



Reasonable Efforts: Overview of the Law and Fiscal Implications

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Reasonable Efforts Findings

- ▶ Have you ever had a judge make a “no reasonable efforts” finding?

Or

- ▶ Have you ever had a judge direct DCFS to make more efforts and then to reschedule ...within timeframes.?

Or

- ▶ Have you, as an attorney, ever asked the court to make a “no reasonable efforts” finding?

Federal Background: Reasonable Efforts Mandates

Child Abuse Prevention and Treatment Act
(CAPTA) 1974

Indian Child Welfare Act (ICWA) 1978

Adoption Assistance and Child Welfare Act 1980

Adoption and Safe Families Act (ASFA) 1997

ASFA Regulations 2000

Reasonable Efforts (RE)

45 C.F.R. §1356.21 (b)

- ▶ To Prevent Removal: (b)(1)
 - Agency must make RE to maintain the family unit, and prevent unnecessary removal
 - RE finding must be made within 60 days of the child's removal (b)(1)(i)
 - If the court does not make the RE finding, the agency will not receive IV-E funds for the duration of the child's stay in foster care
 - Child's health and safety is paramount concern
 - Court must find that continuation in the home would be contrary to the child's welfare, or that placement is in the child's best interest §1356.21(c)

Reasonable Efforts

45 C.F.R. § 1356.21 (b)

- ▶ To Finalize Permanence: (b) (2)
 - Agency must make RE to reunify and make and finalize permanent plan (reunification, adoption, legal guardianship, relative placement, alternative permanent living arrangement)
 - Finding must be made within 12 months of foster care entry and at least once every 12 months thereafter
 - If the court does not make the finding, the agency will not receive IV-E funding . . . Until such a determination is made (b) (2) (ii)

Louisiana Children's Code

Art. 603. Definitions (Act 272)

- ▶ (26) "Reasonable efforts" means the exercise of ordinary diligence and care by the department throughout the pendency of a case pursuant to the obligations imposed on the state by federal and state law to provide services and supports designed and intended to prevent or eliminate the need for removing a child from the child's home, to reunite families after separation, and to achieve safe permanency for children. Reasonable efforts shall be determined by the particular facts and circumstances of each case, including the individualized needs of each child and the family, the imminence and potential severity of the threat of danger, the strengths of each child and the family, and the community of support available to the family. In making reasonable efforts, the health, welfare, and safety of the child shall be the paramount concern.

Louisiana Children's Code Art. 619

Instant custody orders; instant safety plan orders (Act 272)

B. (1) If removal of the child is requested, the court shall immediately determine whether reasonable efforts, as defined by Article 603, have been made by the department to prevent or eliminate the need for the child's removal. In making the determination, the court shall consider all of the following:

(a) Whether the department has requested a temporary restraining order pursuant to Article 617.

(b) Whether the department has requested a protective order pursuant to Article 618.

(c) Whether the department has requested an instant safety plan order pursuant to this Article.

(d) Any services or support offered or attempted prior to the request for an instant order to control the threat of danger or substitute for diminished or absent caretaker protective capacity.

(2) In making and determining reasonable efforts, the child's health, welfare, and safety shall be the paramount concern.

(3) Even if the department's efforts have not been reasonable, the court may authorize the removal of the child if the court determines that removal is necessary to secure the safety of the child and that additional efforts would not keep the child safe from identified threats of danger.

Louisiana Children's Code

Art. 672.1. Reunification efforts determination

- ▶ A. At any time in a child in need of care proceeding when a child is in the custody of the department, the department may file a motion for a judicial determination that efforts to reunify the parent and child are not required.
- ▶ B. The department shall have the burden of demonstrating by clear and convincing evidence that reunification efforts are not required, considering the health, welfare, and safety of the child and the child's need for permanency.
- ▶ C. Efforts to reunify the parent and child are not required if a court of competent jurisdiction has determined that:
 - ▶ (1) The parent has subjected the child to egregious conduct or conditions, including but not limited to any of the grounds for certification for adoption pursuant to Article 1015.
 - ▶ (2) The parent has committed murder or manslaughter of another child of the parent or any other child or has aided or abetted, attempted, conspired, or solicited to commit such a murder or manslaughter.
 - ▶ (3) The parent has committed a felony that results in serious bodily injury to the child or another child of the parent or any other child.
 - ▶ (4) The parental rights of the parent to a sibling have been terminated involuntarily.
- ▶ D. If the court determines that reunification efforts are not required, it shall document that determination by written findings of fact. A permanency hearing, which considers in-state and out-of-state permanent placement options for the child, may be conducted immediately and shall be conducted within thirty days after the determination.

Reasonable Efforts: Primary Objectives

- ▶ To keep families intact when possible
- ▶ To reunite families after they have been separated to keep children safe
- ▶ To achieve a permanent plan for children when they cannot go home

Conversation with Samantha Morrison

Pelican Center Peer, Equity and Inclusion Specialist

- ▶ What was the issue that brought your family to the attention of DCFS?
- ▶ What threat of danger existed for your children in your home?
- ▶ How old were your children? Were they vulnerable to the threat?
- ▶ How would you describe your ability to protect your children against the threat at the time DCFS became involved?
- ▶ Was protective custody necessary to prevent harm (abuse or neglect) to your children?
- ▶ Do you feel like removal from the home was in your children's best interest?
- ▶ Do you feel like it would have been contrary to your children's welfare (or not in their best interest) to remain at home?
- ▶ How did DCFS go about reuniting you with your children?

