Welfare Information Gateway. (2020). [https://www.childwelfare.gov/pubPDFs/factsheets\\_families\\_partner\\_relatives.pdf](https://www.childwelfare.gov/pubPDFs/factsheets_families_partner_relatives.pdf)

Partnering with Parents to Promote Reunification. Child Welfare Information Gateway (2019). [https://www.childwelfare.gov/pubPDFs/factsheets\\_families\\_partnerships.pdf](https://www.childwelfare.gov/pubPDFs/factsheets_families_partnerships.pdf)



Strategy Brief: What are some effective strategies for achieving permanency? Casey Family Programs (2018)

[https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF\\_Effective-strategies-for-achieving-permanency.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Effective-strategies-for-achieving-permanency.pdf)

Guardianship Assistance Policy and Implementation, A National Analysis of Federal and State Policies and Programs. Casey Family Programs (2018)

[https://caseyfamilypro-wpengine.netdna-ssl.com/media/Guardianship-Assistance-Policy-and-Implementation\\_Technical-Report.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/Guardianship-Assistance-Policy-and-Implementation_Technical-Report.pdf)

Information Packet: How have states implemented parental rights restoration and reinstatement? Casey Family Programs (2018)

[https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF\\_Parental\\_Rights\\_Restoration\\_Reinstatement.pdf](https://caseyfamilypro-wpengine.netdna-ssl.com/media/SF_Parental_Rights_Restoration_Reinstatement.pdf)

Working with Kinship Caregivers. Child Welfare Information Gateway (2018).

<https://www.childwelfare.gov/pubPDFs/kinship.pdf>

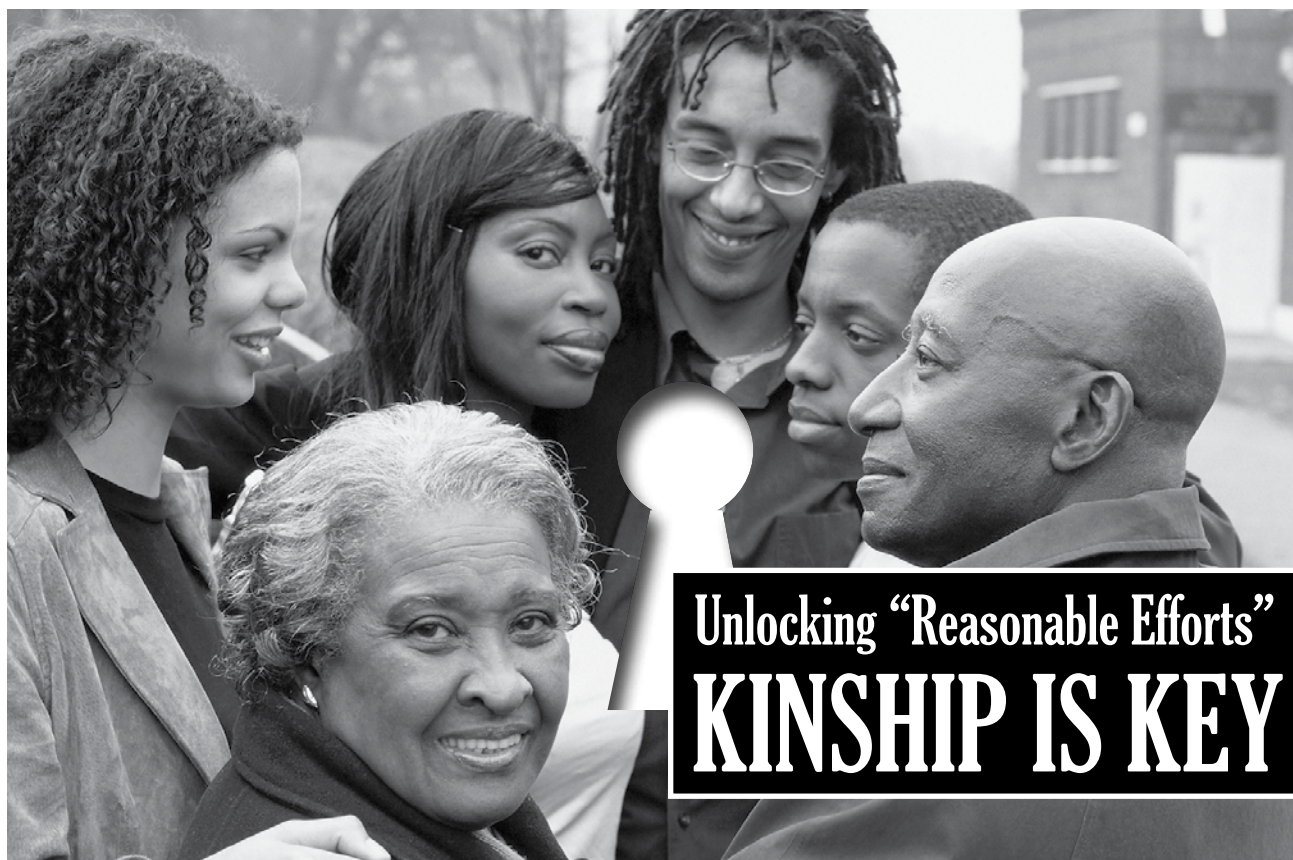
The Quality Improvement Center for Adoption and Guardianship Support and Preservations

<https://www.qic-ag.org/>

Child and Youth Connections: Results from CFSR Round 3 (2015-2018) .Report found at

<https://www.cfsrportal.acf.hhs.gov/resources/cfsr-findings>

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By Rose Marie Wentz and Kelly Lynn Beck

**Rose Marie Wentz**  
*Child Welfare Consultant*

Training for Change  
3830 9th St. N., PH6E  
Arlington, VA 22203  
206.579.8615  
Rose@WentzTraining.com

**Kelly Lynn Beck**  
*Attorney and Trainer*

National Institute for Permanent  
Family Connectedness  
Seneca Family of Agencies  
6925 Chabot Rd.  
Oakland, CA 94618  
510.654.4044  
Kelly\_Beck@senecacenter.org

**“R**easonable efforts” is a term of art used in the child protection and juvenile justice systems. The term refers to a judicial finding that is required to be made during certain pivotal court hearings once a child has been removed from the child’s home or is at risk of removal.<sup>1</sup> The words “reasonable efforts” appear in federal legislation, state statutes, child welfare and juvenile probation policy manuals, judicial bench guides, attorney resources, and court-appointed special advocate training materials, among others.

Although reasonable-efforts findings have been required throughout the child welfare system for many years, “[r]easonable efforts’ has been one of the most hotly debated and confusing issues in the field of child welfare over the past two decades,” the Youth Law Center observed twelve years ago.<sup>2</sup> The sentiment remains true today. As Judge Leonard Edwards said,

[t]here is no definition of reasonable efforts in the federal law. What is reasonable depends on the time, place, and circumstances. What may be reasonable in one community may not be in another. It is the judiciary that ultimately determines what is reasonable. The first decision is rendered by the trial judge and—if the issue is appealed—the appellate court will review that finding.<sup>3</sup>

<sup>1</sup>Social Security Act, Title IV-E, 42 U.S.C. §§ 670 *et seq.*; 45 C.F.R. §§ 1356 *et seq.* (2012).

<sup>2</sup>YOUTH LAW CENTER, MAKING REASONABLE EFFORTS: A PERMANENT HOME FOR EVERY CHILD 1 (2000), <http://bit.ly/LeZQMQ>.

