ADOPTION AND PERMANENCY GUIDELINES

Improving Court Practice in Child Abuse and Neglect Cases

NATIONAL COUNCIL OF JUVENILE
AND FAMILY COURT JUDGES
Reno, Nevada

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Table of Contents

INTRODUCTION **1**
A. Historical Perspective 2
B. Need for the *ADOPTION AND PERMANENCY GUIDELINES* 3
C. Purpose of the *ADOPTION AND PERMANENCY GUIDELINES* 3
D. Scope of the *GUIDELINES* 4
E. Key Principles 4
- Avoid Unnecessary Separation of Children and Families 5
- Make Timely Decisions in Child Abuse and Neglect Cases 5
- Provide Close Judicial Oversight of Abuse and Neglect Cases and Practice One Case/One Judge 5
- Provide Competent and Adequately Compensated Representation 5
- Implement Systems to Gather, Analyze and Use Information to Improve Court and Child Welfare Processes 6
- Engage in Judicial Leadership 6
- Promote Collaboration with Child Welfare Professionals and the Community 6
- Recognize Prioritized Preferences for Permanency 6
- Ensure Timely Decision-Making and Placement Stability 6
  - Concurrent Planning 7
  - Alternative Dispute Resolution Techniques 7
- Believe in the Adoptability of All Children 7
- Consider Adoption with Contact 7
- Provide Expedited Appeals 7
- Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Adoptive Placements and Timely Adoption Finalizations 7
- Understand the Need for Post-Adoptive Subsidies and Services 8

Endnotes 8

CHAPTER I: PERMANENCY PLANNING **9**
A. Court Best Practices Prior to the Permanency Hearing 10
- Early Identification and Involvement of Absent Parents 10
- Early Identification and Involvement of Relatives 10
- Ensuring Quality Plans and Services are Available to the Family to Assist with Reunification 11
- Complying with the Interstate Compact on the Placement of Children 11
- Complying with the Indian Child Welfare Act 11

B. Child Welfare Best Practices Prior to the Permanency Hearing 12
- Concurrent Planning 12
- Use of Foster-Adopt Homes 13
- Family Decision-Making 13

C. Important Permanency Definitions 14
- Preferred Options for Permanency 14
- Permanency Characteristics 14
- Compelling Reasons 15

Endnotes 16

Table of Contents

CHAPTER II: THE PERMANENCY HEARING..... 17
A. Purpose of the Hearing..... 18
B. Timing of the Hearing..... 18
C. Preparation for the Hearing 19
- The Child Welfare Agency and Other Parties..... 19
- The Court..... 19

D. Conducting the Hearing..... 19
- Who Should be Present..... 20
- Questions that Must be Answered 20
  - In All Cases, What are the Child's Special Needs? 20
  - If Reunification is Recommended..... 20
  - If Termination of Parental Rights and Adoption are Recommended..... 21
  - If Permanent Guardianship or Permanent Custody is Recommended..... 21
  - If Another Plan is Being Recommended 21

E. Findings and Conclusions..... 22
Endnotes 22

CHAPTER III: TERMINATION OF PARENTAL RIGHTS HEARINGS 25
A. Purpose..... 26
B. Timing of the Process 26
- Timing Issues Regarding the Decision to Pursue Termination of Parental Rights 26
- Timing Issues Regarding Filing and Hearing the TPR Petition 27

C. Best Practices for Reducing Delays From Trials and Appeals..... 27
- Mediation and Other Pre-Trial Negotiations 27
- Adoption With Contact 28

D. Filing the Termination of Parental Rights Petition 29
- Content of the Petition..... 29
- The Court's Response to the Filing of the Petition..... 30

E. Conducting the Hearing..... 30
- Information the Court Should Have..... 30
- Who Should be Present..... 31

F. Questions that Must be Answered to Determine Whether Grounds Exist for Termination of Parental Rights and Whether Termination and Adoption are in the Best Interests of the Child 31
- When Mediation Results in Voluntary Relinquishment of Parental Rights..... 31
- When the Case Goes to Trial 32

G. Questions that Must be Answered to Determine Whether Reasonable Efforts are Being Made Toward Adoption and to Finalize the Permanent Plan 32
- In All Cases, What are the Child's Special Needs? 33
- If the Plan is Relative or Foster Home Adoption 33
- If an Adoptive Home has been Recruited..... 33
- If an Adoptive Home Must be Recruited 33

H. Findings and Conclusions..... 34

I. Avoiding Appeals 34
Endnotes 35

CHAPTER IV: THE APPEALS PROCESS 37
A. Purpose 38
B. Timing of the Process 38
C. Prior to the Hearing 39
D. Caseflow Management Considerations 39
E. Information the Court Should Have 39
F. Conducting the Hearing 40
G. The Final Order 40
H. Proposed Appellate Time Lines 40
Endnotes 40

CHAPTER V: ADOPTION ISSUES JUDGES MUST UNDERSTAND PRIOR TO CONDUCTING REVIEW HEARINGS THAT FOLLOW TERMINATION OF PARENTAL RIGHTS 41
A. The Multiethnic Placement Act 42
B. Adoption Recruitment Best Practices 43
C. Inter-jurisdictional Adoptions and Interstate Compact on the Placement of Children 44
D. Adoption Assistance Subsidies 46
E. Non-Recurring Adoption Expenses and Medical Expenses 47
F. Post-Adoptive Services 48
G. Adoption Assistance Agreements 50
Endnotes 50

CHAPTER VI: REVIEW HEARINGS THAT FOLLOW PERMANENCY HEARINGS OR TERMINATION OF PARENTAL RIGHTS HEARINGS 51
A. Purpose 52
B. Timing of Review Hearings 52
- Timing of Review Hearings for Children for Whom Adoptive Homes Must be Recruited 53

C. Preparation for the Hearing 54
- The Child Welfare Agency and GAL or CASA 54
- The Court 54

D. Conducting the Hearing 54
- Who Should be Present 55
- Questions that Must be Answered 55
  - In All Cases, what are the Child's Special Needs? 55
  - If Reunification is the Permanent Plan 55
  - If Permanent Guardianship or Permanent Custody is the Permanent Plan 56
  - If Relative or Foster Home Adoption is the Permanent Plan 56
  - If an Adoptive Home has been Recruited Since the Last Hearing but the Child has not yet Been Placed in the Home 56
  - If the Child Has Been Placed in an Adoptive Home Since the Last Hearing 57

Table of Contents

If the Child Has Been in the Adoptive Home Since the Last Hearing 58
If the Agency is Recruiting an Adoptive Home 58
If Another Plan is the Permanent Plan 58
E. Findings and Conclusions 59
Endnotes 59

CHAPTER VII: HEARINGS TO FORMALIZE CASE CLOSURE AND FINALIZE ADOPTIONS 61
A. Purpose 62
B. Timing of the Hearing 62
C. Preparation for the Hearing 62
- The Child Welfare Agency and GAL or CASA 62
- The Court 62

D. Conducting the Hearing 63
- Who Should Be Present 64

E. Questions That Must Be Answered 64
F. Findings and Conclusions 64
Endnotes 65

MASTER CHECKLISTS 67

A. Permanency Hearing 67
B. Termination of Parental Rights Hearings 71
C. Review Hearings That Follow Permanency Hearings or Termination of Parental Rights Hearings 75
D. Hearings to Formalize Case Closure and Finalize Adoptions 81

GLOSSARY 83

APPENDICES 89
A. Judicial Monitoring of the Child Abuse and Neglect Caseload 91
B. The Adoption and Safe Families Act 93
C. Interstate Compact on the Placement of Children 95
D. Sample Border State Agreement 101
E. Profiles of Children With Special Needs for Whom Adoptive Homes Were Successfully Recruited 105
F. First Monday TPR Reviews for Children in Need of Adopting Homes 109
G. List of State, Regional and National Adoption Exchanges 111
H. Post-Adoption Contact Statutes 119
I. Statutes and Court Rules that Expedite the Appellate Process 125
J. Adoption Disruption 127
K. Reports From Two NCJFCJ Model Courts 129
- The Expedited Adoption Project of Multnomah County, Oregon 129
- The Hamilton County Juvenile Court Expedited Adoption Project in Cincinnati, Ohio 132

L. Post-Adoptive Services in Ohio and Illinois 135
M. National Organizations and Resources 139

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INTRODUCTION

TABLE OF CONTENTS

A. Historical Perspective 2
B. Need for the *ADOPTION AND PERMANENCY GUIDELINES* 3
C. Purpose of the *ADOPTION AND PERMANENCY GUIDELINES* 3
D. Scope of the *GUIDELINES* 4
E. Key Principles 4
- Avoid Unnecessary Separation of Children and Families 5
- Make Timely Decisions in Child Abuse and Neglect Cases 5
- Provide Close Judicial Oversight of Abuse and Neglect Cases and Practice One Case/One Judge 5
- Provide Competent and Adequately Compensated Representation 5
- Implement Systems to Gather, Analyze and Use Information to Improve Court and Child Welfare Processes 6
- Engage in Judicial Leadership 6
- Promote Collaboration with Child Welfare Professionals and the Community 6
- Recognize Prioritized Preferences for Permanency 6
- Ensure Timely Decision-Making and Placement Stability 6
  - Concurrent Planning 7
  - Alternative Dispute Resolution Techniques 7
- Believe in the Adoptability of All Children 7
- Consider Adoption with Contact 7
- Provide Expedited Appeals 7
- Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Adoptive Placements and Timely Adoption Finalizations 7
- Understand the Need for Post-Adoptive Subsidies and Services 8

Endnotes 8

Introduction

A. Historical Perspective

As recently as the 1970s, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from home or placed under court or agency supervision. Children were often being removed from their homes unnecessarily and children who could not be safely returned home lingered in temporary care for years. These children endured multiple placements and often aged out of the child welfare system without family ties and with inadequate skills to function as adults. court involvement in cases was often a "rubber stamp" for agency recommendations and plans.

During the 1980s, with the implementation of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), juvenile and family court judges became responsible for ensuring that a safe, permanent, and stable home was secured for each abused or neglected child coming before the court. The law required courts to evaluate the reasonableness of services provided to preserve families, to hold periodic review hearings in foster care cases, to adhere to deadlines for permanency planning decisions, and to comply with procedural safeguards concerning placement and visitation.

By the early 1990s, most juvenile and family courts were beginning to recognize the need for timely decision-making and active case oversight for abused and neglected children. Because of a lack of resources, they were struggling to implement P.L. 96-272. In order to assist juvenile and family courts to successfully carry out these new responsibilities, the Permanency Planning for Children Department (PPCD) of the National Council of Juvenile and Family Court Judges (NCJFCJ) established the Victims Act Model Court Project (hereafter referred to as the Model Court Project) in 1992.[1]

In 1995, the NCJFCJ Model Court Project published a hands-on benchbook — *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*. This benchbook, developed by judges, court administrators, attorneys and child welfare experts, and endorsed by the National Conference of Chief Justices and the American Bar Association, became the blueprint for the NCJFCJ Permanency Planning for Children Department's efforts to provide training and technical assistance to courts across the country. As a result of these efforts, hundreds of judges began to embrace their new responsibilities and started re-designing their systems to make significant, systemic improvements. Their courts began to demonstrate that a *self-disciplined court could discipline the whole system*.[2]

The NCJFCJ Permanency Planning for Children Department began to select "Model Courts" which agreed to focus on improving practice in child abuse and neglect cases by incorporating the principles outlined in the *RESOURCE GUIDELINES* and using innovative alternative dispute resolution methods. Lead judges in each model court agreed to take a critical look at their practices and institute reforms where needed to improve court performance and enhance outcomes for children and families. Today, these model courts include 22 jurisdictions in 20 states, representing large urban centers such as Chicago, Los Angeles, Miami and New York City, as well as smaller communities such as Alexandria, Virginia, and Reno, Nevada.[3]

At approximately the same time, the U. S. Department of Health and Human Services (HHS) Children's Bureau implemented the Court Improvement Program. This program made funds available to each state to create court and interagency teams to assess their systems serving neglected and abused children and to develop and implement improvements.

As a result of these efforts by NCJFCJ, HHS and courts across the country, significant gains were made during the 1990s to reduce the time children spent in temporary care, resulting in many children reaching the point of safe reunification in a much shorter period of time.[4]

B. Need for *ADOPTION AND PERMANENCY GUIDELINES*

One outcome of this progress in improving the court process for abused and neglected children, however, has been an increase in the number of children who have been identified as unable to be successfully reunified with their parents. These children are in need of a new permanent home as soon as possible. Unfortunately, there has not yet been an equal increase in the number of children legally freed for new families nor in the number of adoptive homes available for these children.