RE to Prevent or Eliminate Need for Removal: Examples

▶ COURT INTERVENTIONS

- ▶ Temporary Restraining Orders
- ▶ Protective Orders
- ▶ Instanter Safety Plan Orders

▶ PREVENTATIVE SERVICES

- ▶ Mental health treatment
 - ▶ Substance abuse treatment
 - ▶ Parenting
 - ▶ Other supports or services
- ▶ Please refer to the *Louisiana Child in Need of Care Benchbook for Juvenile Judges* for more examples and information:
https://pelicancenter.org/uploads/3/4/5/4/34547658/section_5.pdf

RE to Prevent/Eliminate Need for Removal Finding: Fiscal Impact (1)

- ▶ Finding:
 - ▶ RE made or RE not required by law
 - ▶ Written in court order
 - ▶ Individualized findings
 - ▶ Within first 60 days of removal
 - ▶ If not, child's Title IV-E eligibility will be impacted for the life of the case

RE to Prevent/Eliminate Need for Removal Finding: Fiscal Impact (2)

- ▶ Remember: Child's removal may happen at different junctures in a case
- ▶ Possible orders within first 60 days of removal if removal occurs through an Instanter Order for Removal:
 - ▶ Instanter Order, Continued Custody Order, Answer Hearing Order, Status Hearing Order
- ▶ Possible orders within first 60 days of removal if removal occurs at Disposition:
 - ▶ Judgment of Disposition, Status Hearing Order

RE to Prevent/Eliminate Need for Removal Finding: Fiscal Impact (3)

- ▶ Practical Application
 - ▶ What if individualized RE findings for each child are written in the Instanter Order for Removal?
 - ▶ Reasonable efforts findings are not necessary in the Continued Custody Order for funding purposes.
 - ▶ Remember: Federal and state reasonable efforts requirements are broader than the fiscal impacts
 - ▶ What if the court order leaves off RE in both the Instanter Order for Removal and the Continued Custody Order?
 - ▶ Funding will not be impacted if written individualized findings are made in another court order within 60 days of removal.

RE to Prevent/Eliminate Need for Removal Finding: Fiscal Impact (4)

What if the child is removed at Disposition and the Judgment of Disposition states there have been reasonable efforts but does not make individualized findings for each child?

- ▶ Such a Judgment could raise concerns in a federal Title IV-E eligibility review.
 - ▶ Remember: RE are required throughout the life of a case involving removal and can be raised at any juncture.

RE to Finalize Permanent Plan Examples

REUNIFICATION

- ▶ Ensuring the case plan is reasonably related to achieving reunification
- ▶ Providing quality visitation time (or such opportunities) between the parents and the child
- ▶ Assisting parents in timely accessing appropriate and effective services and supports needed to address the conditions for the removal
- ▶ Seeking needed court interventions (i.e. Temporary Restraining Orders (TRO) and/or Protective Orders (PO))

OTHER PERMANENT PLANS

- ▶ Conducting a thorough Dispositional alternative investigation
- ▶ Timely assessments of relatives and other possible placements
- ▶ Involving youth in the development of their Youth Transition Plan (YTP)
- ▶ Making efforts to complete adoption if the parents' rights have been terminated
- ▶ Please refer to the *Louisiana Child in Need of Care Benchbook for Juvenile Judges* for more examples and information
https://pelicancenter.org/uploads/3/4/5/4/34547658/section_10.pdf

RE to Finalize Permanent Plan Finding: Fiscal Implications (1)

- ▶ Finding
 - ▶ RE made throughout the life of the case to finalize the permanent plan
 - ▶ Written in court order
 - ▶ Individualized
 - ▶ Within 12 months of removal
 - ▶ Every 12 months thereafter
 - ▶ If not, funding will be impacted until individualized RE finding is written in a court order
 - ▶ Note: may not be a fiscal impact if no gap in months (see next slide example)

RE to Finalize Permanent Plan Finding: Fiscal Implications (2)

- ▶ Practical Application
 - ▶ Permanency Hearing
 - ▶ Due September 2022
 - ▶ Held October 20, 2022 and individualized RE finding written in court order
 - ▶ No fiscal impact because no gap in months
 - ▶ Child is Title IV-E eligible until the last day of the month when the written finding in a court order is due (e.g., eligible until September 30, 2022)
 - ▶ Child becomes eligible on the first day of the month when the written finding is made in a court order (e.g., eligible starting on October 1, 2022)

RE to Finalize Permanent Plan Finding: Fiscal Implications (3)

- ▶ Practical Application
 - ▶ Permanency Hearing
 - ▶ Due September 2022
 - ▶ Held July 15, 2023, and written individualized RE finding made in court order
 - ▶ No Title IV-E eligibility from October 1, 2022 through June 30, 2023 (8 months)
 - ▶ Child is Title IV-E eligible until the last day of the month when the finding in the court order is due (e.g., eligible until September 30, 2022).
 - ▶ Title IV-E eligibility returns July 1, 2023
 - ▶ Child becomes eligible on the first day of the month that RE finding is properly made in a written court order.

RE to Finalize Permanent Plan Finding: Fiscal Implications (4)

- ▶ Practical Application
 - ▶ Permanency Hearing
 - ▶ Due September 2022
 - ▶ Held July 15, 2023, and written individualized RE finding made in court order
 - ▶ Case Review Hearing Held on December 9, 2022, and Case Review Order contains written individualized RE finding re: permanent plan
 - ▶ The written, individualized finding in a court order and the timing are what is important (not the title of the order)
 - ▶ No Title IV-E eligibility for October and November 2022
 - ▶ Title IV-E eligibility resumes December 1, 2022

Questions?

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THANK YOU!