<sup>3</sup>Leonard Edwards, *Reasonable Efforts: A Judicial Perspective*, THE JUDGES’ PAGE NEWSLETTER 5 (Oct. 2007), <http://bit.ly/lAHcOp>. 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), <http://1.usa.gov/lGhzgZ>).

Practitioners are similarly bewildered by what “reasonable efforts” means. If you ask most practitioners to define “reasonable efforts,” you will get a smile, a rolling of the eyes, a blank stare, or the standard legal definition: “It depends.” Because there is no uniform definition of “reasonable efforts,” these responses may be entirely warranted.

Reasonable-efforts findings are extremely important for three reasons. First, if a child welfare agency or probation or police officer (collectively referred to as the “state agency”) seeks to remove a child from the child’s home and does not give adequate evidence that the agency employed reasonable efforts to prevent the need for removal, the child must be returned home immediately. Second, a court ruling as to whether the state agency provided reasonable efforts is essential to determining whether a child should be reunited with the child’s parents or whether one or both of the parents’ parental rights should be terminated. Third, if the court determines that the evidence does not support a reasonable-efforts finding at any time that the finding is required, the state agency cannot claim federal Title IV-E reimbursement for the child’s out-of-home placement expenses.<sup>4</sup>

Reasonable efforts equal reasonable services under current legislation. However, research and federal child welfare monitoring show that services alone do not lead to prevention of removal, children’s expeditious return home, or movement to another permanent plan such as adoption.<sup>5</sup> Here we show that finding and engaging a child’s extended family in the child welfare process as soon as it is practical, especially before the initial removal, is a necessary and vital component of our reasonable-efforts mandate. Further, modern technology enables agency workers and court per-

sonnel to locate a child’s relatives in a matter of minutes. By utilizing a focused family finding and engagement model, every stakeholder involved in child welfare or the juvenile justice system can participate, monitor, and support efforts to identify, locate, and engage the family members of every child who is at risk of removal or who has been removed from the child’s home.

### **Our Current Understanding: Reasonable Efforts Equal Reasonable Services**

For most dependency or delinquency practitioners, reasonable-efforts requirements are most closely identified with the Adoption Assistance and Child Welfare Act of 1980 or the Adoptions and Safe Families Act of 1997, the latter containing the original reasonable-efforts requirements and specific exceptions to those requirements.<sup>6</sup> However, few practitioners realize that these federal guidelines are found within the Social Security Act.<sup>7</sup> The Act clearly states that, for a state to be eligible for payment (or reimbursement) for the funds it spends on children in foster care, the state must adhere to specific guidelines, including making reasonable efforts to preserve and reunify families at certain hearings.

The Social Security Act states that “the child’s health and safety shall be the paramount concern” in determining what reasonable efforts shall be employed. Reasonable efforts are not required if a court determines that a parent has murdered another child of the parent; committed voluntary manslaughter of another child of the parent; aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter; or committed a felony assault resulting in serious bodily injury to the child or another child of the parent. Rea-

<sup>4</sup>45 C.F.R. §§ 1356.21(c), 1356.21(b)(1)(iii) (2012).

<sup>5</sup>CHILDREN’S BUREAU, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, FEDERAL CHILD AND FAMILY SERVICES REVIEWS: AGGREGATE REPORT: ROUND 2: FISCAL YEARS 2007–2010, at 50 (Dec. 16, 2011), <http://1.usa.gov/KR2Xli>.

<sup>6</sup>Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980); Adoptions and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997). See also Child Welfare Information Gateway, Federal Laws (n.d.), <http://1.usa.gov/IDTTes>.

<sup>7</sup>42 U.S.C. § 671(1)(15).

sonable efforts are not required if a court determines that the parent’s rights to one of the child’s siblings have been terminated involuntarily. Nor are reasonable efforts required if the court determines that the parent subjected the child to aggravated circumstances, which are defined under state law and may include abandonment, torture, chronic abuse, and sexual abuse.<sup>8</sup> Even if a court finds that the state agency is not required to provide reasonable efforts for reunification, the court must find that the agency made reasonable efforts to move toward an alternative permanent plan at a later hearing.

The Social Security Act also now houses the recently enacted Fostering Connections to Success and Increasing Adoptions Act of 2008.<sup>9</sup> To state agencies this legislation conveys additional mandates and opportunities, among them the requirement to exercise due diligence to identify and notify all adult grandparents and other adult relatives of the child (even other adult relatives suggested by the parents) when a child has been or is being removed from parental custody. An additional mandate is that reasonable efforts shall be made to place siblings together unless the state agency documents that the joint placement would be contrary to the safety or well-being of any of the siblings. If the siblings are not placed together, the state agency must allow for frequent visitation or other ongoing interaction among the siblings.<sup>10</sup>

Most state statutes interpret reasonable efforts to be “family support services,” “supportive or rehabilitative services,” or “the exercise of ordinary diligence and

care by the department to utilize all preventive and reunification services that are available to the community and necessary to enable the child to live safely at home.”<sup>11</sup> Few states describe locating and involving the nonoffending parent and other relatives as reasonable efforts; states that mention relatives at all typically refer to them only as a placement option.<sup>12</sup>

The U.S. Department of Health and Human Services gives the following information:

We have not, nor do we intend to define “reasonable efforts.” To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any definition would either limit the courts’ ability to make determinations on a case-by-case basis or be so broad as to be ineffective. In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made.<sup>13</sup>

The department then lists examples of services, safety protections, and transportation solutions that the state agency could employ and that would allow the child to remain safely at home or to pursue another permanent plan. The American Bar Association’s Child Safety Guide for Judges and Attorneys cites additional efforts that agencies can undertake, such as the exploration or development of a “sufficient safety plan.”<sup>14</sup>

<sup>8</sup>*Id.* § 671(a)(15)(D)(i)–(iii).

<sup>9</sup>Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008), amending, *inter alia*, 42 U.S.C. § 673, <http://bit.ly/rC8w7v>; Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, Program Instruction: Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008 (July 9, 2010), <http://1.usa.gov/et7rvF>; Casey Family Programs et al., Judicial Guide to Implementing the Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351) (2011), <http://bit.ly/MT9qZ8>.

<sup>10</sup>42 U.S.C. § 671.

<sup>11</sup>Child Welfare Information Gateway, Reasonable Efforts to Preserve or Reunify Family and Achieve Permanency for Children (2009), <http://1.usa.gov/lGhzgZ>.

<sup>12</sup>See CAL. R. CT. 5.678(c)(1) (2012).

<sup>13</sup>Administration for Children and Families, U.S. Department of Health and Human Services, Children’s Bureau (May 31, 2012), <http://1.usa.gov/JlyzGk>.

<sup>14</sup>TERESE ROE LUND & JENNIFER RENNE, AMERICAN BAR ASSOCIATION, CHILD SAFETY, A GUIDE FOR JUDGES AND ATTORNEYS 26 (2009), <http://bit.ly/Mh4EEu>.

Most state agencies rely upon outside agencies or professionals to provide most of the family's court-ordered services, such as parenting classes, drug evaluation and treatment, mental health counseling, medical care, transportation, and domestic violence counseling. Agencies contract with local sources to provide the services because most parents cannot afford to pay for them.

Other services, such as supervision of visits between parents and children, are most commonly provided by the state agency directly. Depending upon what is available in a given community or available to the agency, this would constitute reasonable efforts. Here is a scenario often presented to courts across the country:

Juan is a 2-year-old child who lives with his father and mother. One day a neighbor calls the local child protective services hotline and reports that Juan is continually unsupervised and is frequently injured. Child protective services workers investigate the family and learn that the family lives in temporary housing and both parents are unemployed. The father appeared to be intoxicated when a child protective services worker interviewed him.