"On any given day in America, 520,000 children are living in foster care. Of those, 110,000 have a permanent plan of adoption, 20,000 have been freed for adoption and are in an adoptive placement, and 20,000 are free for adoption but still waiting to be placed in an adoptive home."[5]

In order to provide these children with a permanent family, the court must ensure that in most instances parental rights are terminated in a timely manner. The court must also ensure that a new, legally secure family is identified, adequately prepared for their responsibilities, and adequately supported to meet this important lifelong role. To help courts and agencies with this new challenge, both the federal government and the NCJFCJ Permanency Planning for Children Department have turned their attention to the issue of adoption.

The Adoption and Safe Families Act (ASFA) became law in November 1997.[6] In addition to placing an emphasis on the child's health and safety, it identifies circumstances under which reasonable efforts to reunify are not required and shortens the time frames for initiating proceedings for the termination of parental rights. ASFA also requires states to document to the court a compelling reason for any permanent placement other than reunification, adoption, legal guardianship or placement with a relative and provides incentive payments to states to encourage adoption of children out of foster care.[7] The White House Adoption 2002 Initiative seeks public and private sector support for a nationwide increase in adoptive placements.

The NCJFCJ Permanency Planning for Children Department also responded to the need for shortened time frames and improved adoption processes by creating the Expedited Adoption Project in 1997.[8] This project brought together practice experts from juvenile and family courts across the country along with attorneys, child welfare experts and adoption experts to create the sequel to the *RESOURCE GUIDELINES*. The hope is that this document, the *ADOPTION AND PERMANENCY GUIDELINES*, will assist juvenile and family courts to make the same progress in achieving timely adoptions for children as the *RESOURCE GUIDELINES* accomplished with timely reunification for children.

C. Purpose of the *ADOPTION AND PERMANENCY GUIDELINES*

The purpose of the *ADOPTION AND PERMANENCY GUIDELINES* is to set forth the essential elements of best practice for the court processes that lead to a permanent home for children who cannot be reunified with their families.

Unfortunately, extensive research does not exist to help courts make the difficult decisions involved in these processes. When objective data from research exists that is specifically related to this population and the topics addressed in these *GUIDELINES*, the research is used in making best practice recommendations. However, in most instances, recommendations of best practice are drawn from the collective experiences of judges and other professionals who have spent many years managing numerous cases involving abused and neglected children. These professionals have had both the joyful and heart-breaking experiences of seeing the consequences

of decisions made by courts and child welfare agencies.

This collective experience comes together in the *ADOPTION AND PERMANENCY GUIDELINES* for the purpose of defining the role of the court, and to ensure that everything possible is done to achieve timely permanence for every abused or neglected child who cannot or should not be reunified with his or her family. The *GUIDELINES* define the court's role in holding parties accountable to fulfill their responsibilities to the child. It describes the court's responsibility to identify system barriers to successful adoption and to actively advocate for needed system improvements.

D. Scope of the *GUIDELINES*

The *GUIDELINES* describe each step between the point at which the court determines reunification is not an option and the point at which the juvenile and family court is no longer involved in the case because the child has achieved permanence in a new home. These steps include:

- Permanency Planning
- The Permanency Hearing
- Termination of Parental Rights
- The Appeals Process
- Adoption Related Issues Judges Must Understand Prior to Conducting Review Hearings that Follow Termination of Parental Rights
- Review Hearings that Follow Permanency Hearings or Termination of Parental Rights
- Hearings to Formalize Case Closure and Finalize Adoptions

The beginning point in this process can occur at the time of the filing of the original abuse or neglect complaint in certain circumstances (e.g., the parent has caused the death of a sibling), or at the point that reunification attempts have failed or are at risk of failing. The ending point can occur at the time a relative, foster parent or other non-relative adoption is finalized; or it can occur at the point that a permanent and legally secure custody or guardianship with a relative or non-relative is finalized and court involvement ends.

It is important to note that these *ADOPTION AND PERMANENCY GUIDELINES* are written to address the issue of permanency for abused and neglected children. They are not written to address the topic of voluntarily surrendered infants. Abused and neglected children are often toddlers and older children for whom reunification has been ruled out. Most have special needs due to prior experiences of neglect or abuse. As a result, the court's role in handling these cases is more extensive and specialized than with voluntary infant adoptions.

It is also important to note that the Indian Child Welfare Act (ICWA) sometimes mandates requirements for Indian children that are different from the recommendations in these *GUIDELINES*. Throughout the document we attempt to identify all such areas either within the text itself or by endnote.

Part of the court's role in these cases is to anticipate the post-adoptive challenges that will occur for many families who adopt abused and neglected children with special needs. The *ADOPTION AND PERMANENCY GUIDELINES* will explore the court's responsibility to help ensure that adequate post-adoptive subsidies and services exist for every eligible adopting family and that these services are easily accessible when needed. Without this step, the court would fail to do everything possible to make sure that all children have the best chance possible of long-term success with new families.

E. Key Principles

All of the key principles to be discussed rest on one foundational element:

> All children have the right to a healthy and safe childhood in a nurturing, permanent family, or in the closest possible substitute to a family setting.[9]

The majority of abused and neglected children who reach the point of termination of parental rights and adoption have previously spent many months

in the temporary custody of a child welfare agency. During these months, a court-approved plan of reunification with the child's family was attempted. This process is defined in detail in the *RESOURCE GUIDELINES: Improving Court Practice in Child Abuse & Neglect Cases*. If a court has not already implemented most of the key principles and processes described in the *RESOURCE GUIDELINES*, the necessary foundation for implementing the recommendations in the *ADOPTION AND PERMANENCY GUIDELINES* will not exist. Key Principles from the *RESOURCE GUIDELINES* that are most notable for this document include the following:[10]

- **Avoid Unnecessary Separation of Children and Families**

Consistent with child safety, families should be preserved, reunified and strengthened so they can successfully rear their children. Judges must use their legal authority to ensure that social and protective services are immediately available to families whose children have been placed at risk of abuse or neglect so that parents have a fair opportunity to become competent and safe caretakers. The services should be easily accessible, adequate, appropriate and delivered in a culturally competent framework. The child's family, barring insurmountable safety issues, is usually the first choice for permanency.

- **Make Timely Decisions in Child Abuse and Neglect Cases**

The prolonged uncertainty for children of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child's development of trust and security. Courts must use tight case flow management practices, including full and complete knowledge at the earliest possible point in the court proceeding. This is often referred to as "front-loading" the system and includes practices such as early identification and involvement of fathers and other relatives, as well as early voluntary involvement of the family in remedial services. Other important caseflow management practices include credible court dates with tight control over continuances and rapid distribution of the court's orders to all parties. These practices avoid unnecessary delays in the court process.

- **Provide Close Judicial Oversight of Abuse and Neglect Cases and Practice One Family/One Judge**

It is strongly preferred that the same judge or judicially supervised magistrate presides over the entire child welfare case from the preliminary protective hearing through permanency, including adoption. Following a case from start to finish offers the judge an opportunity to see the impact decisions have made on the child, creates the best possibility of ensuring that case plans relate to the specific needs of the child and family and allows for development of perspective about cases. Judicial monitoring must continue until a permanent home is finalized and the court can close its case. Judges must use the full extent of their authority to protect children and to keep children and other family members safe. Judges must hold all participants in the proceedings, including state and local agencies, accountable to provide reasonable and necessary services to children and families.

- **Provide Competent and Adequately Compensated Representation**

All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent and adequately compensated attorneys or guardians *ad litem*. Such representation should be available at the earliest opportunity, preferably at the first hearing, but no later than the second hearing after the petition is filed.

- **Implement Systems to Gather, Analyze and Use Information to Improve Court and Child Welfare Processes**

Courts must understand how they are managing their caseloads in terms of numbers, time lines and outcomes for abused and neglected children. They must use technology to create management information systems that can ensure compliance with statutory time limits, track overall compliance with goals, analyze trends and evaluate the effectiveness of programs and policies. Such systems not only provide important research and evaluative information to help the court improve outcomes for children, but also provide information to justify increased resources when needed.[11]

- **Engage in Judicial Leadership**

Judges must ensure that their courts provide efficient and timely justice for children and their families. They must ensure that their juvenile and family court system has the capacity to collect, analyze, and report aggregate data relating to judicial performance, including the timely processing of cases to achieve permanency for children under court jurisdiction. Judges must convene and engage the community in meaningful partnerships to promote safety and permanence for children.

- **Promote Collaboration with Child Welfare Professionals and the Community**

The juvenile court must encourage and promote collaboration and mutual respect among all participants in the child welfare system, including social service agencies, prosecuting attorneys, attorneys for parents, guardians *ad litem,* tribal representatives and staff/community members, court staff, Court Appointed Special Advocate (CASA) volunteers, citizen reviewers and any other relevant participants. Judges must also help the community to understand that child protection is a community responsibility. By regularly convening child welfare professionals, and by regularly appearing in the community to inform the community about the child welfare system and to encourage volunteer participation, judges can set a tone of cooperation and mutual responsibility throughout the professional and private communities in their jurisdictions.

The *ADOPTION AND PERMANENCY GUIDELINES* build upon these principles from the *RESOURCE GUIDELINES*. In addition, they add seven key principles specific to the part of the court process that begins when reunification is not appropriate or deemed at risk, and ends with the finalization of a new and legally secure permanent family:

- **Recognize Prioritized Preferences for Permanency**

It is critical for judges to understand that foster care is a temporary setting and not a place for children to grow up. If the preferred option for permanency – reunification with the biological parents – is not possible, continuation of foster care is rarely an acceptable alternative. Nor is a living situation with a relative that is not legally secure or permanent an acceptable alternative.

When reunification is not appropriate, the next preferred option is adoption by a family with whom the child has a positive existing relationship, such as a relative, foster parent or adopting family of a sibling. The next preferred option is adoption by a family recruited for the child.[12] A court should consider permanent custody or permanent guardianship as a permanent plan only when adoption has been ruled out or under other exceptional circumstances. In order to meet the definition of permanency, custody or guardianship must provide certain legally secure components.[13]

- **Ensure Timely Decision-Making and Placement Stability**

At this stage in the proceeding, timely decision-making is more important than ever. Usually substantial time has passed pursuing reunification. The

clock is ticking for these children and everything possible must be done to provide them with a new permanent home as quickly as possible. Examples of methods to reduce unnecessary delays that were not previously covered in the *RESOURCE GUIDELINES* include:

Concurrent Planning – When, during the reunification process, a child's chances of successful reunification are deemed to have a high risk of failure, judges should make sure that the agency is pursuing concurrent planning.[14] Such children should be placed either with relatives who will adopt or in foster-adopt homes.[15]

Alternative Dispute Resolution Techniques – All juvenile and family court systems should have alternative dispute resolution processes available to the parties so that trials can be avoided whenever possible and appropriate. Such systems should include family group conferencing, mediation and settlement conferences.[16] These systems expedite sound decision-making and avoid lengthy appeals because they often produce full or partial agreement of the parties.

- **Believe in the Adoptability of All Children**

Judges should not use the concern that an adoptive home may not be found for a child as a reason not to move forward with termination of parental rights.[17] Termination of parental rights does not mean that prior positive relationships between the child and other adults or siblings must be discontinued. Failure to proceed with termination of parental rights in most cases when a child cannot be safely reunified practically ensures that the child will not achieve permanency.

- **Consider Adoption with Contact**

This term describes a variety of arrangements that involve the birth family, other individuals who were a positive part of a child's life before entering an adopting home, and the child who now resides with adopting parents. This contact occurs both prior to and after the adoption is finalized. It can range from sending birthday cards to the child or providing pictures to the biological parents (directly or through neutral third parties) to regular visitation. The determining factor as to whether adoption with contact is appropriate must always be the best interests of the child, not the desires of the adults. Adoption with contact recognizes that many children who move into new families through adoption are old enough to have established strong relationships with biological parents, siblings and others and that completely severing these relationships may not be in the child's best interests.[18]

- **Provide Expedited Appeals**

An expedited appeals process for cases involving termination of parental rights and adoption is crucial to permanency. Whether accomplished by court rule or by legislation, appellate courts at all levels should give the highest priority to hearing these appeals and issuing final decisions.[19]

- **Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Adoptive Placements and Timely Adoption Finalizations**

When parental rights have been terminated, the court must commit to frequent review of the case until the child has been placed in an adoptive home and the adoption has been finalized. For the group of children for whom adoptive homes require intensive recruitment, these reviews are critical. Judges must move out of the courtroom and into the community, raising community awareness that these are **our** children who need new families. Judges must engage the community in the effort to find a permanent home for every child.

