

## The Golden Rule of Reasonable Efforts – Aspirational or Definitive?

### THROUGH THE EYES OF THE CHILD SUMMIT

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and the  
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## Disclaimer

- I am just a guy with Power Point presentation and a microphone.
- You are the experts. You do it every day.
- I take an expansive view of judicial oversight.
- I believe that it is the responsibility of the judge to fill voids in the system. Unless there is specific authority to the contrary, I will assume that I have the authority, as well as the responsibility, to fill the voids.

## Nebraska Family Policy Act frames the reasonable efforts discussion

- 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. 43-532

## What is the Golden Rule of Reasonable Efforts?

- "Reasonable efforts" is doing for the families and children we serve that which we would want others to do for us and our families if we found ourselves in a like circumstance."

RMK

## Presentation Format

- Historical perspective
- The law
- Examples of "no reasonable efforts"
- Documenting findings
- Opportunity to Cure
- When reasonable efforts not required

## Legislative History

- 1974 - Child Abuse Prevention and Treatment Act
- 1978 - Indian Child Welfare Act
- 1980 – Adoption Assistance and Child Welfare Act (Public Law 96-272)
- 1993 - Family Preservation Act
- 1994 – Multiethnic Placement Act
- 1997 - Adoption and Safe Families Act
- 2008 – Fostering Connections to Success and Increasing Adoptions Act of 2008

## Title IV-E Funding

- What is it?
- Why is it important?
- What drives it?
- What is our role?

## 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.

## The Law

- Federal law = State law
- A court's order removing a child from the child's home shall be based upon a finding by the court that continuation in the home would be contrary to the welfare of the child.

## Consequence for failure to make and document finding?

If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV-E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date.

## Why are the consequences so severe?

This protection is in place because Congress believed that judicial oversight would prevent unnecessary removals and act as a safeguard against potential inappropriate action.

The Final Rule

## The Law, Continued

- Except as where expressly excused under the statute, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home. 43-283.01(2)
- What are the consequences for failure to make and document the required findings?

### From the Final Rule

The requirement for the State to make reasonable efforts to prevent removals is a fundamental protection under the Act and one of several title IV-E eligibility criteria used in establishing eligibility. From both a practice and an eligibility perspective, it is impossible for the State to provide efforts to prevent the removal of a child from home after the fact. In terms of practice, there is a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone. If the child is returned after services have been delivered, or even immediately, the State has reunified the family, not prevented a removal. (Emphasis added)

### The Law, Continued

- Reasonable efforts findings shall also be made at every subsequent review of the court's order.
- Reasonable efforts shall be made to preserve and reunify families:
  - Prior to placement to prevent or eliminate the need for removal
  - To make it possible for the child to return

What are the factors to consider in making the contrary to the welfare determination?

- Risk Factors
- Controlling Interventions
- Balancing of the Risk

### The Law, Continued

- If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, then (reasonable ?) efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanency placement of the juvenile. 43-283.01(3)

### Asking again - Aspirational or Definitive?

- Doing for the children and families we serve that which we would want someone to do for us and our families if we found ourselves in a like circumstance.
- Is there anything between reasonable and unreasonable?

### Examples of No Reasonable Efforts Findings

- To avoid removal
- To reunify
- To effect an alternative placement

### Examples of No Reasonable Efforts To Avoid Removal Finding

- Failure to investigate
- Failure to provide appropriate services for sufficient period of time
- Failure to effectively safety plan
  - Failure to identify relative placements
  - Failure to explore non-relative placements
  - Failure to provide services

### Examples of No Reasonable Efforts To Avoid Removal Finding

- Failure to seek protective order prior to removal

### Examples of No Reasonable Efforts To Reunify Finding

- Failure to develop case plan around court's finding as to cause of separation
- Failure to conduct proper assessments
- Failure to match service with needs
- Expecting too much out of parents too early in the case
- Failure to provide meaningful visitation
- Failure to develop resources (Tier Two)
- Failure to provide transportation

### Examples of No Reasonable Efforts To Reunify Finding, Continued

- Failure to provide good information to service providers
- Failure to follow up with service providers
- Failure to obtain meaningful reports from service providers for hearings and reviews
- Failure to timely file revised case plans, evaluations and other documentation necessary to conduct hearings and reviews

### Examples of No Reasonable Efforts To Reunify Finding, Continued

- Failure to expedite child support proceedings
- Failure to involve parents and others in case planning
- Failure to communicate contents of case plan
- Failure to communicate – Period
- Failure to identify and work with family strengths

### Examples of No Reasonable Efforts To Reunify Finding, Continued

- Failure to meet the needs of the child
- Failure to be prepared for hearings and reviews
- A failure to comply with ICPC, including Reg 7
- Failure to comply with policy, standing orders, and protocols
- .... and maybe the failure to implement effective practices

### Examples of No Reasonable Efforts To Effect Alternative Placements Finding

- Failure to do concurrent planning
  - Failure to develop a concurrent plan
  - Failure to implement a concurrent plan
- Failure to timely identify alternative placements
- Failure to counsel the child on alternative placements
- Failure to comply with the 15/22 requirements

### 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]

### Opportunity to Cure

- Court should give a reasonable opportunity to cure
- Court should make specific factual findings to support both reasonable efforts finding and no reasonable efforts finding
- Does not apply to reasonable efforts to avoid removal

Reasonable efforts to preserve and reunify the family not required if a court of competent jurisdiction has determined that:

- The parent has subjected juvenile to aggravated circumstances.
- The parent has committed or been involved in the murder or felony assault of another child of the parent.
- The parental rights of the parent's rights to a sibling of the juvenile have been terminated involuntarily.  
43-283.01(4)