What should the child welfare agency do next? The agency must determine not only the extent of Juan's injury and neglect but also what efforts can be made to allow Juan to remain safely at home. If the agency takes the family to court, the judge is required to make a finding, based upon the evidence presented, as to whether the agency made reasonable efforts to prevent or eliminate the need to remove Juan from his parent's custody. Alternatively the agency has to convince the court that there is an exception to the reasonable-efforts requirement.

What types of efforts or services would be appropriate in a situation like this? How

would the agency engage the parents to attend and adhere to those services? How could the agency and the court know that Juan would be safe if they left him with his parents?

### Failure of Services to Meet Federal Mandates

Referring parents to agency and community services alone is the current approach to meeting the reasonable-efforts requirement set forth in federal law. The services typically recommended by state agencies and ordered by courts focus on the parents' afflictions. Parenting classes are the most commonly prescribed service. The other services offered most frequently are housing, medical care, addiction treatment, transportation, mental health treatment, domestic violence counseling, and anger management.<sup>15</sup>

Yet services alone have not been sufficient to meet the reasonable-efforts standards for a number of reasons. The services provided are seldom evidence-based. Most of the services are not backed by any research showing a relationship between the services and improved parenting skills for families who have maltreated their children.<sup>16</sup>

Assume that the current menu of services offered to families in the child welfare system is appropriate. State agencies consistently have difficulty providing family members with the court-ordered services they need to reunite their families. Statistics show that agencies do not provide adequate services to mothers 68 percent of the time and to fathers 43 percent of the time. African American children's parents were provided appropriate services only 42 percent of the time.<sup>17</sup>

Many of the available services are designed to cure incurable conditions. Take, for example, a long-held drug or

<sup>15</sup>Administration for Children and Families, U.S. Department of Health and Human Services, National Survey of Child and Adolescent Well-Being: No. 16: A Summary of NSCAW Findings 3 (n.d.), <http://1.usa.gov/J85aB3>.

<sup>16</sup>Charles Wilson & Laine Alexandra, National Association of Public Child Welfare Administrators, Guide for Child Welfare Administrators on Evidence Based Practice (2005), <http://bit.ly/L4CywL>. For a sampling of evidence-based and non-evidence-based services, see California Evidence-Based Clearinghouse for Child Welfare, Search by Topic Area (2012), <http://bit.ly/JwR679>.

<sup>17</sup>CHILDREN'S BUREAU, *supra* note 5.

alcohol addiction. Currently most professionals believe that recovery is a process, not an event.<sup>18</sup> Addiction treatment supports the development of relapse prevention skills since a relapse is highly likely to occur. Relapses are less likely over time, yet a person who has many years of sobriety can still relapse. Similarly persons with manic depression can learn to use medication and therapy to control their mental illness, but relapse is always possible. Even though relapse is widely known to be possible in both the addiction and mental illness contexts, state agencies and courts usually assume that successful completion of a treatment regimen ensures a child's safety.

Court-ordered services often have a proviso that the parent "will not use drugs or relapse." Like recovery, relapse is a process—not a single event. In the addiction context it does, however, entail the renewed use of alcohol or other drugs. There are many definitions of relapse. Some are research-based, and others are more general. To some, relapse involves a single event of reuse. Others distinguish between a slip or lapse (a brief event) and a relapse, which involves a deeper level of use. Some argue that any return to the original drug of choice is a complete relapse.<sup>19</sup> A caseworker's or a parent's operational definition of relapse is critical. Will the caseworker or parent view a single incident of reuse as a complete failure, or will it be viewed as a learning opportunity to prevent future lapses? Does the caseworker believe that the parent will never be able to reunify with her family, or is this a normal part of the recovery process?<sup>20</sup>

A downfall of short-term, court-ordered services is that they are not a magic cure for the ailment. They are the beginning stages of a lifetime of living with and managing a condition. Typically the parent has access to court-ordered services for only about twelve months or up to eighteen months in certain situations.<sup>21</sup> To ensure long-term or lifelong sobriety, most parents need additional programs such as Alcoholics Anonymous or life-long mentors or role models.

Even if the parents are able to attend counseling regularly, submit negative drug tests, obtain adequate housing, and finish their parenting class, the state agency does not usually return the children home automatically. Agencies cannot monitor "safe parenting" without maintaining a presence in the family's life. Once services are completed, the state agency cannot assume that the parents are now safe and can raise the children on their own, without court intervention. The question becomes, Why do courts order case plans that in all likelihood will not provide the assurance the agency needs or the evidence the court needs to return the children home? What or who is missing?

Although most families truly need the services currently offered, the numbers prove that additional support is necessary. An extremely high number of children linger in the foster care system. Ultimately they either age out of the foster care or return home only to cycle back into care. In 2009 only 28.9 percent (median) of children in care for more than twenty-four months had permanent homes by the end of the year.<sup>22</sup> Ap-

<sup>18</sup>Rivera, Sierra and Company, *Transitions: From Treatment to Family: A White Paper* 23–24 (2003) (citing Office of the Assistant Secretary for Planning and Evaluation, Substance Abuse and Mental Health Services Administration, Administration for Children and Families, U.S. Department of Health and Human Services, *Blending Perspectives and Building Common Ground: A Report to Congress on Substance Abuse and Child Protection* (April 1999) <http://1.usa.gov/LvvyQKB>) (unpublished paper) (on file with Rose Marie Wentz).

<sup>19</sup>Ingrid Brudenell, *A Grounded Theory of Protecting Recovery During Transition to Motherhood*, 23 *AMERICAN JOURNAL OF DRUG AND ALCOHOL ABUSE* 453–66 (1997); Diana Mumme, *Aftercare: Its Role in Primary and Secondary Recovery of Women from Alcohol and Other Drug Dependence*, 26 *INTERNATIONAL JOURNAL OF THE ADDICTIONS* 549–56 (1991).

<sup>20</sup>Rivera, Sierra and Company, *supra* note 18.

<sup>21</sup>45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i) (2012); 42 U.S.C. § 675(5)(C), (F) (court must hold permanency hearing to select permanent plan no later than twelve months from date child entered foster care).

<sup>22</sup>CHILDREN'S BUREAU, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *CHILD WELFARE OUTCOMES 2006–2009: REPORT TO CONGRESS*, at iii (n.d.), <http://1.usa.gov/Klb90F>.



proximately 52 percent of states showed a decline in performance from 2006 to 2009 with regard to the median length of stay in foster care for reunified children, and 115,000 children were waiting for adoption in 2009.<sup>23</sup> Moreover, 28,000 children aged out of foster care in 2009, while 13 percent of children who left the system reentered it.<sup>24</sup>

Whether Juan remains at home or is placed in foster care, his parents would probably have a court-ordered case plan requiring them to complete a parenting course, complete a drug evaluation and then attend drug treatment, obtain stable housing and employment, and obtain medical care for Juan’s injuries and services for his other needs.

Juan’s parents will probably be sent to a parenting class that may or may not be based on the research related to helping neglectful parents. Although the parents may gain new knowledge and parenting skills, such as how to handle temper tantrums, the class is not likely to include particulars needed in their situation, such as how to supervise a child when the parents are exhausted and lack resources.<sup>25</sup>

In fact, Juan’s parents live in a small community. The only parenting classes available begin every four months. The parents just missed the start of the last class and must wait almost three months to begin the class. The class is conducted in English. Although the parents speak some English, their primary language is Spanish. The class also assumes a parenting style that does not meet the cultural norms of this family.

Juan’s parents requested court permission to attend a Spanish-language parenting class at their church based on their cultural beliefs. Arguing that only services from the child welfare agency’s contracted organization would be acceptable, the agency opposed the parents’ request.

The court also ordered that the parents’ contact with Juan be limited to supervised visits overseen by the state agency’s staff, as the agency requested. Due to resource restrictions, however, the state agency could schedule supervised one-hour visits only every other week.

Juan’s parents were also ordered to find stable housing and employment. The state agency and other professionals involved with their case probably did not refer the parents to a community-based agency that could help them find housing or jobs, much less communicate with another agency that provides those services. How would the state agency staff be able to determine if the employment and housing services would reasonably help the parents meet the court’s expectations?

### **Family Involvement: When and Why?**

When we analyze all of the events that take place when a child is removed from home, as well as all of the orders a court needs to make at the initial hearing, seeing where extended family fits into the picture is not necessarily intuitive.

**When?** Federal law requires that states consider giving preference to an adult relative over a nonrelative caregiver when they are determining placement options for a child about to enter foster care.<sup>26</sup> Almost all states have enacted legislation that mirrors this federal requirement and defines the term “relative” to include the noncustodial parent and the noncustodial parent’s family and other important adults. However, relatives have historically been involved only if they show up at the first hearing, if they follow up with the social worker and ask for placement, or if they have already been involved in raising the child.

This changed somewhat with the passage of the Fostering Connections to Success and Increasing Adoptions Act. The fed-

<sup>23</sup>*Id.* at ii.

<sup>24</sup>*Id.*

<sup>25</sup>CHILDREN’S BUREAU, *supra* note 5.

<sup>26</sup>42 U.S.C. §§ 621 *et seq.*

eral government now mandates that state 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. This provision forces state agencies to employ a front-end approach to involving family, rather than waiting to see if family shows up at some point. This approach requires a truly proactive effort to locate as many relatives as possible at the earliest opportunity.<sup>27</sup>

The first time the court is required to make a reasonable-efforts finding occurs within a few hours of the child’s removal from the child’s home (i.e., at a shelter care hearing, initial hearing, or detention hearing, typically held within forty-eight to seventy-two hours of the child’s removal). The judicial officer is required to consider evidence, usually in the form of a report from the state agency, on what efforts were made to prevent the child’s removal from the home. Extended family involvement or support is not typically considered during this inquiry.

During this same hearing the court can make additional orders, such as implementation of visitation. At the first hearing, the court usually orders for the family a standard agency-recommended visitation regimen, which could be once a week, once a month, or somewhere in between. The court order almost always begins with supervised visits with a schedule based on the state agency’s availability to conduct and monitor those visits.

The court reexplores the services recommended by the state agency during the next court hearing, the dispositional hearing (held up to sixty days later). The court must find that the state agency is making reasonable efforts to reunify the family (i.e., return the child home). The services are presented in the form of a case plan, and the parents are typically required to sign the plan. Thereaf-

ter parents are often left to attend to and complete their case plans by themselves. They are expected to be in perfect attendance, participate actively, and act as perfect parents during visits. Use of family and their community support system to meet reasonable efforts is often not sought out and, if found, not approved by the agency or the court. These services are typically not reviewed again for another six months when the parents return for their next court hearing.

**Why?** Relatives and other connections in the community can and do provide support, encouragement, and assistance for parents and children as they try to meet case plan requirements. They can also help minimize or eliminate the risk that this child or family will come to the attention of the child welfare system. What is it that we truly hope to accomplish after we have been involved with a family? What supports that are available now and long after the state agency’s case is closed can we put into place for the parent(s) and children? Who can monitor the child’s safety more frequently than the weekly or monthly home visits made by the agency’s caseworker?

What do most families have available to them during stressful times? A natural family support system. Family involvement can fill in gaps that the state agency and court cannot. Family members can assist parents and children before a child is actually removed from the home; monitor visitation; provide respite care; and help with transportation (often crucial to maintaining a child’s educational placement during foster care).

We know that family involvement is beneficial in many ways. Families typically consist of many—if not hundreds—of members.<sup>28</sup> Given the opportunity, family members will step up and support children and parents. If parent(s) cannot safely care for children, we know

<sup>27</sup>The term “relative” is defined by state statutes and range from the third degree of kinship to the fifth degree of kinship. E.g., Alabama law defines relatives as individuals legally related to a child “within the fourth degree of kinship,” whereas California includes relatives within the fifth degree of kinship (ALA. CODE § 38-12-2(c)(1) (2012); CAL. WELF. & INST. CODE § 361.3(c)(2) (Deering 2012)) (for a comprehensive list of state definitions of the term “relative,” see Child Welfare Information Gateway, Placement of Children with Relatives (July 2010), <http://1.usa.gov/M2vC3J>).

<sup>28</sup>Kevin A. Campbell et al., *Lighting the Fire of Urgency: Families Lost and Found in America’s Child Welfare System*, PERMANENCY PLANNING TODAY, Fall 2003, at 12, <http://bit.ly/Mh759X>.

that children do well, if not better, when placed with relatives. Children need a sense of belonging and connectedness in order to survive and be successful in life. Relative caregivers are more willing to become long-term guardians or adoptive parents for children, allow for siblings to be placed together, and keep children connected with their parents (when appropriate) and other family members.

Children are typically cut off from most of their family members when they are removed from their homes and placed with nonrelative caregivers. Nevertheless, most children want to have an ongoing connection with their families so much that they will search for their families while in foster care or soon after their 18th birthdays even if they were adopted at birth. Extended family members can provide the support network that most children in foster care seek.<sup>29</sup>

The decision to allow children to remain at home or return them home should be made on the basis of the ability of the parents to care safely for their children under normal circumstances. The family support network has more resources than the state agency to monitor and help the family directly. Children can be placed with or paroled to relative caregivers. Relatives can drop by on a Saturday night when an addicted parent is more likely to be relapsing. Relatives can support the children's connections to their parents by supervising or hosting visits. They are willing to be called in the middle of the night when a parent and child must find immediate safety from a battering parent. And the family support system can and often does provide financial, emotional, and other services that the family needs long after the court and agency have closed the case.

The proverbial “It takes a village to raise a child” is true for all families. Every family has problems and stressors. All families utilize some form of shared or coparenting (i.e., day care providers,

teachers, grandparents). One of the goals of the child welfare system is to enhance the family's support network so there are enough resources in place to deal with the underlying causes of the maltreatment that brought the family to the attention of the authorities. Expecting that the parent will never relapse or be overwhelmed by stress that leads to child maltreatment is not reasonable. Trying to make sure that a family network is in place to monitor and provide safety when the parent cannot is reasonable.

Can we trust that the family support network will work to keep Juan safe and meet his permanency needs? Progressive visit services are one way that state agencies and courts can both reinforce children's family support networks and evaluate the networks' monitoring and support of the family if and when the children are returned home.<sup>30</sup> In progressive visits, professionals observe and assess whether the parents can meet the children's needs in situations, locations, and times of day that would likely trigger repeat maltreatment. The family's support network is used to supervise, monitor, and implement a safety plan when parents are not capable and before the children are harmed. The family's network must be consistently available to the children and parents during the months and years to come. Progressive visits slowly transition responsibility from professionals who supervise visits at the beginning of the children's placement to visits supervised by the support network to unsupervised visits in the parents' home; the visits are monitored by the support network.