- **Understand the Need for Post-Adoptive Subsidies and Services**

The availability of post-adoptive subsidies and services can be the determining factor in the long-term success of many adoptions of children with special needs. Judges should have a vested interest in the quality, quantity and accessibility of post-adoptive services available to families who adopt children with special needs.[20]

If the court and child welfare systems are working effectively and following these key principles, children will be less damaged by the uncertainty of their existence and by multiple moves at the point they are legally freed for adoption. The lives of these children will be significantly improved. And the number of children who find themselves with parental rights terminated but no new permanent home in sight will be significantly reduced over time.

Endnotes

1. The Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice helped to fund this initiative.

2. Quote from Judge David E. Grossmann of the Hamilton County Juvenile Court, Cincinnati, Ohio.

3. For more detailed information on Model Courts, refer to the NCJFCJ publication Technical Assistance Bulletin: *Child Victims Act Model Courts Project Status Report 1999;* and the *OJJDP Fact Sheet: Model Courts Serve Abused and Neglected Children,* January 1999, #90.

4. 67% of children in foster care are reunited with birth parents, according to the GAO report, *FOSTER CARE: HHS Could Better Facilitate the Interjurisdictional Adoption Process,* November 1999.

5. Carol Williams, D.S.W., Deputy Commissioner, U.S. Department of Health and Human Services, and Director, Children's Bureau, June 1998.

6. P.L. 105-89 amended Titles IV-B and IV-E of the Social Security Act. See Appendix B for a summary of ASFA.

7. It is important to note that ASFA does not amend any of the requirements of the Indian Child Welfare Act.

8. The American Honda Foundation and the Dave Thomas Foundation for Adoption have assisted with funding for the Expedited Adoption Project.

9. *Key Principles for Permanency Planning for Children*, Technical Assistance Brief, NCJFCJ, Reno, Nevada, October 1999.

10. In addition to the *RESOURCE GUIDELINES*, elements of these key principles are also taken from the NCJFCJ *Key Principles for Permanency Planning for Children,* Ibid.

11. See Appendix A: Judicial Monitoring of the Child Abuse and Neglect Caseload for additional information.

12. It should be noted that for Indian children, the first preferred placement is with extended family members when available, with members of the child's tribal community or with a family identified by the child's tribe. Other placements should be a last resort. Because certain tribes do not believe in the termination of parental rights, adoption should not be required when the tribe can present a safe alternative plan.

13. See Chapter I, Section C for the required components of a permanent relationship.

14. See Chapter I, Section B for a more detailed description of concurrent planning.

15. Foster-adopt homes are homes where the foster parent will become the adopting parent if the parental rights of the child's parents are terminated and the child becomes legally free for adoption.

16. See Chapter I, Section B and Chapter III, Section C for more details with respect to these techniques.

17. See Appendix E for profiles of children with very special needs for whom adoptive homes were successfully recruited.

18. See Chapter III, Section C and Appendix H for more details with respect to Adoption With Contact.

19. See Chapter IV and Appendix I for more information on expedited appeals.

20. See Chapter V, Section D, E and F, and Appendix L for more information on post-adoptive services and subsidies.

PERMANENCY PLANNING TABLE OF CONTENTS

A. Court Best Practices Prior to the Permanency Hearing 10
- Early Identification and Involvement of Absent Parents 10
- Early Identification and Involvement of Relatives 10
- Ensuring Quality Plans and Services are Available to the Family to Assist with Reunification 11
- Complying with the Interstate Compact on the Placement of Children 11
- Complying with the Indian Child Welfare Act..... 11

B. Child Welfare Best Practices Prior to the Permanency Hearing 12
- Concurrent Planning 12
- Use of Foster-Adopt Homes 13
- Family Decision-Making 13

C. Important Permanency Definitions 14
- Preferred Options for Permanency..... 14
- Permanency Characteristics 14
- Compelling Reasons 15

Endnotes 16

Chapter I: Permanency Planning

To achieve timely permanency for an abused or neglected child, the focus on permanency must begin when the court and child welfare agency first become involved with the family. Certain critical elements must be thoroughly examined and clearly documented in the court record well before the permanency hearing or their oversight can seriously impede timely permanency for a child.

Child welfare agencies can implement certain practices that have a dramatic, positive impact on a child's options for permanency and the timeliness of the permanent plan. It is important for judges to understand these practices so that the court strongly encourages and supports such efforts well before the permanency hearing.

Finally, when judges must make permanent plan decisions, it is important that they understand three concepts – what are the preferred options for permanency, what makes a home permanent, and what does ASFA mean by "compelling reasons" why it would not be in the best interests of a child to proceed with adoption or legal guardianship.

Because of the importance of these preparatory elements to successful permanency hearings, this chapter will:

- Summarize the critical elements courts must fully explore early in the case so that they do not stall the permanency process;
- Review child welfare practices of concurrent planning, use of foster-adopt homes and family decision-making; and
- Explain the permanency concepts of preferred options for permanency, what makes a home permanent, and compelling reasons.

A. Court Best Practices Prior to the Permanency Hearing

The *RESOURCE GUIDELINES*: *Improving Court Practice in Child Abuse & Neglect Cases* provides important detail about the steps from the time a child is removed from the home through the determination of whether reunification can occur. It is important to briefly review five of these issues because they can cause significant delays at the time of the permanency hearing if not adequately dealt with early in the case. More detailed information about each issue can be found in the *RESOURCE GUIDELINES*. These five issues are:

- Early identification and involvement of absent parents;
- Early identification and involvement of relatives;
- Ensuring availability of quality plans and services to the family to assist with reunification;
- Complying with the Interstate Compact on the Placement of Children; and
- Complying with the Indian Child Welfare Act.

Early Identification and Involvement of Absent Parents

At the very first hearing on a petition alleging abuse or neglect, efforts should begin to include all parents involved in the life of the child and to locate absent parents. Putative fathers must be located and brought into the court process as quickly as possible. Timely resolution of paternity issues is both in the best interests of the child and essential to avoiding delays at subsequent points in the court process. The court must ensure that the efforts of the child welfare agency are thorough and diligent in locating and involving all legal and putative parents.

Early Identification and Involvement of Relatives

It is equally important, particularly when a child must be removed from the home, to identify all relatives of the mother, father or putative father(s) and to investigate all of these relatives as potential caretakers for the child. Courts should not make the presumption that because the parents have serious problems, all of the relatives must also have serious problems. Relatives generally know the child better and often have a familial commitment to the

care of the child. An appropriate relative who is willing to provide care is almost always a preferable caretaker to a non-relative.[21]

When courts and agencies have not conducted thorough relative searches and reunification is ruled out, they can be faced with the difficulty of deciding between adoption by a foster parent with whom the child has bonded and a relative who is appropriate but did not previously know of the child's need for a permanent home. If, however, the relative search was thorough and a relative who has previously chosen not to come forward changes his or her mind, the preference for keeping the child with relatives diminishes. When courts and agencies do their job thoroughly, they should not have to choose between a foster parent adoption or a relative adoption.

Ensuring Quality Plans and Services are Available to the Family to Assist with Reunification

If the needs of a child and family have not been thoroughly assessed and appropriate services made available to families to assist with reunification, the parents may have a valid argument at the permanency hearing that reasonable efforts have not been made to reunify them with their child. This situation can cause a significant delay in achieving permanency for the child by delaying the child's reunification, delaying the court's ability to terminate parental rights, or by setting up the possibility of reversal of the termination by the court of appeals.

Complying with the Interstate Compact on the Placement of Children (ICPC)[22]

The ICPC is a statutory law, enacted uniformly by state legislatures in all 50 states, the District of Columbia and the U.S. Virgin Islands for the purpose of ensuring that children are protected when placed between states. Since jurisdiction of a child ends at the state line, without the ICPC the public authorities in the receiving state would not be obligated to make pre-placement investigations or supervise placements. Nor would the sending state be financially and legally responsible for the child until termination of the interstate placement.

Termination of the ICPC placement can occur when the child returns to the sending state, the receiving state agrees to termination, the child is adopted or the child reaches the age of majority. Otherwise, dismissal of state custody of a child who is to be placed out-of-state or dismissal of custody of a child in an interstate placement is a violation of state law.

When courts and agencies place children out-of-state without following the ICPC, the receiving state may not do a home assessment. This sets up the possibility of children being placed at risk and without adequate services. This is not only harmful to the child, but could potentially disrupt a placement that with the proper services could become a permanent home. Such a placement creates the possibility of serious delays in achieving permanency should disputes occur between the sending and receiving states.

Complying with the Indian Child Welfare Act (ICWA)

The Indian Child Welfare Act of 1978 (ICWA)[23] was passed to address the removal of Indian children from their homes and their placement with non-Indian families. At that time, Indian children were becoming involved with the child protection system at four to eight times the rate of non-Indian children.

ICWA establishes special procedural and substantive safeguards to protect the interests of Indian children and families, including tribal determination of who is an Indian child, full tribal participation in planning and decision-making in the child protection case, placement preferences for extended family members and other Indian families identified by the child's tribe, and, when requested, transfer of the child protection case to the child's tribal court.

To prevent these procedures from causing Indian children to linger in foster care, courts should:

- identify at the earliest possible time whether ICWA applies to one or more children in a case;[24]
- have procedures in place for immediate notice of the pendency of a case to the child's Indian tribe;
- open lines of communication with the tribal representative to ensure that complete information is exchanged and that time delays are avoided;
- be familiar with and follow the procedural and substantive requirements set out in ICWA; and
- make sure that all notices, consents, and "active efforts" are documented in accordance with the requirements of the Act.

When courts fail to ensure that Indian children are identified and the requirements of ICWA are followed from the beginning of the court process, and issues concerning ICWA compliance are raised for the first time at the permanency hearing, the court may have failed to identify appropriate care options for the child. This oversight may delay the court's ability to terminate parental rights or otherwise provide for a permanent plan for the child, and may set up the possibility of reversal of a termination by the court of appeals.

B. Child Welfare Best Practices Prior to the Permanency Hearing

Since the *RESOURCE GUIDELINES* were published in 1995, the practices of concurrent planning, use of foster-adopt homes and family decision-making have been implemented in many jurisdictions. These child welfare agency tools have the capacity to significantly reduce the length of time children spend in limbo waiting for the court to make a decision on their permanent plan. They also have the capacity to create options for permanency that might otherwise not be available.

Concurrent Planning

Concurrent planning is based on the concept that it is possible to predict risk of failure of reunification for a family. Issues such as abandonment, serious physical abuse, previous history of termination of parental rights, previous births of drug-affected newborns, numerous convictions for serious crimes, and other factors are indicators of high risk for reunification. When the risk is high, concurrent plans of reunification and adoption or some other appropriate, permanent, legally secure alternative should be pursued. When reunification is either likely or is not indicated, a single alternative plan should be implemented.

The model of concurrent planning was developed with the expectation that social workers involved in the process would have very low caseloads.[25] It is designed for implementation during the first 90 days of a case. Some of the key elements of concurrent planning are:

- full disclosure of the concurrent plans to parents as soon as the decision is made; in the case of an Indian child, full disclosure must also be made to Indian custodians and the child's tribe;
- placement of the child in a relative-adopt or foster-adopt home to reduce the number of times the child must move;[26]
- strict time limits on case progress and scheduling of hearings;
- active efforts to have regular and meaningful visitation between parent and child;
- involving parents in planning for the future of their children if they cannot be with their children;
- detailed small steps to accomplish the plan, in weekly and monthly increments, accompanied by parental record-keeping and frequent court reviews;
- progress measured by behavior, documented in reports submitted to the court;
- excellent social work, supported by training, consultation and reasonable caseloads; and

- defining success by timely permanency, whether it is reunification or the alternate plan.

In order to ensure the occurrence of good faith efforts at reunification under concurrent planning, it is critical that foster and relative families receive additional training and that interactions between the foster family or relative, the birth family and the child are carefully monitored. Using family decision-making or other means of actively involving the extended family will help to ensure that active and reasonable efforts are made to reunify *and* the focus on the child's best interests is maintained.

When concurrent planning is used, either the parents should be ready for the child's return or a filing of termination of parental rights should be prepared prior to the time of the permanency hearing. If reunification fails, the child should already be in the home that will become the adoptive home.

Use of Foster-Adopt Homes[27]

"The dominant feature of the special needs[28] adoptive family is that the vast majority of them have been foster parents first."[29] This is a vast change over practice in the 1950s, when foster parents were discouraged from forming attachments with foster children and children were moved regularly to avoid such attachments. We now know that multiple moves break the bonds of trust and attachment formed by the child and consequently, multiple moves harm the child. Multiple moves compound the original trauma of abuse and neglect, often leading to long-term adjustment and attachment difficulties.

Multiple placements can be avoided for a child who cannot be placed with relatives by using foster-adopt homes, also called legal risk homes or resource homes. These parents have been licensed to provide a temporary foster home, but if the child cannot be reunified with the birth family, then the home becomes the adoptive home for the child. Risk placements of this nature are specifically authorized under ASFA.

Family Decision-Making

The purpose of this best practice technique is to build better alliances among the family, the child welfare agency, the child's tribe, where applicable, and the court for the purpose of providing a safe and permanent home for the child. To avoid the dynamic of the "system" telling the family what they need to do to fix their problems and the family resisting the intrusion, family decision-making builds communication, cooperation and collaboration between the family, the child's tribe, when applicable, and child welfare professionals.

Family decision-making (also referred to as family group conferencing and family unity meetings) recognizes that families have the most information about themselves and have the ability to make well-informed decisions. Instead of acting as adversaries trying to keep information from the authorities, family members become active participants in the decision-making process.

Common values across all models reflect that the process is family focused, strength-based, community-based and culturally appropriate. Details of models vary to some degree but generally involve the following:

- All family members who wish to be present at the family meeting are invited. Assistance, if needed, is provided to enable their attendance. Some models give the parents veto power over which family members may attend. If the child is an Indian child, a representative from the child's tribe should be invited to attend.
- The family can identify other non-family supportive individuals who are also invited.
- An independent coordinator arranges the meeting. The caseworker is present but does not lead the meeting.
- Information is shared by all present, usually starting with the caseworker who presents the facts of the neglect or abuse and related information to the family. The family asks questions of the

caseworker and others to make sure they have full information regarding the issues.

- In most models, the professionals leave the room and allow the family to discuss the case in private. The family's job is to create a plan to ensure that the child is cared for and protected from future harm. In some models, the professionals are permitted to remain in the room.
- The family presents and explains their plan to the professionals, who have veto power. Consensus can usually be reached.[30] The court must ultimately approve the plan.

Use of family decision-making, in addition to assisting with timely reunification, can assist the family to understand when reunification is not possible. Family decision-making can also help overcome resistance to severance of parental ties. By giving the family the opportunity to understand the need for permanency and security for the child in one stable home, family decision-making can open the door for relative or third-party adoption and, when appropriate, create a proposed plan that includes adoption with contact. Because family decision-making usually creates an agreed plan, lengthy trials of termination of parental rights and lengthy appeals can be avoided.

C. Important Permanency Definitions

Judges often face the difficult decision of choosing among options for a child's permanent family. Three concepts assist in evaluating such options:

- Preferred Options for Permanency;
- Permanency Characteristics; and
- Compelling Reasons.

Preferred Options for Permanency

This first concept recognizes that some permanent options are preferred over others and that these preferred options may change over time.[31] The first preferred option for permanency is reunification with the biological parents. The next preferred option is adoption by the relative or foster family with whom the child is living. The next preferred option is adoption by an appropriate family with whom the child has a positive existing relationship (but is not living with) – i.e., a relative, former foster parent or adopting family of a sibling. The next preferred option is recruitment of a new family who will adopt the child. Permanent guardianship or permanent custody is the final preferred option for permanency when adoption is not possible or exceptional circumstances exist, but only if the relationship meets the legally secure components described in the next section.

An example of how these preferences can change over time would be with regard to relatives and foster parents. Relatives are generally the preferred persons to adopt or enter into an alternative permanent relationship. However, if a child has been in a foster home for an extended period of time, is adjusting well, bonding to the foster family and the foster family wishes to adopt, *and* if a relative comes forward after many months and expresses interest, the foster parents would be the preferred option because of their relationship with the child over an extended period of time.

Permanency Characteristics

This second concept is very important to apply when a judge must decide whether a non-adoptive relationship with a relative or non-relative is an acceptable permanent plan. Permanency includes the following characteristics:[32]

- A judicially created relationship that is intended to be permanent and self-sustaining; a relationship that will last through the child's minority and continue with lifetime family relationships;
- A legal relationship that is binding on the adults awarded care, custody and control of the child;
- The parents in the permanent family have the right to protect, educate, have care and control of

the child, have decision-making authority including medical care and discipline and have the power to represent the child in legal proceedings;
- The family is free from supervision by the child welfare agency and monitoring by the court;
- Biological parents cannot petition the court to terminate the relationship; and
- The court will only consider a change of custody if there is clear and convincing evidence that the custodian is unfit or has abused or neglected the child.

Some states have statutes that create permanent relationships in addition to the biological parent relationship or adoption that encompass all of these characteristics. These legal relationships are usually called permanent guardianship or permanent custody.

In contrast, some state statutes provide for temporary custody and allow biological parents to file for a return of custody without any significant change of circumstance of the child. Such statutes do *not* meet the standard of permanence.

It is important to note that even in states that provide legally permanent options of permanent guardianship and permanent relative custody, such relationships may not be eligible for the same subsidies and assistance that would be available with adoption. Lack of such resources could create future instability for a child with special needs.

Compelling Reasons

The third and final permanency planning concept is the ASFA requirement of "compelling reasons." ASFA states that the court must document "a compelling reason for determining that it would not be in the best interests of the child to return home, or be referred for termination of parental rights, or be placed for adoption with a fit and willing relative or with a legal guardian." In other words, if the court decides that the permanent plan for the child is something other than a permanent family, it must explain why.

Courts must be very careful that they do not abuse the option of compelling reasons and use it as an excuse for their reluctance or failure to move forward with permanency. Only in rare circumstances should the court agree to accept compelling reasons. A safe, nurturing, permanent home is in the best interests of all children. The following have been suggested as circumstances that might warrant a court's acceptance of compelling reasons not to order the filing of a termination of parental rights petition at the permanency hearing:[33]

- Services identified in the case plan were not provided in a timely fashion, the services are available, and the services may make it possible for the child to return home safely within several months.

  It should be noted that if this happens, there has been a breakdown not only with the child welfare agency but also in the court's review of the case.
- The parents have made substantial progress in eliminating the problems causing the child's continued placement and it is likely that the child will be able to return home safely within several months.

  In this instance, the court should continue the permanency hearing for up to 90 days, at which time either the child returns home or another permanent plan is determined.
- A relative with whom the child has resided for an extended period in a stable relationship is willing and capable of providing permanent care for the child. However, the relative is opposed to termination of parental rights and adoption and the state does not have a permanent guardianship or permanent relative custody statute.

  In this situation, the court should make additional efforts to assist the relative and family to understand the importance of permanence and the option of adoption with contact.

- The Indian child's tribe is culturally opposed to the concept of termination of parental rights and has offered a safe plan for the child in a home approved by the tribe.

  This situation is acceptable because it complies with ICWA.
- A teenager is firmly opposed to termination of parental rights and adoption and is likely to disrupt any adoptive placement.

  In this circumstance, the court should frequently review the child's current attitudes toward termination of parental rights and look for every opportunity to revisit the question of adoption. The court should ask the youth whether she/he would like a permanent family and discuss the concept of adoption with contact with the youth.
- A child is not capable of functioning in a family setting.

  This exception should require review every 90 days. Even though the child cannot currently live with a family, the court should seek a family who will visit the child and provide a home for visitation and possible future adoption.
- A child has complex and expensive medical or other special needs and the state's adoption subsidy and other benefits are insufficient to reliably cover the costs of the child's present or anticipated care and treatment.

If the child is not in a foster or relative home, the child still needs a committed family who will visit and who will open their home for visits from the child.

Endnotes

21. If the child is an Indian child, the Indian Child Welfare Act establishes a clear placement preference with members of the child's tribal family. See endnote #12.

22. See Appendix C for a more detailed description of ICPC.

23. 25 USC sec 1901 et seq.

24. Each Indian tribe establishes the requirements that must be met to be a member of that tribe. The tribe's determination of membership is final, and entitled to full faith and credit under section 1911(d) of the ICWA and federal case law. See e.g. Santa Clara Pueblo v. Martinez.

25. Linda Katz, of Lutheran Social Services in Washington State, is the creator of this model. The social workers of her agency who were involved in concurrent planning had caseloads of approximately 10.

26. According to the United States General Accounting Office report *FOSTER CARE: HHS Could Better Facilitate the Interjurisdictional Adoption Process,* November 1999, "of those foster children who are adopted, about 78 percent are adopted by their foster parents or relatives."

27. Although relative homes can be licensed as foster homes, there are significantly different dynamics between foster homes that are relatives and those that are not. Consequently, we generally use the term "foster home" to mean the licensed home of a non-relative; and use the term "relative home" to include relatives regardless of whether or not they are licensed as foster homes and receiving foster care board.

28. "Special needs" is a term defined by state policy that refers to factors which may make it difficult to place a child for adoption. The factors might include older age at adoption (often six years of age or older), membership in a sibling group, emotional, developmental or behavioral problems, ethnicity, and serious medical conditions.

29. McKenzie, J., *Adoption Of Children With Special Needs, The Future Of Children,* Adoption 3(1), Packard Foundation, Los Angeles, CA. 1996.

30. In New Zealand, where the Family Group Decision-Making model originated and is required in all cases of neglect and abuse, agreement is produced in approximately 90 to 95% of the cases, according to *Putting Families Back into the Child Protection Partnership: Family Group Decision-Making,* by Lisa Merkel-Holguin, MSW, *PROTECTING CHILDREN,* Volume 12, Number 3.

31. For Indian children, as required by ICWA, if the child cannot be reunited with the biological parents or Indian custodian, the next preferred option is permanent placement with an extended family member, regardless of whether the child has an attachment to the foster family. The next preferred option is placement with a member of the child's tribe, and lastly, with any other placement approved by the child's tribe. Bonding should not interfere with these placement preferences except for the most fragile of children.

32. Taken in part from *A Place to Call Home, Adoption and Guardianship for Children in Foster Care,* by Steve Christian and Lisa Ekman, National Conference of State Legislatures, March 2000.

33. Concepts taken in part from *Mandatory Termination of Parental Rights Petitions: "Compelling Reasons" and Other Exceptions Under The Adoption and Safe Families Act,* by Mark Hardin, ABA Center on Children and the Law, 1999.

CHAPTER II

THE PERMANENCY HEARING
TABLE OF CONTENTS

A. Purpose of the Hearing 18

B. Timing of the Hearing 18

C. Preparation for the Hearing 19
- The Child Welfare Agency and Other Parties .. 19
- The Court 19

D. Conducting the Hearing 19
- Who Should be Present 20
- Questions that Must be Answered 20
  - *In All Cases, What are the Child's Special Needs?* 20
  - *If Reunification is Recommended* 20
  - *If Termination of Parental Rights and Adoption are Recommended* 21
  - *If Permanent Guardianship or Permanent Custody is Recommended* 21
  - *If Another Plan is Being Recommended* 21

E. Findings and Conclusions 22

Endnotes 22

Chapter II: The Permanency Hearing

A. Purpose of the Hearing

What was once called the dispositional hearing under P.L. 96-272[34] and related state legislation has now been designated by ASFA as the *permanency hearing*. The permanency hearing represents a deadline for the court to determine the final plan in a neglect or abuse case that will move the child out of temporary foster care and into a safe, nurturing and permanent home.

At the permanency hearing, the judge must order one of the following permanent plans for the child and specify the date that the plan will be implemented:

- Return to the parent;
- Proceed with adoption by a relative, foster parent or other non-relative with the state filing a petition to terminate parental rights, if necessary;
- Proceed with legal guardianship;
- Proceed with permanent placement with a relative, foster parent or other non-relative; or
- Provide another specified permanent living arrangement, *if* there is a compelling reason why it would not be in the best interests of the child to proceed with one of the other options.

B. Timing of the Hearing

Both federal and state statutes govern timetables for permanency hearings. Effective November 1997, ASFA expedited federal time lines for permanency hearings, moving them six months earlier than previously required by P.L. 96-272. The general requirement of ASFA is that a permanency hearing must take place no later than 12 months after a child has entered foster care.[35] For purposes of this requirement, children are considered to have "entered foster care" on the earlier of: a) a judicial finding that the child has been subjected to child abuse or neglect; or b) 60 days after the child is removed from the home. With many states requiring an adjudication of abuse or neglect within 30 days of removal, the date of adjudication will likely be the operative date.[36]

It is important to note that these time frames are *maximum* time frames. A case may move to this hearing as soon as 30 days after adjudication when it is clear that reasonable efforts to reunify need not be made.[37] In these circumstances the permanency hearing and dispositional hearing on the complaint are held concurrently. Examples when it could be clear at adjudication that reasonable efforts need not be made include:

- parents subjected the child to aggravated circumstances as defined by state law (examples cited in ASFA include abandonment, torture, chronic abuse, and sexual abuse);
- a parent has aided, attempted, conspired, solicited, or committed the murder or voluntary manslaughter of another child of that parent;
- a parent has committed a felony assault resulting in serious bodily injury to the child or another of the parent's children;
- there has been a final decision on an involuntary termination of parental rights to a sibling; or
- other circumstances under which efforts to preserve or reunify the family are inconsistent with the child's permanent plan, holding the child's health and safety as paramount.[38]

When the original, court approved plan is reunification, the permanency hearing should be held as soon as it appears that reunification will not be achieved. If this occurs before 12 months, the permanency hearing should be moved earlier. If it is believed prior to the permanency hearing that there are no other alternatives to termination of parental rights, the TPR petition should be filed and served in advance of the permanency hearing. The scheduled permanency hearing can serve as both the permanency hearing and a pre-trial on the TPR petition.[39]

C. Preparation for the Hearing

The Child Welfare Agency and Other Parties:

The child welfare agency's proposed permanent plan should be provided to all parties, their legal representatives and for Indian children, the child's tribe, sufficiently in advance of the hearing to allow for preparation and response. If there are differing opinions from the parent or guardian *ad litem* or CASA, each should also submit a report.

If not specified in statute, court rules should state the number of days prior to the hearing by which the reports should be furnished. Reports should cover all of the issues listed under "Questions that Must be Answered" in Section D of this chapter. Reports should be written in language clearly understandable by the parties and should set out facts to support the recommended permanent plan for the child. The report as written should assist the court in writing the permanency order with substantive findings of fact. If there has been family decision-making, a report and recommendation from the conference should be included with the agency report.

The Court

The court is responsible to schedule and conduct the permanency hearing for a time and date certain that fall within the statutory maximum time frames.[40] The hearing should be scheduled before the same judicial officer who has handled the case since the original filing. Sufficient time should be scheduled so that the hearing can be completed in one setting. For a routine permanency hearing, 60 minutes is the recommended amount of time to be docketed. A continuance policy discouraging delays should be in place and enforced.

The court must ensure that all parties have been provided notice of this hearing. If applicable, the citizen review board should be notified of the hearing date, as should volunteer CASAs and if the child is Indian, the child's tribe. Under ASFA, foster parents and adoptive parents are entitled to notice of the hearing and must be given an opportunity to be heard.

Prior to the hearing, the judicial officer should review the court file, which should provide the following information:

- Date and circumstances under which the child was first removed from the home, and the child's age at removal;
- Whether the child holds tribal membership status;
- Known needs of the child at removal, as well as current needs;
- Number and nature of placements, and reasons for each move;
- A current photo of the child;
- Family strengths and concerns;
- The case plan, detailed progress reports, and other reports by professionals;
- Chronology of court hearings and reviews, with dates, persons present, findings, and orders;
- The status of legal representation in the case, including dates of appointments made and actions undertaken by representatives; and
- Recommendations from the CASA volunteer or guardian *ad litem,* reports of the foster parents, reports from citizen review boards about ongoing case activity and periodic reviews and reports from the child's tribe, if applicable.

The court should also review the reports submitted by the child welfare agency and any other parties. These reports should have been provided to all parties in advance of the hearing.

D. Conducting the Hearing

The permanency hearing is the point at which a clear, permanent goal must be identified, along with steps and time lines for its accomplishment. The court must make an independent finding concerning reasonable efforts as well as the child's best interests. If the permanent plan does not involve reunification of the child with the family, then reasonable efforts become focused

on finding another permanent home for the child.[41] If concurrent planning was used in the case and reunification has failed, the alternate plan will already have been sanctioned by the court.

Parents, children, other parties and other appropriate persons such as CASAs, foster parents, relatives and the child's tribe, if applicable, should be permitted and encouraged to participate fully in permanency hearings. The court must ensure all opinions are heard because there may be differing opinions on the issues. Where state statute requires, and if a child is of the age and maturity to express an interest in the permanent plan, the child's wishes should be considered during development of the permanent plan.

Competent legal representation must be available at this and future stages in the case, to ensure that procedural protections are afforded to the parties. Ideally, the same representatives who have served the parties in the early stages of the case will be available to continue with the case to its finalization.

This hearing is such an important step in the move to permanency for a child that the judge should not accept stipulations to the plan or agreed orders without full examination of the parties to ensure their understanding of the issues under consideration. In the move to expedite processes and avoid litigation, parties may not give full consideration to the best interests of the child and to the child's safety, health and well-being.

Who Should be Present:[42]

- the judge who has monitored the case from the first hearing;
- the child, unless inappropriate for a specific reason;[43]
- parent(s) whose rights have not been relinquished or terminated;[44]
- the Indian custodian, the child's tribe and attorney, if applicable;[45]
- attorney(s) for the parent(s);
- assigned child welfare caseworker(s);[46]
- prosecuting or agency attorney;
- attorney for the child, if applicable;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney, or CASA;
- foster parent(s),[47] legal risk foster parent(s) or adoptive parent(s);
- relatives, other interested persons and witnesses;[48]
- court reporter or suitable recording technology; and
- court security and other court staff.[49]

Questions that Must be Answered:[50]

In order to determine the most appropriate permanent plan, the court must ensure that all of the following questions have been answered:

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Updates on health and educational information;
- A description of the child's current placement and behavior;
- A description of the services that have been provided to the child, the progress the child has made and issues that still need to be addressed, including cultural needs; and
- If a member of a sibling group, information on the status of the relationship and contact between siblings.

IF REUNIFICATION IS RECOMMENDED:

- How have the conditions or circumstances leading to the removal of the child been corrected?
- Why is this plan in the best interests of the child?
- How often is visitation occurring and what is the impact on the child?
- What is the date and detailed plan for the child's safe return home and follow-up supervision after family reunification?
- What are the plans to continue any necessary services to the child?
- What are the plans to continue any necessary services to the family?

- If a change of school will occur, what will be done to prepare for the transition?

IF TERMINATION OF PARENTAL RIGHTS AND ADOPTION ARE RECOMMENDED:

- What are the facts and circumstances supporting the grounds for termination?
- What reasonable efforts were made to reunify?
- Why is this plan in the best interests of the child?
- Has the petition been filed and if not, what is the date it will be filed?
- Are there relatives who will adopt the child if TPR is granted? If so, is the child living with the relative? If not, why not? If there are no relatives willing and able to adopt, why not?
- If relative adoption is not the plan, is adoption by the foster parents the plan? If not, why not?
- If an adoptive home must be recruited, what efforts are being made to identify potential adoptive homes both locally and in other jurisdictions?[51] Are there adults with whom the child has or has had a positive relationship and are they potential adopting families?
- Will adoption with contact be recommended and why or why not?
- What counseling will be provided to assist the child to deal with this change of plan?
- If the child is an Indian child, have ICWA requirements been met?[52]

IF PERMANENT GUARDIANSHIP OR PERMANENT CUSTODY IS RECOMMENDED:

- Why is this option preferable to TPR and adoption? Why is it in the best interests of the child?
- What reasonable efforts were made to reunify?[53]
- What are the facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent family to the child? Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness?
- Has there been full disclosure to the family of the child's circumstances and special needs?
- What is the plan to ensure that this will be a permanent home for the child?[54]
- What contact will occur between the child and parents, siblings and other family members?
- What financial support will be provided by the biological parents?
- What are the plans to continue any necessary services to the child? How will these services be funded after guardianship or custody has been granted?
- If the child is not already placed in this home, why not and:
  - How often is visitation occurring and what is the impact on the child?
  - What is the date and detailed plan for the child's placement in this home and follow-up supervision after placement?
  - If a change of school will occur, what will be done to prepare for the transition?

IF ANOTHER PLAN IS BEING RECOMMENDED:

- What are the compelling reasons not to proceed with reunification, TPR, permanent guardianship or permanent custody? What is the plan, and why is this plan in the child's best interests?
- What reasonable efforts were made to reunify the child with the parents?[55]
- How will this plan provide stability and permanency for the child?
- What contact will occur between the child and parents, siblings and other family members?
- What are the plans to continue any necessary services to the child?
- If the child is a teenager, what is the plan to prepare the child for independent living?

- If the child is not already placed in this home, why not and:
  - How often is visitation occurring and what is the impact on the child?
  - What is the detailed plan for the child's placement in this home and follow-up supervision after placement?
  - If a change of school will occur, what will be done to ease the transition?

E. Findings and Conclusions

Findings of fact and conclusions of law should be stated in language understandable by the parties and with enough detail to support later court actions. The court's findings and conclusions should be set out in writing and made available to all parties at the conclusion of the hearing. They should include:

- Persons present at the hearing and whether absent parties were provided with appropriate notice. It should also be verified that reports offered into evidence have been provided to all parties in advance of the hearing.
- A finding as to what reasonable efforts the agency has made to reunify the family and to finalize a permanent plan.[56] A well designed, appropriate case plan and meaningful case reviews should prevent unexpected findings of "no reasonable efforts" at this stage of a case. Should it be found that additional remedial steps are necessary, specific expectations should be set out in a detailed order, with a short time frame (e.g., 30 days) for holding the follow-up permanency hearing. A copy of the order should be forwarded to the head of the social services agency.
- A statement addressing special factors or conditions of the child that are identified as special needs, what services are to be provided to address the needs and who is responsible for providing the services.
- The court's determination of the permanent plan for the child and why the plan is in the best interests of the child. The order should state the steps to be taken and time lines for accomplishing the permanent goal. If the plan is reunification, the date for reunification should be stated.
- If the plan is termination of parental rights and the petition has not yet been filed, the order should state the expected time frame for filing a petition for termination of parental rights that must be within 30 days. If the petition has been filed, the court should proceed to schedule pre-trials, mediation and trial dates.
- If the plan is termination of parental rights, and a parent wishes to relinquish parental rights at the permanency hearing, the court should be prepared to accept the relinquishment and include the relinquishment in the order.
- For any plan, a next hearing date and purpose should be stated. The exception is if all court and agency involvement is terminated (i.e., permanent guardianship, permanent custody or reunification without protective supervision).

Endnotes

34. 42 USC sec. 675 (5)(c).

35. Some state statutes provide even shorter time lines when very young children are involved. See for example California Welfare and Institutions Code 361.25 (1997), and Mississippi Code 43-15-13 (1997) dealing with children age three or younger.

36. *Permanency for Children: Guidelines for State Legislation,* U.S. Department of Health and Human Services in response to Adoption 2002: The President's Initiative on Adoption and Foster Care, recommends that the deadline be clarified in state statute as 12 months from the date of adjudication.

37. It is important to note that neither ICWA nor ASFA permit the agency to stop making active efforts to reunify Indian children with their families unless the court finds beyond a reasonable doubt, including testimony of a qualified expert witness, that continued custody by the parent or Indian custodian will likely result in serious emotional or physical damage to the child [25 USC 1912(f)].

38. State statutes may detail other grounds which warrant a "no reasonable efforts required" finding.

39. See Chapter III, Section D for information on TPR pre-trials.

40. Recommendations for hearing times were first made in the *RESOURCE GUIDELINES* in 1995. The *Conference of Chief Justices, the board and membership of NCJFCJ, and the American Bar Association endorsed the document.*

41. Under ASFA, Title IV-B of the Social Security Act [42 U.S.C. 671 (15)], was amended to authorize reasonable efforts to place a child for adoption or legal guardianship to be made concurrently with reasonable efforts to preserve or reunify the child with birth parents.

42. The *RESOURCE GUIDELINES* first set out a listing of who should be present at various hearings in a child abuse and neglect case. This listing now includes foster parents, as clarified under ASFA. There is also now a greater emphasis on including children in all or part of a hearing.

43. A child needs to have personal contact with the judge. If exclusion of the child is being considered, it may be appropriate to obtain the child's presence for part of the hearing instead.

44. If a parent is not conversant in English, a translator qualified in the language and dialect of the parent should be present.

45. An Indian child's tribe has an absolute right to be present at all hearings concerning the child. For Indian children, the tribe often has information regarding the child and family that is critical to assisting the court in good decision-making regarding the child.

46. If an adoption worker has been assigned to the case, that worker should be present along with the ongoing caseworker.

47. Per ASFA, foster parents are entitled to notice of hearings and an opportunity to be heard. They are often the most informed individuals to provide a day-by-day report of the child's status, health and well-being.

48. This can include relatives, service providers, therapists, educators, probation and parole officers, and any others who can provide relevant information to the court.

49. If case managers, clerks or other court staff are needed in the courtroom to assist with scheduling hearings, compiling files, and retrieving electronic information, they should also be present.

50. Judges should make these questions available to the child welfare agency, the guardian *ad litem* and CASA organizations so that they can be covered in staff training that prepares workers for court hearings.

51. See Appendix J for factors contributing to adoption disruption.

52. For Indian children, ICWA requirements indicate the need for additional information when termination of parental rights is being considered, specifically: 1) Have efforts to reunify been not only reasonable but also *active?* 2) Is it likely that there will be evidence beyond a reasonable doubt that the child will likely suffer serious emotional or physical harm if placed with the parents? 3) If relative adoption is not the plan, have the other placement preferences set forth in ICWA been identified and chosen? If not, why not? 4) Does the child's tribe support this plan, and if not, why not? It should be noted that for Indian children, a foster home that does not meet the requirements of ICWA should be the *last* option, not the first option.

53. For Indian children, ICWA requires that efforts to reunify be not only reasonable but also *active*.

54. Refer to Chapter I, Section C for a description of factors that reflect permanency.

55. For Indian children, ICWA requires that efforts to reunify be not only reasonable but also *active*.

56. Ibid.

TERMINATION OF PARENTAL RIGHTS HEARINGS

TABLE OF CONTENTS

A. Purpose 26
B. Timing of the Process 26
- Timing Issues Regarding the Decision to Pursue Termination of Parental Rights 26
- Timing Issues Regarding Filing and Hearing the TPR Petition 27

C. Best Practices for Reducing Delays From Trials and Appeals 27
- Mediation and Other Pre-Trial Negotiations 27
- Adoption With Contact 28

D. Filing the Termination of Parental Rights Petition 29
- Content of the Petition 29
- The Court's Response to the Filing of the Petition 30

E. Conducting the Hearing 30
- Information the Court Should Have 30
- Who Should be Present 31

F. Questions that Must be Answered to Determine Whether Grounds Exist for Termination of Parental Rights and Whether Termination and Adoption are in the Best Interests of the Child 31
- When Mediation Results in Voluntary Relinquishment of Parental Rights 31
- When the Case Goes to Trial 32

G. Questions that Must be Answered to Determine Whether Reasonable Efforts are Being Made Toward Adoption and to Finalize the Permanent Plan 32
- In all Cases, What are the Child's Special Needs? 33
- If the Plan is Relative or Foster Home Adoption 33
- If an Adoptive Home has been Recruited 33
- If an Adoptive Home Must be Recruited 33

H. Findings and Conclusions 34
I. Avoiding Appeals 34
Endnotes 35

A. Purpose

The voluntary or involuntary termination of parental rights severs all legal familial rights and ties between a child and the birth parents, freeing the child for adoption. After termination, parents are no longer entitled to notice of future court proceedings concerning the child. Termination of parental rights ends the duty to provide continuing child support and the legal right to visit the child.[57]

Termination creates a possibility for a *new* parental relationship and permanent family for children who cannot be safely reunified with their biological parents. It is consistent with the key foundational principle that *"all children have the right to a healthy and safe childhood in a nurturing, permanent family..."* [58]

About one-third of foster children do not return to their birth parents. Approximately 21% or one in five adjudicated neglected and abused children experience the severing of parental rights and adoption. Furthermore, HHS estimates that of the foster children who are adopted, 78% will be adopted by their foster parents or relatives.[59] Clearly, there is a significant percentage of children in the child protection system who require the termination of parental rights in order to accomplish their best interests, safety, health and well-being.

Termination of parental rights cases are among the most difficult and challenging a judge can face. Termination proceedings must be conducted with great care and with full procedural protections for parents and children. When judges have carefully followed the preparatory steps described in the *RESOURCE GUIDELINES* and in the early chapters of these *ADOPTION AND PERMANENCY GUIDELINES*, the court has prepared a solid foundation upon which to build the justification of termination of parental rights for children who cannot be reunified and to provide the child with a new family through adoption.

Under ASFA, the court must make "reasonable efforts toward adoption" findings from the permanency hearing until permanency is achieved. This suggests that the termination of parental rights trial becomes a *two-part consecutive process:* first, termination issues are addressed; second, if termination of parental rights is granted, reasonable efforts toward adoption findings should be made.

B. Timing of the Process

Timing Issues Regarding the Decision to Pursue Termination of Parental Rights (TPR)

There are certain circumstances under which it is appropriate to proceed directly to termination of parental rights when the original complaint of neglect or abuse is adjudicated. Refer to Chapter II, Section B, for a listing of examples where it could be clear that reasonable efforts to reunify need not be made.[60]

Under ASFA, terminations of parental rights proceedings must be filed – or joined, if filed by another party – *by the state* for any child who has been in foster care for 15 of the most recent 22 months.[61] This requirement was included because of the documented substantial and unjustified delays in many states in legally freeing children for adoption, delays caused by both child welfare agencies as well as juvenile and family courts.[62]

Termination of parental rights petitions should be filed at any time in a case when it is clear that reunification cannot occur. It is not appropriate to wait for the permanency hearing to file the TPR petition when it can be documented well in advance of the scheduled hearing date that termination is the necessary direction.

Under ASFA, at the same time that the state is filing a termination petition under any grounds, the social services agency is required to concurrently identify, recruit, process, and approve a qualified adoptive family.

The purpose of this requirement is to expedite the process of locating a new family for the child by eliminating any delay between the agency recommendation for termination of parental rights and the agency initiation of the recruitment process.

This should not be misinterpreted, however, to mean that ASFA requires an adopting family to be found prior to the court's decision regarding termination of parental rights. Although some judges and other professionals have been disinclined in the past to terminate parental rights unless they could be sure that a new family would be found for the child, *terminations should not be delayed until adoptive families have been identified*. There are several reasons for this position:

- Many families interested in adopting hesitate to commit to a specific child if the child is not yet legally free for adoption.
- "There is a significant difference between terminating rights and terminating relationships and one does not require the other."[63] Adoption with contact is often in the best interests of the child and enables relationships to continue with family members and other significant persons in the child's life after termination of parental rights has occurred.[64]
- Given the many examples of successful recruitment of adopting families for all types of children with all types of needs, it is reasonable to believe in the adoptability of all children. If an adopting family has been found for a child with similar characteristics, why not believe that a family can be found for this child?[65]

Timing Issues Regarding Filing and Hearing the TPR Petition

Good practice dictates that the petition to terminate parental rights be filed with the court and served on all parties *no later than* 30 days after the agency or court makes a determination that the filing is appropriate. Good practice dictates that the trial, if necessary, should begin *within* 90 days of the date the petition is filed and that the court deliver its written decision to all parties *no later than* 14 days after the completion of the trial.

C. Best Practices for Reducing Delays from Trials and Appeals

There are two additional best practices that courts can use at this point in the process to expedite the achievement of timely permanency and to design the best possible permanent plan for a child who cannot be reunified. Various jurisdictions have demonstrated significant success in avoiding trials on termination of parental rights when using these practices. These practices help a family accept adoption as being in the best interests of the child, thereby avoiding appeals after termination of parental rights. These practices include mediation (and other types of pre-trial negotiations) and consideration of adoption with contact.

Mediation and Other Pre-Trial Negotiations

Although there are technical variations between mediation and pre-trial or settlement conferences, all have the potential to accomplish the same purpose – to achieve voluntary termination of parental rights and settlement of related issues and to avoid costly and time consuming trials and subsequent appeals. These practices can achieve these results by:

- Providing parents with factual information that offers a realistic prospect of trial outcome and helps to separate personal issues and biases from factual information;
- Giving parents a sense of participation in future planning for the child and a sense of significance and closure with dignity that will no longer be available if the case goes to trial;
- Helping the child, parents and relatives to understand the

importance of one stable home for the child and to overcome objections to terminating parental rights, opening the door to relative adoption; and
- Providing a forum to discuss the appropriateness of adoption with contact and to develop a proposed plan for the contact.

Of these negotiating options, mediation has the best chance of achieving *all* of these results. Mediators must be highly trained, experienced and skilled professionals who have credibility with the court and related professionals. Family members and other participants must perceive them as neutral and having the best interests of the child and family at heart. All parties, their attorneys and other relevant case participants, including the child if developmentally appropriate, are included in the mediation process.

When used at the point of termination of parental rights, mediation programs should be court-based or court-supervised and have strong judicial and interdisciplinary support. Mediated agreements must be specific and detailed and made a part of the court record.

In some jurisdictions, mediation programs have produced full or partial pre-trial agreements in 90% of mediated cases.[66]

Pre-trial conferences and settlement conferences can occur with or without judicial supervision. When there are disputes concerning discovery, evidentiary or other legal issues, judicial involvement is preferred. As with mediation, all parties, including age-appropriate children and their attorneys, should be involved.

Even when mediation and other negotiations fail to produce agreement and avoid trial, they can help narrow the focus of the trial, shorten its duration and ensure that all parties are prepared well in advance of the trial.

Adoption With Contact

Adoption with contact is the second practice that courts can use to design the best possible permanent plan for a child, and often, in the process, avoid a trial. Historically, adoptions have varied in the degree of confidentiality that has existed between birth parents, adopting parents and the child. Prior to the 1930s, confidentiality was the exception. From the 1930s forward, the practice of confidentiality among all parties became the norm. Even when older children were adopted, courts and child welfare agencies often attempted to maintain total separation between the child, the biological parents and the adopting family.

Practically, however, when older children are adopted, the question of confidentiality is often moot because the child knows his or her parents and relatives and where they live. The question often becomes whether or not the child, birth parent and relatives are going to have sanctioned or unsanctioned contact.

Because these *GUIDELINES* deal with neglected and abused children who are often old enough to remember their biological parents, relatives and others with whom they have had relationships, the recommendation is that adoption with contact always be *considered*.

Adoption with contact describes a wide variety of arrangements among birth parents, siblings, relatives (and other significant individuals from the child's past relationships), the child and the adopting family. This contact can occur both prior to and after the adoption. Examples of this range of contact include:

- Biological parents do not know who the adopting family is but send cards or letters using an intermediary. The adopting family decides whether to share the communications from the biological parent(s) with the child. The child may also send return letters and pictures through the intermediary.
- Biological parents receive pictures and annual progress reports from the adopting family.

- Biological parents know the identity of the adopting family and are permitted occasional or regular visitation with the child.

Small degrees of contact are often sufficient to facilitate obtaining voluntary relinquishments of parental rights and consequently serve to avoid trials and lengthy appeals. In most of the jurisdictions that regularly permit some type of adoption with contact, the parent understands that going to trial probably means losing any opportunity for contact. However, the determining factor as to whether adoption with contact is appropriate *must always be the best interests of the child and not the desires of the adults or the hope of avoiding a trial*.

Examples of situations where continued contact with the birth parents after adoption may be in the child's best interests are:[67]

- A child has a good relationship with a developmentally, emotionally or physically disabled parent who is not able to care for the child.
- An older child wishes to continue a relationship with birth parents and the child will benefit from ongoing communication or visits.
- The adopting foster parents have a cooperative relationship with the birth parent that is likely to continue after the adoption.
- A child has siblings still living with the birth parents.

When considering adoption with contact, it is important to consider the enforceability of any agreement. Less than a third of the states have adoption statutes that permit contact between birth parents and child after adoption. In other states, contact arrangements between birth parents and adopting parents are strictly voluntary and not enforceable in court.[68]

It is important to note that adoption with contact does not change the fact that the adopting parents are the legal parents of the child and are ultimately in control. If either the adopting parent, the biological parent or other person violates the contact agreement, mediation is a recommended method to resolve disputes. The mediation process would require the adopting family to agree to participate in the mediation session. It would not, however, require the adopting family to accept any proposed outcome.

The most effective adoption with contact agreements include the following characteristics:

- legally approved by case law or statute;
- negotiated based upon full disclosure to all parties;
- agreed to by a child of sufficient age and maturity to specify a position on the matter or by the guardian *ad litem* for the child if of insufficient age;
- clearly set out in writing and incorporated into the adoption decree;
- modifiable based upon changes in circumstances and the best interests of the child; and
- enforceable, but *not* grounds for setting aside the adoption.

D. Filing the Termination of Parental Rights Petition

Content of the Petition

The termination of parental rights petition must be complete and definite and provide fair notice to the parties. Petitions typically address issues such as agency efforts to work with parents; parents' cooperation with the agency; parents' condition, behavior progress, and improvements; and the effects of foster placement on the child. Although facts may be alleged in summary form due to the breadth of material at issue, the allegations must be sufficiently precise to give the parties notice of the issues at stake. The court should require that the petition cite the statutory grounds relied upon and provide a summary of facts in support of each statutory ground. When the child is an Indian child, the petition must rely upon 25 USC §1912 and should include a summary of facts supporting those

requisite findings. The petition must be filed with the court and served on all parties.

The Court's Response to the Filing of the Petition

The court must ensure that all parties are represented by counsel. Preferably, all counsel representing the parties at the original filing would still be assigned to the case. If not, the court must expeditiously appoint new counsel for any indigent parties. Because of the court's review of this issue at the recent permanency hearing, another hearing should not be necessary to make these determinations. Immediately upon the filing of the petition, the court should review issues of counsel so that counsel can be present at the first pre-trial hearing.

The court should immediately proceed to set a pre-trial date within 30 days. The pre-trial and all of the subsequent hearings, unless prohibited by statute, should be scheduled before the same judge who has handled the case since the original filing. At the pre-trial, the court should establish *all* of the following additional dates:

- The date for discovery to be completed that is sufficiently in advance of the mediation or settlement conference to allow all parties to review the material in full.
- The date for mediation, pre-trial or settlement conference. This date should be far enough in advance of the trial date so that if significant progress is made, but another meeting is required to reach full agreement, there is adequate time for a second meeting. The recommended time frame for this meeting to be held is two to four weeks prior to the trial date. Counsel must notify the court immediately following the meeting as to whether agreement was reached or whether the trial will proceed as scheduled.
- A final pre-trial date if necessary.
- The trial dates. Trial dates should be consecutive and the trial should begin within 90 days of the filing of the TPR petition.[69]
- The judge should also reserve time on his or her personal calendar within seven days after the final trial day for the writing of the TPR findings and conclusions.

The court must establish and enforce strict expectations with regard to all parties committing to the dates scheduled at the pre-trial. Barring extraordinary circumstances such as serious illness or death of close relatives, everyone should be held to these dates.[70]

E. Conducting the Hearing

At this point in the court process one of two circumstances will exist – either the parents have voluntarily relinquished parental rights, or the case moves to trial. In each instance, the court should address both the questions of whether parental rights should be terminated and whether termination and adoption are in the best interests of the child; and the question of whether reasonable efforts are being made toward adoption and to finalize the permanent plan.[71]

It is important to note that when pre-trial negotiations result in an agreement that the parents will voluntarily relinquish parental rights, counsel must notify the court immediately. The court can then use the beginning portion of the dates previously set for the final pre-trial or the trial for the final hearing on the motion to terminate parental rights. Remaining trial dates and time can be freed for other court business.

Information the Court Should Have

In both instances of voluntary relinquishment and trial, the background information the court needs before going into the hearing is the same. Prior to the hearing, the judicial officer should review the court file, which should provide the following information for each child and parent in the case:

- reports, case plan, findings, orders, and a chronology of the child's out-of-home placements and treatment;
- the age of the child and needs at removal;
- a current report of the child's status and well being;
- circumstances leading to the filing of a termination of parental rights petition; and
- a social service agency report of concurrent efforts to identify, recruit and place the child with an adoptive family.

Who Should Be Present:
The following list of persons to be present applies to both voluntary relinquishments and trials with the one exception that when the case goes to trial, all trial witnesses are also included:

- the judge who has monitored the case from the first hearing;
- the child ;
- parent(s);[72]
- attorney(s) for the parent(s);
- if an Indian child, the child's tribe, the attorney for the child's tribe, if any, and the Indian custodian;
- assigned social services worker(s);[73]
- prosecuting or agency attorney;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney, or CASA;
- attorney for the child, if applicable;
- foster parent(s),[74] legal risk foster parent(s) or adoptive parent(s);
- relatives who are caretakers of the child or who are involved in an adoption with contact agreement, when applicable;
- court reporter or suitable recording technology; and
- court security and other court staff.[75]

F. Questions that Must be Answered to Determine Whether Grounds Exist for Termination of Parental Rights and Whether Termination and Adoption are in the Best Interests of The Child[76]

When Mediation Results in Voluntary Relinquishment of Parental Rights

The seriousness of termination of parental rights and the importance of avoiding collateral attacks on the decree make it important to ensure that whenever the court is involved in voluntary relinquishment of parental rights, the court ensures that the consent is *voluntary* and *informed*. At the hearing, the judge should take the time to make sure that each parent understands the consequences of termination and the right to a trial. Among the questions judges should ask are:

- Was the parental consent to relinquishment voluntary and informed?
- Have both biological parents consented to relinquishment?
- Why is relinquishment and adoption in the best interests of the child?
- Is there a recommendation for adoption with contact? How is this recommendation, or lack thereof, in the best interests of the child?

For Indian children, the court must comply with the requirements of the ICWA, 25 USC § 1913 which states that voluntary relinquishments must be:

- Executed in writing;
- Recorded before a judge and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian;
- Certified by the court that the parent or Indian custodian fully understood the explanation in

English or that it was interpreted into a language that the parent or Indian custodian understood; and
- Any consent given prior to or within 10 days after the birth of the child shall not be valid.

When the Case Goes to Trial

When mediation or other pre-trial negotiations have not produced an agreement for voluntary relinquishment of parental rights, the court is ready to proceed with the trial. The concurrent dates for the trial have already been set, counsel has been appointed and discovery completed (see section D: Filing the TPR Petition).

Terminations of parental rights should be based upon clear and convincing evidence.[77] If the adjudication and other findings in the child abuse and neglect case are also made on clear and convincing evidence, it can be much easier to use those findings at the termination of parental rights trial. State law determines grounds for termination of parental rights. Among the grounds commonly found in statutes for termination are:

- abandonment;
- imprisonment of the parent, taking into account the parent-child relationship and likelihood of release within a specified period of time;
- the passage of a specified period of time, with failure of the parent to correct the problems requiring the child's out-of-home placement (shortened time frames for children under the age of two or three);
- minimal contacts with the child by parents exhibiting extreme disinterest for a prescribed period of time (e.g., six months);
- parental drug or alcohol impairment which creates an inability to care for the child and refusal or failure to respond to substantial treatment efforts;
- physical, emotional or mental incapacity of the parent so severe as to create an inability to care for the child, taking into account the particular needs of the child;
- for a father, if paternity is not established or custody of the child is not sought within 30 days of notice of a child's birth;
- serious physical abuse or neglect or prior abuse or neglect of the child or sibling, so extreme that return of the child would be an unacceptable risk to the child's safety and well-being; or
- failure to comply with case plans.

Questions that must be answered when termination motions go to trial include:

- Were all parties properly identified and served?
- Does the evidence presented show that statutory grounds for termination of parental rights exist?[78]
- Were reasonable efforts made to reunify?[79]
- Is termination of parental rights in the best interests of the child?

G. Questions that Must be Answered to Determine Whether Reasonable Efforts are Being Made Toward Adoption and to Finalize the Permanent Plan

At this point in the proceedings, the court has addressed the first set of necessary questions - it has determined whether grounds exist for termination of parental rights, and whether termination and adoption are in the best interests of the child. Upon finding that facts exist to meet these two criteria, termination of parental rights should be granted.

Then, in a follow-up hearing without the birth parents present, the court should proceed to the second question – determining whether reasonable efforts have been and will be made toward adoption and finalization of the permanent plan by asking the following sets of questions depending on the child's situation:[80]

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Current health and educational information;
- A description of the child's current placement;
- A description of the services that have been provided to the child, the progress the child has made and the issues still to be addressed, including cultural needs; and
- Has the child received counseling with regard to termination of parental rights and how is the child adjusting to the plan of adoption?

IF THE PLAN IS RELATIVE OR FOSTER HOME ADOPTION:

- What, if anything, remains to be done before the home is approved as the adoptive home? Can the adoption home study be waived and replaced with the kinship care or foster home study?
- Is there another person who spends significant time in the home involved with the family, and if so, has that individual been interviewed for appropriateness?
- Has there been full disclosure to the relative or foster parent regarding the child's history and any current or potential disabilities?
- What is the time frame for finalization?
- Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?

IF AN ADOPTIVE HOME HAS BEEN RECRUITED:

- A detailed description of the family. Is there another person who spends significant time in the home and if so, has that individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences list in ICWA, and if not, why not? What efforts has the agency made to identify a placement under ICWA?
- Has there been full disclosure to the adopting family of the child's circumstances and special needs?
- What remains to be done, if anything, to process and approve the home?
- What is the visitation and placement plan and time frame? If visits have begun, how are the child and the adopting family adjusting?
- If the family's ethnicity is different from the child's, what efforts will be made to ensure relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another locality from where the child currently lives, what are the plans to meet the child's educational and special needs for services? How will the educational and service transition occur?
- Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- After placement in the adoptive home, what contact will the child have with the prior caretaker and others who have had positive relationships? Is the adopting family agreeable to any contact plan that may have been recommended with the biological parent(s)?

IF AN ADOPTIVE HOME MUST BE RECRUITED:

- What efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? On what adoption exchanges and internet sites is

the child listed?[81] What other efforts such as newspapers, television spots and match parties are being made?[82]

- What is the status of investigating adults with whom the child has or has had a positive relationship with regard to their potential to become adopting families?
- How many potential families have expressed interest in the child and what is the status of the investigation of each family?

H. Findings and Conclusions

Because of the complexity of findings and conclusions in a termination of parental rights case, it will probably not be possible to write and distribute the findings to parties in the courtroom at the end of the hearing. However, when possible, it is recommended that the court give a verbal statement at the end of the hearing as to how it intends to rule.

The final order arising from the termination of parental rights trial should be issued within 14 days of the close of the hearing. This time frame is achievable when the judge has reserved time on the calendar to write the court's decision when the case was set for the trial.

Findings of fact and conclusions of law should be set forth in language understandable by the parties and with clear and complete detail, sufficient to withstand appellate review. Termination of parental rights hearing entries should be divided into two separate sets of findings. The first set of findings should include:

- Persons present and how absent parties were provided with appropriate notice, paying particular attention to any biological parent, tribal representative or Indian custodian not present.
- If there was a voluntary relinquishment of parental rights, efforts made by the court to ensure the relinquishment was voluntary and informed.[83]
- How reasonable efforts were made to reunify the family. If no efforts were reasonable, a statement that *based on family circumstances and child health and safety, all reasonable efforts were made*.[84]
- If the case went to trial, whether or not termination of parental rights is granted. If so, under what statutory grounds and the specific reasons why the statute applies in this case.[85] For Indian children, findings must include the special requirements of ICWA.
- Why termination of parental rights and adoption is in the best interests of the child.

When termination of parental rights is granted, the following additional findings addressing the plans to finalize a permanent placement should be made in a separate entry:

- What is being done to ensure that reasonable efforts are being made to find an adoptive home and to finalize the permanent placement, with specific steps and time frames that are to occur.
- A description of any special factors or conditions of the child that are identified as special needs, what services are to be provided to address these needs and who is responsible for providing each service.
- The date and time of the next review set for within 90 days.[86]

I. Avoiding Appeals

Termination of parental rights has been compared to a death penalty in terms of impact and severity on birth parents. Even with fairness in procedures, competent attorneys, and full disclosure of facts related to the case, a significant percentage of involuntary termination cases will be appealed.

By their nature, appeals create another layer of process and potential for delay in achieving permanence for the child. Delays can occur in preparation of transcripts and assembling the record for appeal. Even though a number of

appellate courts have instituted "fast tracking" of termination cases through direct appeal to a designated court and expedited hearings, the process still takes months.[87] All of these issues delay permanence for a child and extend the period of uncertainty for the child and the adopting family.

The best way to avoid the delay of appeals is to avoid the appeal being filed. The following list summarizes points made throughout these *GUIDELINES* that can help to avoid appeals:

- institute relinquishment counseling for parents beginning early in a case;
- require mediation or another alternative dispute resolution process after termination of parental rights becomes part of the permanent plan;
- conduct procedurally correct hearings and be scrupulous about due process and evidentiary rulings;
- ensure competent representation of parties throughout the child protection case; and
- make clear and legally sufficient findings of fact, including reasonable efforts findings and conclusions of law at each hearing, including all ICWA requirements.

Endnotes

57. Adoption with contact agreements may be made between adopting parents and birth parents, however, birth parents are not legally entitled to such an agreement.

58. See the Introduction, Section E.

59. United States General Accounting Office report *Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process,* November 1999.

60. It should be noted that for ICWA cases, it is never appropriate or legally permissible to proceed in this manner unless active efforts to rehabilitate the family have been offered and have failed.

61. 42 USC sec 675 (5)(F). The exceptions to this requirement are when the state has not provided timely services to the family, and, if the state elects, when the child is being cared for by a relative or other compelling circumstances.

62. *Mandatory Termination Of Parental Rights Petitions:" Compelling Reasons" and Other Exceptions Under the Adoption and Safe Families Act,* Mark Hardin, ABA Center on Children and the Law, January 1999.

63. Quote from Susan H. Badeau, Project Manager, National Adoption Center.

64. See section on Adoption With Contact, this Chapter, Section C.

65. See Appendix E for profiles of children with special needs where recruitment efforts have succeeded in finding adopting families.

66. It is important to note that definitions of "partial agreement" differ by jurisdiction. Santa Clara County (San Jose) California has been practicing court-based dependency mediation for many years. Mediation is available throughout the state of Oregon. Oregon reports a 90% agreement rate. One third of Oregon's children are freed for adoption through voluntary relinquishment as opposed to termination. For more information refer to the NCJFCJ Technical Assistance Bulletin: *Child Victims Act Model Courts Project Status Report,* 1999 and the report from Multnomah County, Oregon, in Appendix K.

67. Baker, D., and Vick, C., *The Child Advocate's Legal Guide,* 1995. North American Council on Adoptable Children, St. Paul, MN.

68. See Appendix H for additional information on states with post-adoption contact statutes.

69. If the trial cannot be completed in the allotted time, judges must give priority to finishing the trial as soon as possible. Dates for completion should be set before parties leave the courtroom. If judges hold one or two days open each month for such "emergencies," no trial should have to be continued for more than 30 days.

70. In Multnomah County (Portland) Oregon, attendance at these hearings is mandatory for the parents and if they miss any of the dates, parental rights are terminated by default.

71. In some states (e.g., California) voluntary relinquishments are out of court proceedings in which the court has no involvement.

72. If a parent is not conversant in English, a translator qualified in the language and dialect of the parent should be present.

73. If an adoption worker has been assigned to the case, that worker should be present along with the ongoing caseworker.

74. Per ASFA, foster parents are entitled to notice of hearings and an opportunity to be heard. They are often the most informed individuals to provide a day-by-day report of the child's status, health and well being.

75. If case managers, clerks or other court staff are needed in the courtroom to schedule hearings, compile files, and retrieve electronic information, they should also be present.

76. The "Questions that Must be Answered" throughout this chapter should be provided to child welfare agency and guardian *ad litem* and CASA organizations to be used in training of workers regarding preparation for court.

77. ICWA requires the burden of proof in a termination of parental rights to be beyond a reasonable doubt.

78. Under ICWA, if the child is an Indian child, in addition to any state requirements, the court must determine beyond a reasonable doubt that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

79. Under ICWA, if the child is an Indian child, in addition to any state requirements, the court must determine that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proven unsuccessful.

80. In some states (e.g., California) a finding of reasonable efforts is not required at the TPR hearing. However, ASFA requires that at the point the TPR petition is filed, the child welfare agency must begin to seek an adopting home. Consequently, it is recommended that the court pursue this issue at the hearing when TPR is granted.

81. See Appendix G for a list of adoption exchanges.

82. If the child is an Indian child, what efforts are being made to identify potential adopting homes in the child's tribal community and what efforts are being made by the agency to comply with ICWA placement preferences?

83. For Indian children, this must include the special requirements of ICWA described in Section F of this chapter.

84. Ibid.

85. Ibid.

86. It is recommended that the review hearing process discussed in the *RESOURCE GUIDELINES* and in Chapter V is continued after termination of parental rights until the adoption or other permanent familial relationship is accomplished.

87. See Chapter IV: The Appeals Process.

CHAPTER IV

THE APPEALS PROCESS
TABLE OF CONTENTS

A. Purpose 38

B. Timing of the Process 38

C. Prior to the Hearing 39

D. Caseflow Management Considerations 39

E. Information the Court Should Have 39

F. Conducting the Hearing 40

G. The Final Order 40

H. Proposed Appellate Timelines 40

Endnotes 40

Chapter IV: The Appeals Process

In spite of the best efforts of courts and child welfare agencies to avoid the filing of appeals by using the recommendations in these *ADOPTION AND PERMANENCY GUIDELINES*, specifically those at the end of the preceding chapter, many cases that go to trial on termination of parental rights petitions will be appealed.

Appeals from adoptions and terminations of parental rights should be expedited and given priority over other cases by the appellate courts. No child can achieve permanency until an appeal is final.

Although most of the responsibility to expedite the appeals process falls on the appellate court, there are *two final processes that the trial court must ensure are in place* so that they will not contribute to a delay in permanence for the child when a case is appealed. These two processes are:

1) The trial court is responsible for preparation of the record. The trial court must give priority to cases involving termination of parental rights or adoption and make sure that processes are in place for speedy preparation of the record.
2) If an adoptive home for the child must be recruited, the trial court must ensure that the search for an adopting family continues in the same manner it would for a case that has not been appealed. If an interested and appropriate family is found for the child, visits and placement in the home should proceed while the appeal is pending. The risk that the appeal might be granted is overshadowed by the detriment an extended delay would cause if the search were placed on hold during the appeals process and the trial court's ruling upheld.

The remaining steps of the appeals process are under the control of the appellate court and the remainder of this chapter will describe the appeals process, including recommended time frames for completion of the process.

A. Purpose[88]

The standard appellate process is slow. For a child in foster care, a lengthy appellate process can often mean months or years in limbo, without hope of achieving permanence, to the obvious detriment of the child involved.

Many states, through legislation or court rule, have created mechanisms for expediting cases involving adoption and termination of parental rights issues, giving them preference over other cases on the appellate docket.[89] However, a statute or court rule may not be enough to ensure the expediency required for these cases. All parties must seek to secure a quick and efficient resolution in each case.

Appellate courts, as well as attorneys representing the parties in such appeals, should seek to ensure that appeals from adoption and termination cases are given priority and heard in a timely manner. Appellate courts must ensure that no obstacles arise to hinder the expediency of the matter. Extensions of time are rarely justified. Use of such tactics only lengthens the time in which a child will be displaced from a permanent home.

B. Timing of the Process

Timely resolution of the case is the ultimate goal of expedited adoption and termination appeals. To achieve timely resolution, the appellate court must first, by court rule or by legislation, have a system streamlining any appeal from an adoption or termination case. This system must, through appropriate channels, take such cases to the top of the court's calendar.

Second, time frames must be established which shorten and strictly enforce the time for preparation of the record and filing of briefs. Scheduling orders should be given to ensure that the case is not delayed. Only in extraordinary circumstances should the

appellate court grant an extension of time to any party.

Finally, after the record and transcript are transmitted, and briefs have been filed, the appellate courts should hear oral argument at the earliest possible time. At this point, the adoption or termination appeal must be given strict priority over all other appellate matters. Under certain circumstances, to be determined by the appellate court, the matter should be considered without oral argument. The absence of oral argument in some cases further enables quick resolution. In either situation, the appellate court's decision and written opinion must be released promptly after consideration of the case. The appellate court should give these decisions priority above all other pending decisions.

C. Prior to the Hearing

Appellate court administrators must establish a system to recognize and prioritize appeals in adoption and termination cases. A docketing statement, to be prepared by the appellant, should contain a clause which covers adoption and termination cases. When a party indicates on the docketing statement that the appeal is of an adoption or termination case, the court administrator will be alerted that the case will have priority in docketing over all other cases before the appellate court. The court administrator should leave open a certain percentage of space in the court's docket so that when the adoption or termination appeal is filed, adequate time is guaranteed available to ensure that the case will be heard at the earliest practicable time.

Appellate courts should consider shortening the time for filing of briefs in these matters, through court rule or legislative change. For instance, parties might have half the time to file each brief. In the alternative, the court may choose not to shorten the time for filing the brief, but rather, strictly enforce the time for filing briefs already established by court rule by eliminating the granting of extensions for filing briefs. Only in extraordinary circumstances should the court grant an attorney extra time for filing the brief.

The largest obstacle to expediting adoption and termination appeals is transmission of the record. Preparation and transmission of the transcript can hold up an otherwise easily expedited process. Therefore, appellate courts should seek to establish methods that will make certain that the transcript is not unnecessarily delayed. For instance, the appellate courts may by rule require that preparation of the record in these appeals be given priority over all other transcripts for cases awaiting appeal.

D. Caseflow Management Considerations

From the date of the filing of the notice of appeal, the court system and the parties involved should seek to resolve the matter promptly. The appellate courts should establish a system that easily identifies the cases that fall under this priority system, and should monitor the flow of cases to avoid unnecessary delays. Adequate open spaces should be established in the docket to guarantee that an appeal of an adoption or termination case will immediately be placed on the docket.

The appellate court should seek, at least informally, to reduce the time frame in which the appeal must be heard. For instance, the court might insist upon a maximum number of days between the time of the filing of the notice of appeal and the time the opinion is issued by the court.

E. Information the Court Should Have

The information necessary for the appellate court will differ from case to case, depending on the nature of each case. To ensure that an appeal of an adoption or termination case is heard at the earliest time, the appellate court should have before it all information pertaining to the timing of the appeal. The court should be adequately notified if any unnecessary delay has emerged in each case, and then the court should order that no further delays be permitted.

F. Conducting the Hearing

After the record has been transmitted, and all briefs have been filed, the appellate court should hear the case as soon as possible. The court should be responsible for enabling the case to be heard at the earliest time, and should therefore not contribute to any delays. If an oral argument is scheduled, the date of argument must be given priority on the docket. The court should not grant continuances, except in the most extraordinary cases.

G. The Final Order

The purpose of expedited appeals will be hindered if the court delays in the preparation of the final order. The appellate court should issue a decision very soon after hearing the case or reviewing the briefs in a case without oral argument. The permanency of the child's home and future depends on a quick determination by the court, thus no delays must occur during the time in which the court is to issue its opinion. The writing of these appellate opinions must take priority over the writing of any other opinion, regardless of when the case was heard.

H. Proposed Appellate Time Lines

The following represents *maximum* best practice recommended time lines for the appellate process when the case involves termination of parental rights and adoption.[90] Whenever possible, it is in the child's best interests to reduce the time frames even further:

STEP 1: The trial court's order terminating parental rights is distributed to the parties.

STEP 2: The appeal is filed *within a maximum of 30 days*.

STEP 3: The record is transmitted from the trial court to the appellate court *within a maximum of 30 days*.

STEP 4: The appellant brief is filed *within a maximum of 20 days*.

STEP 5: The appellee brief is filed within a maximum of 10 days.

STEP 6: If oral arguments are required, the appellate court sets the hearing *within a maximum of 30 days*.

STEP 7: The appellate court entry of judgement is completed and distributed to parties *within a maximum of 30 days* from either the filing of appellee briefs when oral arguments are not required, or from the hearing on oral arguments.

With these expedited time frames, the appellate process adds a four to five month delay, depending on oral arguments, to achieving permanency for a child. Without an expedited process, as exists in many states, the delay to permanency can be years. Involvement of appellate judges in court improvement committees and in juvenile and family court training programs can open the door for collaboration on methods to expedite appeals from terminations of parental rights and adoption.

Endnotes

88. Sections A through G were written by Justice Evelyn Lundberg Stratton of the Supreme Court of Ohio, assisted by Jo-El Huck, research assistant.

89. Appendix I provides a list of states that have an expedited appellate process.

90. The state of California requires that the appellate courts rule within 120 days on whether reunification efforts should be provided. The party challenging the termination of reunification efforts must file an extraordinary writ within 7 days of the decision of the trial court. The appellate court will make a ruling on the merits within the 120 day time frame. At the time of this publication's printing, the state of Ohio had pending legislation to establish a 120-day to 150-day maximum time frame for issuing decisions on appeals of TPR and adoption cases.

CHAPTER V

ADOPTION ISSUES JUDGES MUST UNDERSTAND PRIOR TO CONDUCTING REVIEW HEARINGS THAT FOLLOW TERMINATION OF PARENTAL RIGHTS

TABLE OF CONTENTS

A. The Multiethnic Placement Act 42

B. Adoption Recruitment Best Practices 43

C. Inter-jurisdictional Adoptions and Interstate Compact on the Placement of Children 44

D. Adoption Assistance Subsidies 46

E. Non-Recurring Adoption Expenses and Medical Expenses 47

F. Post-Adoptive Services 48

G. Adoption Assistance Agreements 50

Endnotes 50

When parental rights have been terminated and the permanent plan for a child is adoption, there are seven issues that judges must understand in order to conduct thorough and effective review hearings. These issues are:

- The Multiethnic Placement Act;
- Adoption Recruitment Best Practices;
- Interjurisdictional Adoptions and Interstate Compact on the Placement of Children;
- Adoption Assistance Subsidies;
- Non-Recurring Adoption Expenses and Medical Expenses;
- Post-Adoptive Services; and
- Adoption Assistance Agreements.

All ICWA related issues should have been identified and addressed substantially earlier in the process. However, because parties may have overlooked ICWA and failed to identify an Indian child and interested Indian caregivers early in the case, it is critical for judges to inquire at each hearing whether ICWA applies and has been complied with. Failure to do so may cause substantial delays at this point in the process.[91]

A. The Multiethnic Placement Act

For each child with special needs who is adopted each year, another child is still waiting for a family.[92] Children of color represent a higher number of those who are waiting. A 1992 study entitled *Adoption Services for Waiting Minority and Non-minority Children*[93] found that ethnicity was the single strongest predictor of whether a child was in an adoptive placement. This study found that African-American children constituted about 37% of the children who are free for adoption but who have not yet been placed. Overall, African-American, