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Reasonable Efforts: Just a Box to Check?

Reasonable efforts. We've all heard the term, and we've all seen the check-box on court paperwork. But what does reasonable efforts really mean? More importantly, how should courts evaluate the whether DCF's efforts toward reunification were reasonable? Let's begin with a quick history lesson.

Concerned with the growing number of children in foster care, and recognizing that existing law created financial incentives for states to take and retain custody of children, Congress passed the Adoption Assistance and Child Welfare Act of 1980. The law, which remains in effect today, provides funding for states to provide family preservation services. Additionally, the law requires child welfare agencies to make "reasonable efforts" to prevent removal of a child from the home. Once a child is placed in foster care, the child welfare agency must make reasonable efforts to finalize the permanency plan.

In the mid-1990s, a series of highly public child fatalities following reunifications resulted in legislative pressure to amend the 1980 Act and limit the reasonable efforts requirement. Proponents of the amendment framed the issue in terms of competing rights: the parent's right to family privacy and control versus the child's right to remain safe from harm. Such framing unfortunately assumes that only parents, as opposed to children, have an interest in family integrity. Children who never achieve permanency, as well as those who reenter DCF custody after an unsuccessful adoption, might wish that they had remained in their families of origin despite the circumstances preceding their removal.

The pressure to focus on safety at the expense of preserving families resulted in the Adoption and Safe Families Act of 1997 (ASFA). ASFA was enacted to combat the belief that "statutes, the social work profession, and the courts sometimes err on the side of protecting the rights of parents." *New York ex rel. N.Y. State Office of Children & Family Servs. v. U.S. Dep't of Health & Human Servs.*, 556 F.3d 90, 95 (2d Cir.2009) (quotation omitted) (describing legislative history). ASFA enumerated circumstances under which reasonable efforts to reunify were not required, including cases of abandonment, torture, and repeated or severe abuse. Many states have added additional items to the list of circumstances where reasonable efforts are not required. Whenever a court makes a finding that the child welfare agency failed to make reasonable efforts, the result is the

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loss of certain federal funds for that particular case.

In Vermont, "reasonable efforts" are defined as "the exercise of due diligence by the Department to use appropriate and available services to prevent unnecessary removal of the child from the home or to finalize a permanency plan." 33 V.S.A. § 5102. The court may find that no efforts were reasonable under the circumstances. Additionally, if the court makes written findings that aggravated circumstances are present, the court need not make a finding as to whether reasonable efforts were made to prevent removal of the child from the home. Aggravated circumstances include: 1) the parent has subjected a child to abandonment, torture, chronic abuse, or sexual abuse; 2) the parent has been convicted of murder or manslaughter of a child; 3) the parent has been convicted of a felony crime that results in serious bodily injury to the child or another child of the parent; or 4) the parental rights of the parent with respect to a sibling have been terminated. Unless reasonable efforts are not required because of aggravated circumstances, the temporary care order must contain a finding that DCF made, or did not make, reasonable efforts to prevent unnecessary removal from the home. 33 V.S.A. § 5308(c)(1)(B).

These statutory "reasonable efforts" requirements beg the question: what is the remedy when the court finds that reasonable efforts were *not* made? Interestingly, the Vermont Supreme Court has held that the "issue of reasonable efforts is separate from whether termination of parental rights is in a child's best interests." *In re C.P.*, 2012 VT 100, ¶ 38, 193 Vt. 29, 47, 71 A.3d 1142, 1155 (2012). The Court reasoned that because the best interest factors are outlined in a separate statute (33 V.S.A. 5114), the reasonable efforts determination is wholly separate from the "best interests" determination. The Court declined to address the question of whether DCF's failure to make reasonable efforts might preclude a finding of substantial change in material circumstances on the basis of "stagnation."