Visits between parents and children in care always progress on these bases: length of visit, number of visits per week, location of visits (from the agency office to relative or caregiver homes to the parents' home), parenting responsibilities (easy tasks to tasks that will challenge the parents' skills), and level of supervision (therapeutic, social worker, family members, monitored only to unsupervised).

<sup>29</sup>Rosemary Avery, *An Examination of Theory and Promising Practice for Achieving Permanency for Teens Before They Age Out of Foster Care*, 32 CHILDREN AND YOUTH SERVICES REVIEW 399–408 (2010).

<sup>30</sup>ROSE MARIE WENTZ, CENTER FOR HUMAN SERVICES, UNIVERSITY OF CALIFORNIA, DAVIS, NORTHERN CALIFORNIA TRAINING ACADEMY, CORE, MODULE 4, VISITATION TRAINERS' GUIDE 31–41 (2008); Rose Wentz, *Visit/Connections* (2011), <http://bit.ly/K9SE8o>.

As each step is taken, the state agency assesses whether the parents and their support network can take care of the children safely. Relatives also support these visits by allowing visits in their homes or supervising visits elsewhere, such as in a parent’s home or in a community location (a medical office, school, or religious center). Parents and children can then interact with one another in a more natural environment for such activities as cooking, teaching skills, and mingling with other family members. If a relative participating in the visitation plan can also teach or model parenting skills, the family support network thus supports or supplements parenting classes. Research proves that frequent parent and child visits are related to reuniting families and decreasing the time that children spend in foster care, but many agencies struggle to provide visits due to a lack of resources.<sup>31</sup> The state agency worker seldom has a caseload that allows the worker to visit a family multiple times in a given week or respond to problems during visits after work hours. Progressive visitation plans that incorporate a family’s support network from the beginning of a child welfare case provide the state agency with an additional resource to supervise visits and observe a family’s support network in action before the case is closed.

### Meeting Reasonable-Efforts Requirements Through Family Finding

Before a court makes a reasonable-efforts finding, the judicial officer must review all the available evidence. Here are some hearings where reasonable-efforts findings are required; through the lens of Juan’s family, these illustrate how finding and engaging families can support the parent(s) and enhance the ability of the state agency to meet the reasonable-efforts standards.

**Removal Hearing.** As discussed above, the removal hearing is the first hearing for the court to evaluate what the state

agency has done in the field to prevent the child from being removed.<sup>32</sup> At this stage the child is in temporary custody of the state agency, and the court needs to determine whether the child can return home. The court must look at what, if any, efforts can be put into place to prevent the child’s continued removal from home. Often, if agencies, courts, and advocates for parents and children focus on finding and engaging as many family members as possible at this stage of children’s welfare cases, the children more likely may not even enter nonkinship foster care.<sup>33</sup>

**Juan’s Family.** In an interview before the removal hearing, the state agency worker asks Juan’s parents, “How big is your family?” The worker is mindful that each of Juan’s parents has large extended families. The worker asks open-ended questions about the family’s strengths and resources. Through this discussion the worker identifies some extended family members and their friends. The worker learns that the family belongs to a church. The worker and parents contact several members of the family’s support network immediately, and everyone works to develop an in-home safety plan ensuring that Juan is always being supervised by a sober and competent adult. The worker’s colleagues back in the office run expedited background checks of all the adults who have come forward as resources, and everyone is cleared. Family and friends set up a schedule to help in supervising Juan and promise to drop in and call each day to make sure that Juan is being supervised. Juan’s grandmother agrees to take Juan to a medical appointment after the removal hearing. The court does not order continued custody, and the matter is dismissed.

Alternatively, if the court considered the in-home safety plan and determined it inappropriate, the worker could still continue to work with Juan’s extended family to create a plan to allow Juan to live with family. Juan’s grandmother would share

<sup>31</sup>CHILDREN’S BUREAU, *supra* note 5.

<sup>32</sup>In some jurisdictions the removal hearing is also known as a shelter care hearing or an initial hearing.

<sup>33</sup>National Council of Juvenile and Family Court Judges, *Courts Catalyzing Change: Preliminary Protective Hearing Benchcard* (2012), <http://bit.ly/L3ZNXs>.

her address book with the worker, which contains contact information for more than forty relatives in the area. Juan's parents and grandmother identify reliable people who are likely to be able to help immediately. The state agency holds a family meeting that day (many jurisdictions now require agencies to hold meetings with family members on the day of removal hearings).<sup>34</sup> The family collaborates with the worker to identify a maternal aunt and uncle who live nearby, have parenting skills, and are likely to meet agency requirements to be relative foster parents. Other family members and friends agree to help Juan's aunt and uncle by supplying an appropriate bed for Juan, assisting in child care, and helping them transport Juan to his visits with his parents and his day care. Juan's aunt and uncle also agree to take the child care course required by the foster care agency for all new foster parents.

**Disposition.** This hearing is typically held after adjudication. If the court assumes jurisdiction and an out-of-home placement is required, the court must determine whether the parents or guardians will receive reunification services and where the child will live pending the child's return home or other permanent placement.<sup>35</sup>

The dispositional hearing is a crucial part of the court process because the services offered to assist in returning the child home are recommended and ordered here (if they were not recommended and implemented at the initial hearing). Thus this hearing sets the stage for reasonable-efforts determinations now and in the future. Are the efforts (services) offered reasonable? Are the services linked to the reasons the child was removed from the home? Are the services structured to alleviate or mitigate the reasons why the child was placed outside the home? Attorneys for the children

and parents often suggest alterations of the service plan if there are anticipated difficulties or if some of the services are perceived as inappropriate. The family support network can be instrumental in designing and implementing the service plan and can help the family expedite the child's return home. Extended family can offer placement options for children, supervise and transport children for visitation, and transport the parents or children to and from appointments. Moreover, if extended family members are allowed to supervise visits in their homes or in the community, they can offer more natural venues for parent-child interaction, allowing the parents to participate in their children's lives in a more meaningful way while learning parenting skills.

**Juan's Family.** Juan's family network of support includes many committed adults. Before the disposition hearing, the support network meets with the state agency worker and other professionals working with Juan's family. Many of Juan's relatives are willing to supervise visits between Juan and his parents at his aunt and uncle's home or at their own homes.

Juan's visits with his parents are held at the state agency's offices and supervised by an agency worker during the first weeks of Juan's placement. Juan's visits with family members other than his parents are supervised by approved family members. Juan's grandmother and godparents come forward as backup placement options; they support the parents in their efforts to reunify with Juan.

A progressive visitation plan is implemented, and the parents slowly begin to assume more parenting responsibilities such as feeding Juan, playing with him, bathing him, and helping him go to bed. Juan's parents attend a parenting class

<sup>34</sup>Annie E Casey Foundation, Team Decisionmaking: Involving the Family and Community in Child Welfare Decisions: Part Two: Building Community Partnerships in Child Welfare (Sept. 2002), <http://bit.ly/MVxBG1>.

<sup>35</sup>The court could determine that no reunification efforts should be ordered and that the parents' parental rights should be terminated. If the court makes that determination, another permanent plan must be sought—typically adoption or another permanent placement. Relatives should always be sought and considered as a placement option if a court decides to terminate parents' parental rights (NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE AND NEGLECT CASES 58–59 (Spring 1995), <http://bit.ly/LC2Vsl>).

at their church, and the instructor gives to the agency and Juan's aunt and uncle detailed reports about the skills the parents are learning; the agency can later submit these reports to the court. The state agency worker assesses the parents' skills in interacting with Juan during their supervised visits with Juan. Initially the parents interact with Juan only under normal circumstances. Slowly the visits progress to test the parents' ability to supervise Juan when both the child and the parents are tired and stressed. The family support network provides much of the transportation and supervises the visits as the visits progress to a full day and eventually overnight. Community agencies and the family network help the parents locate jobs and housing, and family members supply furniture and other household items for the apartment.

