



The Summit: Georgia Child Welfare Conference, 2017

Improving Outcomes for Children and Families

MAKING REASONABLE EFFORTS

National Council of Juvenile and Family Court Judges
Materials Adapted From: Hon. R. Michael Key, LaGrange, GA



Atlanta, Georgia
November 28,
2017

LEARNING OBJECTIVES



- Understand the importance of reasonable efforts as a tool for improved safety, timeliness, permanency and well-being
- Understand each stakeholder's role in making reasonable efforts



2

WHAT IS THE END GAME?




To ensure that every child that should be in care is in care, but **not a single child more**; and

To ensure that every child that is in care is in a safe, nurturing placement that is supportive of the permanency plan for the child and that the placement ensures the child's wellbeing.



3

WE HAVE CHOSEN AS OUR LIFE'S WORK.....




When children and families require assistance from the state, the health and safety of the child is the paramount concern and reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible.

Nebraska Family Policy Act Section 43-532


8/25/2017 NCJFCJ 4

PEANUTS




8/25/2017 NCJFCJ 5

GETTING IT RIGHT!



If you:
Do the **right** thing
For the **right** people
In the **right** way
At the **right** time
You will get:
The **right** result!




8/25/2017 NCJFCJ 6

MAKING REASONABLE EFFORTS IS ABOUT

- The quality and timeliness of investigations
- The quality of the findings as to the reason a child cannot be maintained at home safely
- The quality and timeliness of screenings, assessments and evaluations
- The quality and timeliness of case planning
- The quality and timeliness of the delivery of services
- The quality and timeliness of information exchange
- The quality of monitoring delivery of services and progress on the case plan
- The quality and timeliness of reviews
- The buy-in of all participants in the process - we all have to own it

8/25/2017 NCJFCJ 7

PASSIVITY = COMPLICITY



- You cannot sit on the sidelines and point fingers
- Everyone has a responsibility to use "reasonable efforts" to:
 - Hold one another accountable for the work we do...
 - And to support one another in the development and delivery of effective services

8/25/2017 NCJFCJ 8

JUDICIAL OVERSIGHT-ASFA



The Court holding the child welfare agency accountable for making reasonable efforts is not just a best practice.

It's the law!



8/25/2017 NCJFCJ


JUDICIAL OVERSIGHT-ASFA 

Judicial oversight prevents unnecessary removals and acts as a safeguard against potential inappropriate agency action.

The court's role is to:


- exercise oversight of the permanency plan;
- review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and
- conduct permanency hearings.

8/25/2017 NCJFCJ The Final Rule 10

JUDICIAL RESPONSIBILITY FOR MAKING INDIVIDUALIZED FINDINGS 


- "Our purpose for proposing (individualized judicial determinations) can be found in the legislative history of the Federal foster care program. The Senate report on the bill 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' ".
- "Our primary concern is that judicial determinations be made on a case-by-case basis."

From the Final Rule NCJFCJ 11

CONGRESSIONAL EXPECTATIONS OF THE COURTS 

- While acknowledging that reasonable efforts findings could "become a mere pro forma exercise in paper shuffling to obtain Federal funding", the committee is unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children."

The Final Rule NCJFCJ 12

DOCUMENTING FINDINGS 

- We also believe it necessary to ensure State accountability in the areas of documentation of reasonable efforts and contrary to the welfare determinations and requirements related to enforcement of section 471(a)(18) of the Act. Some commenters were concerned that the documentation requirements and enforcement of section 471(a)(18) of the Act were too inflexible. However, we believe that State accountability and Federal oversight in these critical areas of child and family protections and anti-discrimination consistent with the statute, will lead to better outcomes for children and families. [From the Final Rule]

NCJFCJ 13

JUDICIAL OVERSIGHT 


The key to effective judicial oversight is not just knowing what questions to ask or what questions should be asked....
The key is the persistent pursuit of the answers to those questions.

This also applies to lawyers.

We are trained in the law and it is our responsibility to know the law, to seek the truth and to make the right decisions based on the law and the truth.

And it applies to other participants.

NCJFCJ 14


REASONABLE EFFORTS GENERALLY 

The State must make reasonable efforts to:

- Maintain the family unit and prevent unnecessary removal of a child from his/her home, as long as child's safety is assured;
- Effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure immediate safety of the child); and
- Make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible.

45 C.F.R. §1356.21(b)

8/25/2017 NCJFCJ 15

REASONABLE EFFORTS IN GEORGIA 

Reasonable effort shall be made to preserve or reunify families:

- Prior to placement to prevent the need for removal; or
- To eliminate the need for removal and make it possible for an un-adjudicated or adjudicated child to return home at the earliest possible date.

O.C.G.A. Section 15-11-202(a)

In determining the type and in making reasonable efforts, the child's health and safety shall be the paramount concern.

O.C.G.A. Section 15-11-202(b)

8/25/2017 NCJFCJ 16

REASONABLE EFFORTS EXCEPTIONS 

1. Aggravated circumstances
2. Convicted of murder or 2nd degree murder of another child of that parent
3. Convicted of voluntary manslaughter of another child of that parent
4. Party to a crime of the foregoing
5. Felony assault resulting in serious bodily harm to the child or another child of that parent
6. Convicted of a number of listed sex crimes
7. Registered sex offender and relationship not in child's best interest
8. Involuntary termination of sibling and issues not resolved

8/25/2017 NCJFCJ 17

MAINTAINING FAMILY TIES 

- If you take siblings out of a home, reasonable efforts must be made to keep them together unless you find there is a **significant safety issue** that prevents common placement.
- Notice to all adult relatives of the child's removal
- If they can't be placed together, agency must facilitate sibling visits unless it is not safe.

Fostering Connections Act of 2008
Preventing Sex Trafficking and Strengthening Families Act of 2014

8/25/2017 NCJFCJ 18

**"CONTRARY TO WELFARE"
DETERMINATION IN FIRST COURT
RULING** 

If "contrary to the welfare" determination is not made in the first court ruling, the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.


45 C.F.R. §1356.21(c)

8/25/2017 NCJFCJ 19

LEGAL THRESHOLD FOR REMOVAL 

- **BEWARE** of 'rubber stamping' removal and placement decisions [Beware of rubber stamping anything!]
- Sufficient facts to support the allegations or conclusions made. Hold additional hearing
- Consider other plausible explanations for parental actions or behavior
- Remember that we are dealing with a Constitutional standard

8/25/2017 NCJFCJ 20

CAN THE CHILD BE RETURNED HOME TODAY? 

- **Linked with the Safety Threat as well as the 'Minimally Adequate' Standard**
- **Child safety depends on:**
 - Threat of danger
 - Child's vulnerability
 - Parents' protective capacity
- **In-Home Safety Plan**
 - What will protect the child?
 - When threats developed will such a plan control the safety threats?
 - What services or action steps are required to control the threats?

8/25/2017 NCJFCJ 21


**REASONABLE EFFORTS –
ALTERNATIVE PERMANENCY GOAL**



DFCS has the responsibility to finalize an alternative permanent home for an un-adjudicated or adjudicated child

8/25/2017 NCJFCJ 22

**WHAT IS REASONABLE MUST BE
CONSIDERED....**



- Within the context of the subject matter;
- Within the context of the life of each individual child and of each individual family;
- Within the context of the consequences of the failure to have done more; and
- Through a trauma lens.
- Remember, there are no “Do Overs”.

NCJFCJ 23


**FACTORS TO CONSIDER IN MAKING
REASONABLE EFFORTS FINDING**



Whether services to the child alleged to be or adjudicated as a dependent child and his or her family were:


1. Relevant to the safety and protection of such child;
2. Adequate to meet the needs of such child and his or her family;
3. Culturally and linguistically appropriate;
4. Available and accessible;
5. Consistent and timely; and
6. Realistic under the circumstances.

8/25/2017 NCJFCJ 24

TWO TIERS OF REASONABLE EFFORTS 

- Tier One Reasonable Efforts
 - Reasonable efforts made in each individual case
- Tier Two Reasonable Efforts
 - Reasonable efforts to track needs and to develop services to meet the needs

8/25/2017 NCJFCJ 25

TIER ONE REASONABLE EFFORTS 

- Assess the family situation
- Determine if any available services will work
- Consider alternative ways other than removal
- Inform family about available services
- Offer services most likely to work
- Give family opportunity to request other services
- Provide a means for review of agency's failure to provide services family believes will work
- Develop an appropriate case plan
- Visitation
- Permanency hearings


8/25/2017 Making Reasonable Efforts: A Permanent Home for Every Child NCJFCJ 26

TIER TWO REASONABLE EFFORTS 

- Assess need
- Comprehensive plan for prevention and reunification
- Provide all services
- Structure service delivery to keep families together
- Conduct training
- Establish appropriate criteria for services
- Develop written guidelines, procedures and protocols

8/25/2017 Making Reasonable Efforts: A Permanent Home for Every Child NCJFCJ 27

REASONABLE EFFORTS - BRINGING IT HOME




Meaningful Participation
Definition:
"Doing for children and families we serve that which we would others to do for us and our children if we found ourselves in like circumstance"

Collaboration (vertical text on the left)
Common Sense (vertical text on the right)


Mutual Respect

8/25/2017 NCJFCJ 28

REASONABLE EFFORTS - TURNING IT UPSIDE DOWN




If it is not unreasonable to expect a certain thing to be done in order to keep families together or to reunite the family, then the failure to do that thing is a failure to make reasonable efforts.