Other states have interpreted ASFA's reasonable efforts requirement differently. *See generally*, Kathleen S. Bean, Reasonable Efforts: What State Courts Think, 36 U. Tol. L. Rev. 321 (2005). While Vermont limits the reach of reasonable efforts to "available services," other states, including Alaska, Missouri, and Tennessee, explicitly place the burden on the child welfare agency to prove that it has met the reasonable efforts requirement. Some state statutes defining "reasonable efforts" include additional language tending to strengthen the reasonable efforts requirement. Several statutory provisions refer to the diligence of the reunification efforts, using phrases such as "diligence and care," (Colorado) "reasonable diligence and care," (Arkansas) "ordinary diligence and care," (Kentucky) "due diligence," (North Dakota) and "diligent use of preventive or reunification services" (North Carolina). Other state statutes require agencies to use "[e]very reasonable opportunity" for reunification (Hawaii) or to "actively offer" reunification services (Alaska). Minnesota requires courts to consider six factors in making the reasonable efforts determination including, "whether services to the child and family were: (1) relevant to the safety and protection of the child; (2) adequate to meet the needs of the child and family; (3) culturally appropriate; (4) available and accessible; (5) consistent and timely; and (6) realistic under the circumstances."

Likewise, a majority of states require the court to find that the child protection agency made reasonable efforts prior to granting a petition to terminate parental rights. Will L. Crossley, Defining Reasonable Efforts: Demystifying the State's Burden under Federal Child Protection Legislation, 12 B.U. Pub. Int. L. J. 259, 312 (2003). Thus, in a majority of states, the remedy for failure to make reasonable efforts to reunify following a removal is denial of the termination petition. At least ten states (Maine, New York, Florida, Georgia, Iowa, Mississippi, Virginia, Washington, Illinois, and Wisconsin) make failure to make reasonable efforts to prevent removal of the child from the home grounds for returning the child to the parents' custody.

A full exploration of reasonable efforts could encompass hundreds of pages. Child protection is a field that provokes strong emotions and changes in policy and law are often influenced by public outrage. Reasonable people can disagree on the right balance between child safety and a preference toward maintaining family integrity. However, it is imperative to remember that child safety, permanence, and well-being need not be antagonistic to family integrity in a majority of cases. When representing children in CHINS proceedings, it is always important to solicit and amplify the perspective of the child whenever the child is capable of expressing a preference for or against reunification. Even very young children can express such a preference, and these children's voices are often drowned out by the opinions of the adults around them.

The Vermont Family Time Guidelines: A Synopsis for Practitioners in Juvenile Court

Developed in 2008 and updated in 2014, the Vermont family time guidelines (Dept. for Children and Families, Family Svs. Div., *Initial Caregivers Meeting, Shared Parenting Meetings and Family Time Practice Guidance* (Dec. 2014)) draw from social science research and the best-practices employed by other states to guide DCF practice surrounding supported parent-child contact after a CHINS filing. The guidelines are directed toward DCF Family Services Division staff and community partners, but familiarity with the guidelines is essential for children's attorneys, parents' attorneys, AAGs, State's Attorneys, and judges.

Introduction to Family Time

The guidelines begin with an acknowledgement that removal from the home is a uniquely traumatic experience that can result in emotional and developmental harm to the child. From this first acknowledgement flows a second: to maintain or develop secure attachments, children must maintain contact with their parents/caregivers, siblings, and other important adults. According the guidelines, "family time is a right of every child and family." The guidelines also acknowledge the paramount importance of parent-child contact in promoting and predicting successful reunification. Thus, provision of family time coaching at a length and frequency that meets the needs of the child and family may be an essential element of "reasonable efforts."

The Child, Parent, and Foster Parent Experience of Family Time

After introducing the values and rationale behind family time, the guidelines go on to explore and explain the actual lived experience of family time from the perspective of the child, the parents, and the foster parents. These insights are invaluable, as it can be easy to make incorrect assumptions about the value or success of family time based on the reactions of the various participants. For children, several common and often conflicting responses to family time can be expected, including happiness to see the parent, confusion about why he or she cannot return home, withdrawal, anger, fear, guilt, re-traumatization, and regression. Stress or negative behaviors related to family time are usually not a sign that the family time itself is harmful, rather, these behaviors can usually be mitigated by keeping the family time consistent, frequent, and focused on fun and nurturing interactions between parent and child.