Juan's father attended in-patient drug treatment at an agency contracted with by the state agency. He now attends Alcoholics Anonymous at his church daily. Juan's mother and his other caregivers attend a church-sponsored support group for families who struggle with addiction, and family members call and drop by regularly (sometimes without advance notice) to check on the family. Juan's father's Alcoholics Anonymous sponsor who helped Juan's father design a relapse plan has been there to help him avoid circumstances that might trigger his addiction cycle. The family and state agency worker developed a backup plan for what Juan's father should do if Juan's father could not control his addiction cycle. According to the plan, Juan's mother would remind her husband to call his Alcoholics Anonymous sponsor and then take Juan to her mother's house. If Juan's maternal grandmother was not available, Juan's mother would call other designated family members for help.

**Prepermanency Hearing.** At this hearing, also known as a six-month review or periodic review hearing, the court reviews the family's progress. The court must then determine, based upon the evidence, whether the state agency has made reasonable efforts to make pos-

sible a child's safe return home. At this hearing the court could rule that the parents had made substantial progress in alleviating or mitigating the factors that required the child to be removed from the family home.

Family support networks can be instrumental in helping identify continued safety plans and support for the parents and the child. Evidence of an active family support system might help the court determine that further court intervention is unnecessary. Family members can show how they have provided and will continue to provide a support system, including shared emotional support, co-parenting, child care, respite care, help with daily parenting activities, and ensuring that the parents and child continue to participate in services as needed.

**Juan's Family.** Juan's family's support network has successfully met Juan and his parents' needs. Juan's father has been challenged by his addiction cycle and took his drug on two occasions. Both times, however, the relapse plan worked. Juan's father called his Alcoholics Anonymous sponsor, while Juan's mother removed Juan from his father's supervision and went to her mother's home. The family network plans to continue to call and drop by the home to ensure that the relapse and safety plans are working.

Because Juan was placed with relatives, he continued to attend his day care (alternatively, if Juan was older, he would be able to continue to attend his school of origin) and his church and had frequent visits with his parents. There were minimal transition problems moving into his aunt and uncle's home and then back to his parents' home.

**Permanency Planning Hearing.** At this hearing the court must make more specific and final decisions. The court must determine whether the agency has complied with the case plan by making reasonable efforts to return the child to his parents' home safely or, alternatively, has completed whatever steps are necessary to finalize the permanent place-

ment of the child.<sup>36</sup> The court must also determine whether the parents have made substantial progress in alleviating or mitigating the factors that made the child's removal and placement necessary. And the court must identify and order a permanent plan for the child from a list of options, including returning home now (or within the next six months); adoption by the relative or nonkinship foster parent with whom the child is currently placed; permanent placement and guardianship with a fit and willing relative; legal guardianship or custody with another adult; or another permanent living arrangement.<sup>37</sup>

**Juan's Family.** At the permanency planning hearing the court decided that Juan's parents substantially improved their parenting skills and that the family support network was capable of continuing to support Juan and his family. Accordingly the court ordered Juan's return home. If the court did not make this decision and determined that Juan's parents had not made substantial progress, the court would enter a concurrent permanency plan, namely, the court would order that Juan's aunt and uncle adopt him. Juan's grandmother and godparents all expressed willingness to adopt Juan or become his legal guardians if his aunt and uncle could not adopt him. For either permanency plan (reunification or adoption), the family support network could continue to keep Juan connected to his parents and extended family. They could maintain his connection to his ethnicity, religion, and community. Juan's extended family support would ensure that when the case was dismissed, Juan would never return to foster care.

## Using a Family Finding Model

Advocates and agency workers can use different approaches to find and engage family members. Kevin Campbell created a successful family finding process that has been adapted by the National Institute for Permanent Family Connectedness, which is part of the Seneca Family of Agencies.<sup>38</sup> Many agencies, communities, and organizations have incorporated versions of these models throughout the United States. The Seneca model is a process that involves continuity within several components. It incorporates the participation of a permanency team comprising the child, known family members, professionals, and other adults chosen by the child. The team convenes immediately and begins discovery to uncover many lost or newly identified family members.

Discovery is accomplished through the use of engagement tools while meeting and talking with already identified family members, parents, and the child. Agency workers and other professionals can ask the parents and child who else is part of their family or support network. Other discovery tools are the use of modern technology. The right Internet search programs can produce lists of up to fifty family members with addresses and phone numbers within a matter of hours.<sup>39</sup> The team reaches out to these individuals to elicit their participation in the child's future.

Relatives who are willing to support the child will then come together to form the child's lifetime family support network. That network develops permanency options, such as backup plans. The plans

<sup>36</sup>This hearing, also known as a twelve-month review hearing, would be conducted as a dispositional hearing if the court had already entered an order holding that reasonable efforts were not required because of one of the exceptions set forth in federal and state law (42 U.S.C. § 671(a)(15)(D)).

<sup>37</sup>Child Welfare Information Gateway, Court Hearings for the Permanent Placement of Children (Jan. 2012), <http://1.usa.gov/LBOzEJ>.

<sup>38</sup>The Seneca Family of Agencies, a multiservice organization with locations throughout California, provides education, training, and mental health services to help children and families through the most difficult times of their lives. See also Campbell et al., *supra* note 28; Seneca Center, National Institute for Permanent Family Connectedness (n.d.), <http://bit.ly/N663vs>.

<sup>39</sup>For one example of a customized search service, see Seneca Center, Search Services (n.d.), <http://bit.ly/KXR8kH>.



are evaluated as appropriate, and the lifetime family support network incorporates community supports that will help sustain the permanency plans. This lifetime family support network can support parents in complying with recommended or court-ordered services. The network members can understand more thoroughly the family’s strengths, harms, dangers, risk factors, and resources. They can support the safety plan, respite care, temporary care, and concurrent planning. Use of a family finding model can ensure that the child will not leave the system without a permanent family connection or relationship.

### Obstacles and Challenges

Although child welfare practitioners are required to look for and involve family members when children are placed in foster care or at a risk of placement, there are still many challenges that we need to overcome. We routinely conduct training sessions and workshops across the country and continue to encounter stakeholders’ skepticism about working with children’s extended families. Workers continue to think that “the apple doesn’t fall far from the tree” or that finding a healthy family member willing to help the family is so unlikely that they should not bother searching. Many state agencies continue to focus on placing children in nonkinship foster care without discussing relative involvement, even if family members are willing to welcome the children into their homes. Many workers say that they do not have the time and resources to work through a family finding model—and this perception is underscored by agency management failing to view identifying extended family as a priority or training workers about how to locate and work with an extended family. We are most concerned with agency workers’ continued practice of failing to identify relatives quickly, placing the child with nonrelative foster

parents, and later arguing that the child has bonded with this nonrelated family and to move the child now would be detrimental.

Certainly we can all identify arguments against involving family, especially during the later stages of a child welfare case. However, unless and until we truly value family involvement and outwardly show that commitment by seeking to incorporate family members’ participation at the earliest possible opportunity, children will continue to linger in foster care, move from place to place, age out of foster care with no family connections, experience disrupted adoptions, and never find true permanency.