8/25/2017 NCJFCJ 29


IF I AM WRONG...



Let it be said that I demanded too much.


Never let it be said that I accepted too little.

NCJFCJ 30

TIMELINESS OF DELIVERY OF SERVICES - FRONTLOADING 


- Timeliness of services can be as important as the services themselves.
- The failure to timely deliver services, in and of itself may constitute a failure to make reasonable efforts even if the case plan is otherwise a good case plan.
- Delaying hearings, reviews and delivery of services is like foregoing prenatal care and worrying about the baby when it gets here.

8/25/2017 NCJFCJ 31

AVOIDING REMOVAL - SOME QUESTIONS TO BE ADDRESSED 


- What are the circumstances or conditions which caused the child to have to be removed? That is to say, what was the specific reason that the child could not be adequately protected at home and the specific harm that may have occurred if the child remained at home?

8/25/2017 NCJFCJ 32

AVOIDING REMOVAL - SOME QUESTIONS TO BE ADDRESSED 


- What services were offered to avoid removal?
- What services were in fact provided to avoid removal?
- What services, if any, could have avoided the removal?

8/25/2017 NCJFCJ 33

AVOIDING REMOVAL - SOME QUESTIONS TO BE ADDRESSED 


- To the that extent that there were services that could have prevented the removal, why were they not offered?
- To the extent that services were not available, has the agency made reasonable efforts to identify needed resources to avoid removal of children from their homes?

8/25/2017 NCJFCJ 34

AVOIDING REMOVAL - SOME QUESTIONS TO BE ADDRESSED 


- Have there been any prior referrals or agency involvement?
- If there have been prior referrals or agency involvement, were the attendant circumstances or conditions sufficient to put the agency on notice of underlying issues that would likely result in a later removal, but for the provision of appropriate services?

8/25/2017 NCJFCJ 35

AVOIDING REMOVAL - SOME QUESTIONS TO BE ADDRESSED 


- If the answer to the previous question is in the affirmative, did the agency provide services at that time that were reasonably calculated to remedy the underlying issues that made a later removal likely?
- If not, then that failure constitutes a failure to make reasonable efforts to avoid this removal.

8/25/2017 NCJFCJ 36

REUNIFYING - SOME QUESTIONS TO BE ADDRESSED 


- What are the circumstances or conditions causing the child to continue to be separated from her family? That is to say, what is the specific reason that the child could not be adequately protected at home and the specific harm that may occurred if the child is returned home?

8/25/2017 NCJFCJ 37

REUNIFYING - SOME QUESTIONS TO BE ADDRESSED 

- What services are being offered to reduce the risk to an acceptable level?
- Are those services reasonably calculated to reduce the risk? (reverse case planning)
- Are the services being offered in a timely, accessible, and culturally and developmentally appropriate manner?
- Are the desired outcomes being achieved?

8/25/2017 NCJFCJ 38

REUNIFYING - SOME QUESTIONS TO BE ADDRESSED 

- What additional services could be offered to reunify the family?
- To the extent that there are such services, why are they not being offered?
- To the extent that such services are not available, has the agency made reasonable efforts to identify and develop such resources?

8/25/2017 NCJFCJ 39

ALTERNATIVE PERMANENCY PLANS



If continuation of reasonable efforts to reunify the family is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

8/25/2017

NCJFCJ

40

MAKING REASONABLE EFFORTS THROUGH EFFECTIVE CASE PLANNING



8/25/2017

NCJFCJ

41

TO WHOM DOES THE CASE PLAN BELONG?



- The agency
- The judge
- The court staff
- The parents
- The parents' attorney
- The child
- The child's attorney
- The CASA
- The Service Providers
- Foster Parents?



8/25/2017


NCJFCJ

42


THE FOUNDATION OF A GOOD CASE PLAN –THE COURT'S PERSPECTIVE 

- The foundation of a good case plan is the court's determination of the reason(s) that the child cannot be maintained at home safely.
- The Court should never, consciously or through inaction, abdicate its responsibility as gatekeeper.
- The Court should carefully scrutinize stipulations to case plans.

8/25/2017 NCJFCJ 43

WHEN DOES CASE PLANNING BEGIN? 

- Permanency planning begins the first moment the child welfare agency touches the case.
- The first important step in terms of case planning is to thoroughly investigate the case to determine the reasons that the child cannot be maintained at home safely.
- It is the responsibility of the agency to dig deep into the history and dynamics of the child, the family, and the environment to determine the root causes of the alleged deprivation.
- Without a thorough investigation on the front end, permanency will be delayed as the underlying problems are discovered later in the process and the plan revised, or the child may be returned home prematurely and thereby placed at risk of a subsequent removal, or worse.

REASONABLE EFFORTS AND CASE PLANNING –GETTING IT OUT FRONT 

- A good case plan is so critical to effecting permanency for the child that the failure on the part of the Agency to timely develop and implement a good case plan, in and of itself, constitutes a failure to make reasonable efforts to reunify the child with the family.
- When compared to the human and monetary cost of bad case plans, good case plans are cheap.

8/25/2017 NCJFCJ 45

A CLOSER LOOK AT THE CASE PLAN

- There is nothing more important in permanency planning than effective case planning
- The case plan should be driven by the identified needs of the family and not by the readily available resources of the agency and the community
- The case plan is the roadmap to permanency for the children we serve

8/25/2017 NCJFCJ 46

Case Plans

What are the features of a good case plan?



8/25/2017 NCJFCJ

SUMMARY: CHARACTERISTICS OF A GOOD CASE PLAN

What ARE YOUR goals?

- graduate - housing
- a good job/income
- people I can trust - friends
- know I am loved

ARE They being reached ???

- SIMPLICITY
- SPECIFICITY
- ACCOUNTABILITY
- RELATIVITY
- DOABILITY

Lawon, Age 17 NCJFCJ 43

THE CASE PLAN: QUESTIONS TO ASK ABOUT EVERY GOAL AND EVERY STEP



- Is it simple so as to be understood by all?
- Is it specific as to who, what, where and when?
- Does it allow for accountability?
- Does it relate directly to the reason the child cannot be maintained safely at home?
- If all of the steps are achieved, will the risk to the child be reduced to a level that will allow the children to return home?
- Is it doable?

8/25/2017

NCJFCJ

49

INAPPROPRIATE GOALS AND STEPS FOR A REUNIFICATION PLAN



- Nothing should be required that does not reduce the risk factors that make it unsafe for the child to return home, and no steps should be required unless the completion of those steps is reasonably calculated to bring about the identified changes.
- Too many case plans include goals and steps that bear no rational relationship to one another or to the reasons the child cannot be returned home safely, and become unnecessary barriers to reunification.
- They also often overwhelm the parents so much that they are unable to complete those steps that are properly part of the reunification plan.

8/25/2017

NCJFCJ

50

MOTIVATING THE PARENTS




- Should the agency be required to "hold the parent's hand" early in the case? (The "velvet touch")
- Should the agency be required to file a motion for attachment for contempt before withdrawing services based on parent's failure to accept offered services? (The "sledge hammer")

8/25/2017

NCJFCJ

51

SAFETY, PERMANENCY AND WELL-BEING 

CHILD WELL-BEING

- What is the child's well-being status? What progress has the child made?
- What services, interventions or supports are in place to promote well-being?
- How has the Agency assessed the quality of those services?
- Are those services specifically tailored to child's unique issues?
- What additional services, interventions or supports will be provided to overcome child's barriers to progress?


8/25/2017 NCJFCJ 52

AND IT STILL COMES DOWN TO DOING IT RIGHT! 

If you:
 Do the **right** thing
 For the **right** people
 In the **right** way
 At the **right** time
 You will get:
 The **right** result!



8/25/2017 NCJFCJ 53

KEY TAKE AWAY POINTS 

- Keep them home if they can be safe in the home.
- If they can't be safe in the home, keep them with family. Remove them from foster care before they become the rope in the tug of war.
- Keep the siblings together.
- Get them home quickly if they can go home safely. If they can't go home safely and quickly, get them to alternative permanence ASAP.
- Meaningful permanency reviews and hearings are critical to assuring timely permanence.

8/25/2017 NCJFCJ 54

REMEMBER THE KIDS WE SERVE ...



- Their belongings in a bag, their hearts on a sleeve, or tucked securely away,
- Their futures not their own, but held in the hands of those who do not know them.
- Their worlds asunder; insecurity and mistrust their constant companions.
- They come to us looking for answers, for understanding, for hope, for resolution.
- What we give them will determine who they are and who they will forever be.
- Equally as important, what they become because of their having passed our way, will define our lives and our place in history.

Hon. Michael Key, September 24, 2005

8/25/2017

NCJFCJ

2005

QUESTIONS



8/25/2017

NCJFCJ

56