Likewise, family time can trigger the parent's own feelings of guilt and loss. Parents may experience feelings of shame, anger, incompetency, inadequacy, confusion, judgment, and desperation during family time. According to the guidelines, it is common for substance abusing parents to relapse after family time as a way of numbing the overwhelming feelings family time can trigger. To combat the potential trauma of family time for the parent, the coach must focus on the parent's strengths, build the parent's confidence and skill, and empower the parent to demonstrate his or her skills during family time.

Foster parents may also struggle with family time. They may be angry, concerned, or confused by the child's reactions during family time. They may feel angry or resentful at the frequency of family time and ambivalent towards the parent. To maintain their focus on reunification, foster parents may need a variety of supports, including mentoring, frequent contact with the resource coordinator, additional training, or home-based services. Frequent and productive shared-parenting meetings can also improve the relationship between the foster parent and the birth family and can help the foster parent understand the importance of family time and remain committed to reunification. Best practice is to hold shared-parenting meetings monthly.

Family Time Logistics: Transportation, Location, Timing, and Frequency

With respect to location, timing, and frequency of family time, the guidelines offer several recommendations. Visits should occur in the most natural setting that is safe for the child. The parent's home is the preferred setting for family time. If the home is unsafe or the parent is homeless, family time should occur in the foster parent's home, the community, or a visitation center. Family time should be held at the DCF office only as a last resort and only when mandated by the safety needs of the child or the coach.

The first family time should occur within 48 hours after a child enters DCF custody, and for most children, family time should occur no less than 2-3 times per week. Infants and toddlers require more frequent family time to maintain a healthy attachment to the parent. Social workers should participate in family time to observe and provide the parent with direct feedback no less than once per month. Best practice is to have foster parents provide transportation to and from family time to support the child and assist the child in debriefing after the family time.

The Family Time Coaching Model

The Family Time Coaching model consists of 4 key components: 1) empowerment; 2) empathy; 3) responsiveness; and 4) active parenting. The coach should build on the parent's strengths, support the parent to empathize with the child, help the parent learn to manage conflict between the parent's needs and the child's needs, and support the parent in developing healthier and more effective ways of interacting with the child.

Within 5 days of the child's removal from the home, the social worker should convene and initial shared-parenting meeting including the parent(s), the foster parent(s), the social worker, and the family time coach. The purpose of the initial meeting is to create a plan for family time. Prior to the first family time coaching session, the coach should schedule an initial parent interview to meet with the parent, gather information, and explain the family time process.

Each family time session begins and ends with a meeting between the coach and the parent to prepare for and process the family time. Family time coaches must possess "therapeutic interviewing skills" and be familiar with child development, family dynamics, parenting skills, various cognitive/learning styles, and cultural differences that might impact coaching. The coach is tasked with providing pre-meeting and post-meeting support and feedback to the parent, as well as real-time feedback during the family time itself. DCF contracts with various outside agencies for family time coaching services, including Easter Seals, HCRS, and NFI. The contracted agency is responsible for hiring, training, and supervising the coaches.

As discussed above, social workers must attend and observe one family time per month and social workers, the parent(s), the foster parent(s), and the family time coach should attend one shared-parenting meeting per month to discuss progress in family time and make necessary adjustments.

In summary, all juvenile court practitioners should be familiar with the family time guidelines to ensure fidelity to the family time coaching model and adherence to best practices. Providing meaningful, frequent, and supportive opportunities for parent-child contact helps mitigate the trauma of removal and provides for the greatest chance of a successful reunification.

A full text PDF version of the family time guidelines is available at: http://dcf.vermont.gov/sites/dcf/files/FSD/pubs/Family-Time-Guidelines.pdf

2017 Legislative Update: Juvenile Jurisdiction and Juvenile Sex Offender Registration

The 2017 legislative session was relatively quiet on the juvenile law front. Despite the paucity of legislation affecting the child protection and juvenile justice systems, two bills are worth noting. The first is S.23/Act 72 (an act relating to juvenile jurisdiction) and the second is S.7/Act 15 (an act relating to deferred sentences and the sex offender registry).

Act 72 is a follow up to last session's H.95, a bill which expanded the jurisdiction of the juvenile court to youth whose delinquent behavior occurred between the ages 18 through 21. To quickly recap, H.95 amended the law so that these "transition-age youth" who would have previously been charged in the criminal system will be eligible for treatment as youthful offenders beginning in

January 2018. Youth who successfully complete youthful offender probation will have their records sealed. Act 72 makes some technical corrections and other changes to H.95. Act 72 also radically changes the procedure for pre-disposition placement of delinquent youth at Woodside Juvenile Rehabilitation Center.

Among the changes contained in Act 72:

1. A youthful offender has no duty to register as a sex offender unless his or her youthful offender status has been revoked.

2. Beginning on July 1, 2018, DCF and DOC are tasked with jointly supervising youthful offenders. For each case, DCF and DOC must designate a "lead case manager." Electronic monitoring and graduated sanctions may be used with youthful offenders.

3. Children under 12 who commit a serious felony as defined in 33 V.S.A. 5204 must be charged in family court.

4. GALs are appointed only for youth under age 18.

5. Beginning on July 1, 2018, State's Attorneys may commence a youthful offender action by direct filing the petition in family court for youth ages 16-21. Otherwise a youth 21 and under can petition for transfer to the family division from the criminal division.

6. Youthful offender proceedings will be described in a separate statutory chapter, Chapter 52A. This chapter describes the procedure for filing, the requirement for a report from DCF, the process for youthful offender determination and disposition, modification or revocation of disposition, and termination of youthful offender probation.

7. All youthful offender proceedings are confidential (prior law required the "amenability hearing" to be open to the public).

8. Beginning on July 2018, the Act changes the procedures for admission to secure detention at Woodside. Pre-disposition, youth may only be incarcerated by order of the court. Current law permits pre-disposition incarceration through a process of administrative hearings, unless the family court issues an inflexible order (valid for 7 days). Under the new law, the court may not order incarceration absent a recommendation from DCF. If a youth is incarcerated pre-disposition, the merits hearing must be held within 45 days, absent a showing of good cause, and the disposition hearing must be held within 35 days. Youth may appeal a decision by the court to order pre-disposition incarceration before a single justice of the Vermont Supreme Court. Post-disposition, DCF retains sole discretion to incarcerate youth adjudicated delinquent (current DCF policy requires DCF to seek approval from the family court in cases where the plan for post-disposition placement in the long-term program at Woodside is contested by the youth).

Beginning next July, juvenile defenders will need to be prepared to argue against incarceration at the preliminary or temporary care hearing cases where pre-disposition placement at Woodside is proposed. The Office of the Juvenile Defender will litigate appeals to the Supreme Court. The procedure for litigating post-disposition placement at Woodside at the youth's disposition hearing is likely to remain the same, so juvenile defenders must be prepared to argue why a youth does not meet

criteria for placement at Woodside and why it is not in the youth's best interests to be placed there.

Act 15 (deferred sentences and the sex offender registry) is much more easily summarized. The Act makes explicit that no person under the age of 18 shall have his or her name posted on any electronic registry. Additionally, no person subject to a deferred sentence may have his or her name posted electronically unless he or she violates the terms of the deferred sentence.

The Importance of Kinship Care

The benefits of placing children with relatives are widely recognized. Examples of such benefits include reducing the trauma of removal for the child by ensuring that he or she remains in familiar surroundings, reducing reliance on congregate care settings such as group homes and residential treatment programs, easing the trauma of removal on the parents, keeping the child connected to his or her culture and family traditions, decreasing the chance that the child will suffer repeat maltreatment, and increasing the likelihood that the child will exit foster care to permanency (either through reunification or adoption/ guardianship) within a reasonable amount of time. In an article entitled *How to Improve Outcomes for Abused and Neglected Children: Engaging Relatives Early*, published in the Summer 2016 issue of The Bench, Judge Leonard Edwards explores the barriers to kinship care, recent federal legislation that may impact kinship care utilization, and a model for advancing social worker practice with respect to kinship care.