Recent case law indicates what happens when we fall back on excuses rather than involving family members in child welfare cases. If state agencies do not involve family members who ask the agency or the court to be considered as visitation or placement resources (or whom the agency fails to contact), courts are growing more likely to place the children with those relatives, even after several months of placement in nonkinship foster care.<sup>40</sup> Also, courts are growing more mindful of the agency’s obligation to locate and involve noncustodial fathers as soon as possible. If a father appears late in a case and proves that the agency did not exercise due diligence, courts are likely to place the children with the father, and this will cause another placement for the child when placement with the father could have been the child’s only placement.<sup>41</sup>

### Final Thoughts

Every stakeholder involved in the child welfare system can find and engage children’s family support systems or, at a minimum, ensure that state agencies comply with the Fostering Connections to Success and Increasing Adoptions Act’s notice requirements.<sup>42</sup> Without the involvement of extended family we can-

<sup>40</sup>In *the Interest of JW and BJ*, 2010 WY 28, 226 P.3d 873 (Wyo. 2010).

<sup>41</sup>In *the matter of the Adoption of Baby B.*, 2012 UT 8, 270 P.3d 486 (Utah 2012); *Watt v. McDermott*, No. 111497, 2012 WL 1377, at 362 (Va. 2012); see also Todd Cooper, *State Left Girl’s Dad Out of Loop*, OMAHA WORLD-HERALD, June 13, 2011, <http://bit.ly/JKVVWiq>.

<sup>42</sup>Kelly Beck et al., *Finding Family Connections for Foster Youth*, 27 AMERICAN BAR ASSOCIATION CHILD LAW PRACTICE 1, 118–25 (2008).

not make reasonable efforts to prevent children’s placement in foster care or safely and quickly reunify families.

The child welfare system’s reliance on providing traditional services for families without engaging family supports sets parents up for failure. Right now the child welfare system identifies abuse or neglect, selects services that are frequently not evidence-based or provided effectively, and orders parents to work through a laundry list of services. Decisions are based on whether the parents complete the services, but even if the parents complete every element of their service plan, there is still no guarantee that the child will return home or be allowed to continue to maintain family relationships. When this occurs, the court must question whether reasonable efforts were made.

By implementing a family finding model in every case, we can create a bridged ap-

proach that incorporates services to help parents improve their parenting skills (or deal with their afflictions), but we do not rely solely upon services when deciding whether to return the child home once the parents finish their court-ordered services. Instead the court can include the lifetime family support network—a necessary safety net. This approach results in additional safeguards, is focused on identifying several committed adults who will become the lifetime family support network, supports the parent’s attendance of court-ordered services, maintains children’s preexisting family relationships, and allows the court, agency, and family to make permanency decisions based upon evidence of changed parental behavior. In this way the family finding model allows functioning family support networks, rather than the foster care system, to take responsibility for raising children.



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# Introducing the Reasonable Efforts Findings Study

A judge's reasonable efforts decisions at child welfare hearings may avoid separating families and help children achieve permanency faster.<sup>1</sup> As a result, judges play a critical role in child welfare cases, yet there is limited research on how they make decisions or how those decisions relate to case outcomes. The Reasonable Efforts Findings Study (REFS) seeks to better understand how judges' reasonable efforts decisions relate to case outcomes for children.

## What the Study Seeks to Learn about Judicial Decision-Making

The REFS study seeks to better understand factors that influence judges' **reasonable efforts findings** and how reasonable efforts findings relate to **case outcomes**, such as the likelihood of reunification and the time for children to achieve permanency.

There are three overarching goals of reasonable efforts:

- to prevent removal of children from their homes,
- to reunify children who have been removed, and
- to achieve permanency for children who cannot safely return to their parents' care.

Judges are required to make reasonable efforts findings at two points in each case. The first is whether the child welfare agency made reasonable efforts to prevent removal of the child from the home. This decision is made early in the case, typically at the initial hearing. The second is whether the child welfare

agency made reasonable efforts to finalize a permanency goal (e.g., reunification, adoption, legal guardianship, or another placement). The study will examine these reasonable efforts findings a judge makes for a child at initial and review hearings and the case outcomes for that child. (See Table 1 below, *Factors That May Influence Reasonable Efforts Findings and Decisions*.)

The study will also explore how language used during initial child welfare hearings and in court case files may indicate bias and racism.

## Data the Study will Collect

The study team will collect data in three ways—this list provides examples of the types of data to be collected:

- **Observe initial hearings** to capture information about how judges interact with parents, what topics are discussed during the hearing, whether judges

**Table 1: Factors That May Influence Reasonable Efforts Findings and Decisions**

The following factors may influence reasonable efforts findings and decisions:

Factors	Examples of Information to be Examined
Pre- and between hearing communication	Prehearing conferences, depth of information in reports submitted to the court
Hearing quality	Level of discussion of specific aspects of the case among participants during the hearing, engagement of the parent and child in those discussions
Case characteristics	Age of the child, race and ethnicity of the child, case allegations
Judicial characteristics	Race and ethnicity of the judge, length of time the judge has overseen child welfare cases
Timing and frequency of review hearings	Whether cases are scheduled more or less frequently than every six months

make oral reasonable efforts findings and what level of detail is included in those findings. This allows judges' practices to be observed in an objective way as opposed to self-report.

- **Review court case files** for the observed hearings to capture information such as demographics of the parents and child, contents of the dependency petition including specific allegations, circumstances around removal of the child, or what previous hearings have been held, that may inform the judge's reasonable efforts decisions. Case file review will capture information that was provided to the judge before the hearing and written findings.
- **Survey judges** in each study site about their race, ethnicity, gender, number of years hearing child welfare cases, and whether the judge hears only child welfare cases or a variety of cases.

### Study Sample

Up to eight judges from up to four states will participate in the study. A sample of approximately 50 closed cases will be collected from each judge, resulting in 100 cases per study state and 400 total cases in the study sample. Using a random sample of closed cases ensures results reflect the court's typical and current practice and guarantees case outcomes, such as the likelihood of reunification or the time it takes a child to reach permanency, can be measured.

*The REFS study seeks to better understand factors that influence judges' reasonable efforts findings and how reasonable efforts findings relate to case outcomes.*

### Importance to the Legal Community

While growing research explores what factors influence judges' decisions and hearing quality in child welfare cases, more research is needed. This study will be useful to the legal community by:

- addressing gaps in knowledge about judges' reasonable efforts decisions;
- increasing understanding of judges' reasonable efforts findings in child welfare cases;
- raising awareness of the value of child welfare court research;
- providing an example of a study design used to explore judicial decisions and outcomes; and
- elevating and improving practice on behalf of children and their families in child welfare courts.

### Endnotes

1. Milner, Jerry & David Kelly. "[Reasonable Efforts as Prevention](#)." *ABA Child Law Practice Today*, November 5, 2018.

## Learn More about the REFS Study

To learn more, visit the [Understanding Judicial Decision-Making and Hearing Quality in Child Welfare project](#). Staff from James Bell Associates, the American Bar Association Center on Children and the Law, and Co-Principal Investigators Dr. Alicia Summers and Dr. Sophia Gatowski will conduct the study. Study findings will be released as they become available. The Office of Planning, Research & Evaluation (OPRE) and the Children's Bureau of the Administration for Children and Families are funding the Reasonable Efforts Findings Study (REFS).



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**Judge Edwards** is a retired judge from Santa Clara County, California, where he served for 26 years, primarily in the juvenile court. He now works as a consultant. His writings can be seen on his website: [judgeleonardedwards.com](http://judgeleonardedwards.com)

*\*The author wishes to thank Judge J. Robert Lowenbach (ret.) for his contributions to this article.*

## Reasonable Efforts: Let's Raise the Bar

By Judge Leonard Edwards (ret)\*

Federal and local statutes detailing reasonable efforts requirements can be a powerful advocacy tool. When used effectively, such legal advocacy will ensure that children can remain at home with their parents or be reunified quickly should they be removed. It is critical that attorneys and judges be familiar with these requirements and discuss them in juvenile court proceedings. Judges and attorneys can raise reasonable efforts in a way that will improve the supports and services parents need to be successful in reunifying with their children and in assuring permanency for children. This article addresses a number of issues that are frequently overlooked by attorneys and judges. It is hoped that the reasonable efforts law will do as it was intended — give parents a fair chance to retain their children and provide permanency for children.

1. **Failure to locate, notice and engage fathers:** Using social media, investigators, Family Finding, child support information, and other procedures, social workers can identify fathers, engage them, and bring them into the juvenile court process. But, too often, these efforts aren't happening. This failure is both a lack of reasonable efforts to prevent removal of the child and to facilitate reunification. The father and his relatives are often the answer — an important alternative to foster care.<sup>1</sup>
2. **Failure to locate, notice, and engage relatives:** Family Finding can identify and gain contact information for scores of relatives in a few hours. Indeed, Family Finding is recommended in federal law as a best practice.<sup>2</sup> Federal law prefers relative placement to both foster care and congregate care as relative placement is a permanent plan.<sup>3</sup> Relatives are often able to provide a home for the child. It is a violation of the reasonable efforts mandate to prevent removal and facilitate reunification when relatives are ignored or brought into the case weeks and months after a child has been removed.
3. **Failure to support a relative/kinship provider:** When the permanency plan is guardianship/custody with a kinship provider, the agency has an obligation to support the established goal of relative placement. Just as the state provides financial support for adoptive parents, it should assist relatives who have received a child into their care. Failure to do so is a violation of the reasonable efforts mandate to prevent removal and to achieve timely permanency.

1 Edwards, L., "Engaging Fathers in the Child Protection Process: The Judicial Role," *Juvenile and Family Court Journal*, Spring 2009, at pp. 1-29. Available free for download at [judgeleonardedwards.com](http://judgeleonardedwards.com)

2 See the Fostering Connections to Success and Increasing Adoptions Act of 2008. Public Law No. 113-183.

3 Edwards, L., "Relative Placement: The Best Answer for Our Foster Care System," *Juvenile and Family Court Journal*, Vol 69 No 3 (2018). [<http://judgeleonardedwards.com/docs/Relative-Placement-JFCJ-69-3-2018.pdf>]

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4. ***The missing or inadequate service:*** On occasion the parent is required to complete a service that is either unavailable or is structured in such a way that it does not promote reunification.

An example occurred in my juvenile court years ago. The agency provided visitation once a week for two hours on a Saturday morning in a large gymnasium. Parents would come and meet their children in this large room. I attended one of these visitation sessions and was concerned about the quality and quantity of visits in the context of the reunification goal. The large gymnasium meant that many families were visiting at the same time and this made personal exchanges among family members difficult. The once-a-week visitation schedule seemed inadequate to maintain family connections. I hired two psychologists to follow one family from the beginning of a case and, in particular, their visitation experience. I asked if the visitation at the gymnasium promoted reunification.

I received the report a few months later. The report made many recommendations including the following:

*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 focused guidance and supervision of this interaction.*

The report added that the visitation program should be augmented by more staff and families should have individualized visitation plans. Several other recommendations addressed the visitation issue. I gave the Director of Family and Children's Services a copy of the report along with a statement that I would consider making "no reasonable efforts" findings were he not to make substantial changes in the visitation program. He made significant changes including the purchase of a house and setting up several rooms for private family visits.<sup>4</sup>

This is only one example of how a judge can work with the agency to make significant changes in the service delivery system in a particular jurisdiction.

5. ***Services with a long waiting line:*** The law does not give parents a long time to complete services. As a result, the available reunification period is short. Parents need to get involved in services as soon as possible, and a waiting list of months will frustrate their efforts. The court should consider such delayed services to be unavailable and hold the agency accountable by making a "no reasonable efforts" finding.

.....  
4 The entire report from the psychologists is available in Appendix E of *Reasonable Efforts: A Judicial Perspective*, by Judge Leonard Edwards (2014). The entire report is available online at [judgeleonardedwards.com](http://judgeleonardedwards.com) at pp. 410-418.

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This practice represents a failure of the agency to provide timely services to facilitate reunification.

The agency's response may be that the service provider is the problem not the agency. This is incorrect. It is the agency that is responsible for providing the services. The fact that it contracted with a provider that cannot provide timely services is the fault of the agency.

Attorneys and juvenile court judges need to raise the reasonable efforts issue when either services are unavailable or have long waiting lines. Attorneys should let the judge know that the service must be provided in a timely fashion and that failure to do so is a violation of the reasonable efforts to reunify mandate.

6. ***Delay in completing the permanency plan:*** Children need permanency.

Developmental experts inform us that children can't wait.<sup>5</sup> They need permanency now. But when a permanent plan has been set and is delayed for weeks and months (even years), the child suffers, and the law is violated. Attorneys and judges must take steps to understand the adoption, guardianship, and relative placement processes so that delays can be avoided. A failure to achieve timely permanency should result in a "no reasonable efforts" finding as required by law.<sup>6</sup>

7. ***Children who linger in foster or congregate care:*** Many children are placed in foster or congregate care and remain there for years. In these cases, each time the case comes up for review, the report indicates that the child remains in the same placement or that he or she has been moved to a new placement. The usual court order is to continue the child in the same foster or congregate care placement. However, neither of these placements is a permanent plan. Because the placement seems like the only alternative, the child will remain there until aging out of care. Some professionals refer to them as "cold cases" since it appears that no one is paying attention to the child's situation.

But the agency should be taking steps to finalize a permanent plan as required by federal and state laws.<sup>7</sup> Several jurisdictions have addressed this issue by using Family Finding and identifying relatives who can become a part of the child's life. The New Jersey Post-Termination Project has identified and connected hundreds of children to their extended families.<sup>8</sup>

Judges and attorneys need to be aggressive about finding relatives. They must hold the agency accountable to complete the permanency process. Once again, however, it appears that this "reasonable efforts" issue is not being litigated. There are no

5 Goldstein, J., Freud, A., & Solnit, A., *Beyond the Best Interests of the Child*, Free Press, 1973.

6 Adoption and Safe Families Act, 42 U.S.C. §671(a)(15)(C); 45 CFP §1356.21(b)(2).

7 Preventing Sex Trafficking and Strengthening Families Act of 2014; P.L.113-118.

8 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.



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appellate cases questioning agency efforts to search for a permanent home for these children. The failure to make progress toward the permanency goal is unacceptable under the law and should be raised in the legal proceedings.

**Conclusion:**

The reasonable efforts mandate in federal and state laws was intended to give the court tools to monitor the actions of the social service agency and improve the lives of children and their families. Attorneys and judges should use these tools to ensure the parents have a fair opportunity to reunite with their children and that children reach permanency in a timely fashion. The examples in this article are some of the issues that could and should be raised in court. If addressed, they will improve outcomes for children and their families. ■