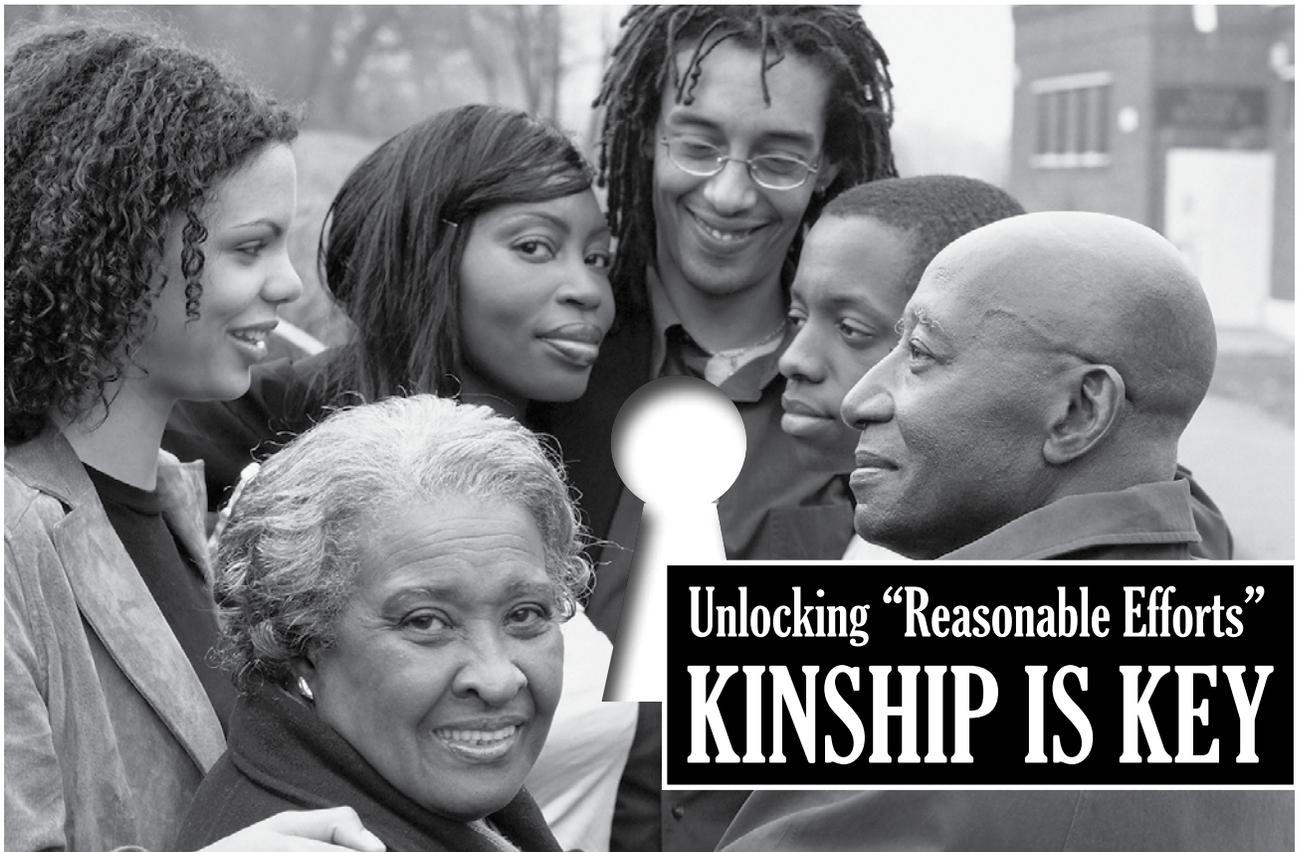


This article was first published in
46 Clearinghouse Review: Journal of Poverty Law and Policy 99
(July-August 2012)
© 2012 Sargent Shriver National Center on Poverty Law



Unlocking “Reasonable Efforts” KINSHIP IS KEY

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

“Reasonable 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.¹ 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.² 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.³

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

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

³Leonard Edwards, *Reasonable Efforts: A Judicial Perspective*, THE JUDGES’ PAGE NEWSLETTER 5 (Oct. 2007), <http://bit.ly/IAHcOp>. 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/IGHgzZ>).

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.⁴

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.⁵ 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.⁶ However, few practitioners realize that these federal guidelines are found within the Social Security Act.⁷ 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-

⁴45 C.F.R. §§ 1356.21(c), 1356.21(b)(1)(iii) (2012).

⁵CHILDREN’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>.

⁶Adoption 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>.

⁷42 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.⁸ 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 2008.⁹ 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.¹⁰

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.”¹¹ 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.¹²

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.¹³

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.”¹⁴

⁸*Id.* § 671(a)(15)(D)(i)–(iii).

⁹Fostering 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>.

¹⁰42 U.S.C. § 671.

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

¹²See CAL. R. Ct. 5.678(c)(1) (2012).

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

¹⁴TERESE 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.¹⁵

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.¹⁶

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.¹⁷

Many of the available services are designed to cure incurable conditions. Take, for example, a long-held drug or

¹⁵Administration 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>.

¹⁶Charles 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>.

¹⁷CHILDREN'S BUREAU, *supra* note 5.

alcohol addiction. Currently most professionals believe that recovery is a process, not an event.¹⁸ 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.¹⁹ 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?²⁰

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.²¹ To ensure long-term or lifelong sobriety, most parents need additional programs such as Alcoholics Anonymous or lifelong 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.²² Ap-

¹⁸Rivera, 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/LwyQKB>) (unpublished paper) (on file with Rose Marie Wentz).

¹⁹Ingrid 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).

²⁰Rivera, Sierra and Company, *supra* note 18.

²¹45 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).

²²CHILDREN’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 2009.²³ Moreover, 28,000 children aged out of foster care in 2009, while 13 percent of children who left the system reentered it.²⁴

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.²⁵

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.²⁶ 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-

²³*Id.* at ii.

²⁴*Id.*

²⁵CHILDREN’S BUREAU, *supra* note 5.

²⁶42 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.²⁷

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.²⁸ Given the opportunity, family members will step up and support children and parents. If parent(s) cannot safely care for children, we know

²⁷The 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>).

²⁸Kevin 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.²⁹

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.³⁰ 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).

²⁹Rosemary 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).

³⁰ROSE 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.³¹ 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.³² 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.³³

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

³¹CHILDREN’S BUREAU, *supra* note 5.

³²In some jurisdictions the removal hearing is also known as a shelter care hearing or an initial hearing.

³³National 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).³⁴ 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.³⁵

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

³⁴Annie 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>.

³⁵The 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/LC2Wsl>).

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.³⁶ 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.³⁷

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.³⁸ 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.³⁹ 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

³⁶This 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)).

³⁷Child Welfare Information Gateway, Court Hearings for the Permanent Placement of Children (Jan. 2012), <http://1.usa.gov/LBOzEJ>.

³⁸The 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>.

³⁹For 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.⁴⁰ 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.⁴¹

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.⁴² Without the involvement of extended family we can-

⁴⁰*In the Interest of JW and BJ*, 2010 WY 28, 226 P.3d 873 (Wyo. 2010).

⁴¹*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>.

⁴²Kelly 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.



Subscribe to CLEARINGHOUSE REVIEW!

CLEARINGHOUSE REVIEW: JOURNAL OF POVERTY LAW AND POLICY is the advocate's premier resource for analysis of legal developments, innovative strategies, and best practices in representing low-income clients. Each issue of the REVIEW features in-depth, analytical articles, written by experts in their fields, on topics of interest to poor people's and public interest lawyers. The REVIEW covers such substantive areas as civil rights, family law, disability, domestic violence, housing, elder law, health, and welfare reform.

Subscribe today!

We offer two ways to subscribe to CLEARINGHOUSE REVIEW.

A **site license package** includes printed copies of each issue of CLEARINGHOUSE REVIEW and online access to our archive of articles published since 1967. With a site license your organization's entire staff will enjoy fully searchable access to a wealth of poverty law resources, without having to remember a username or password.

Annual site license package prices vary with your organization size and number of printed copies.

- Legal Services Corporation-funded programs: \$170 and up
- Nonprofit organizations: \$250 and up
- Law school libraries: \$500

A **print subscription** includes one copy of each of six issues, published bimonthly. Annual rates for the print-only subscription package are as follows:

- Legal Services Corporation-funded programs: \$105
- Nonprofit organizations: \$250
- Individuals: \$400

A print subscription for Legal Services Corporation-funded programs and nonprofit organizations does not include access to the online archive at www.povertylaw.org.

Please fill out the following form to receive more information about subscribing to CLEARINGHOUSE REVIEW.

Name _____

Organization _____

Street address _____ Floor, suite, or unit _____

City _____ State _____ Zip _____

E-mail _____

My organization is

- Funded by the Legal Services Corporation
- A nonprofit
- A law school library
- None of the above

What is the size of your organization?

- 100+ staff members
- 51-99 staff members
- 26-50 staff members
- 1-25 staff members
- Not applicable

Please e-mail this form to subscriptions@povertylaw.org.
Or fax this form to Ilze Hirsh at 312.263.3846.

Sargent Shriver National Center on Poverty Law
50 E. Washington St. Suite 500
Chicago, IL 60602

CUT HERE