Following the enactment of the Fostering Connections to Success and Increasing Adoptions Act of 2008, many states, including Vermont, changed their statutes to include an explicit preference for placement with relatives. However, in 2015, Vermont amended its temporary care statute again and removed the preference for relative placement. According to Judge Edwards, even with legislative changes, child welfare agencies are slow to adopt new priorities and incorporate kinship care into everyday practice. Moreover, when relatives are engaged late in the process, weeks or months after removal, child welfare agencies are often reluctant to move the child from the current foster care placement to a different placement with a relative.

A newer federal law places additional emphasis on placement with relatives. The federal Preventing Sex Trafficking Act of 2014 aimed to eliminate Another Planned Permanent Living Arrangement (APPLA) as a permanency option. Social workers recommending APPLA must now provide "documentation of intensive, ongoing, unsuccessful efforts for family placement . . ." at each permanency hearing. This requirement, if enforced, may also help to limit overuse of residential treatment and group homes. At the permanency hearing, the court must: 1) ask the child about what permanency outcome he or she desires; and 2) make a judicial determination explaining why APPLA is the best permanency plan and provide compelling reasons for why it is not in the child's best interests to return home, be adopted, be placed with a guardian, or be placed with a fit and willing relative. Thus, courts are now required to scrutinize the agency's efforts to finalize any permanency option besides APPLA, prior to approving an APPLA case plan. Faithful adherence to this new requirement should, in theory, result in the near elimination of APPLA as a case plan goal, reduce the number of children in residential placements, and increase the number of youth exiting to permanency.

To increase the use of kinship placements early on in a case, Judge Edwards recommends several adjustments to social work practice. These changes should sound familiar here in Vermont, though DCF may employ the recommended practices inconsistently across the state. These adjustments include "family-centered" social work practices like Family-Group Conferences, Family Safety Planning Meetings, and meaningful engagement of the child and his or her parents in the "front-end" child safety intervention process. Judge Edwards also profiles Allegheny County, Pennsylvania's social services agency. There, social workers have the ability to run background checks on potential relative caregivers in the field and assess potential caregiver's homes as soon as the need for removal is identified. This ensures that the child can be placed with relatives upon entry into custody and without any intervening period spent in the care of strangers. Allegheny County also provides relative caregivers with a variety of services designed to increase placement stability, including training, mentoring, transportation assistance, and respite.

Just over 30% of Vermont children living in out-of-home care reside in kinship care homes, according to data published by the Vermont Department for Children and Families (DCF). Use of kinship care resources varies widely across the state. Some DCF district offices place less than 18% of children with kin and other districts place nearly half of children with kin. The large disparities between districts are likely the result of different practices surrounding kinship care and varying emphasis on its importance. Hopefully, high performing districts can lead the way to greater utilization of kinship resources across the state. In the meantime, it is important for children's attorneys, State's attorneys, and courts to inquire early and often into whether DCF has made efforts to locate and evaluate kinship placements.

For children living in residential placements, the 2014 Preventing Sex Trafficking Act may lend support for transition to less-restrictive community-based settings, especially if the child has been placed in multiple residential programs or has been in a residential setting for an extended period of time. Recall that when APPLA is the goal, the 2014 Act requires DCF to demonstrate that it has worked diligently to locate a family placement for the child. The 2014 Act also requires the court to make certain findings about the availability of family placements. As of January 2017, DCF had over 60 children placed in out-of-state residential programs. Although many of these children were placed in neighboring states, many others are placed as far away as Tennessee, Florida, and Texas. Some of these children have been in residential settings for several years, and many will age out of DCF custody and transition into adulthood without having lived in a family and without permanent connections. The outcomes for such youth are often extremely poor.

Permanent connections with caring adults ensures that transition-age youth have people to support them as they begin to navigate the adult world. Likewise, a portion of adolescence spent in family or community-based settings helps to prepare youth for the challenges of increased freedom and independence that come with adulthood.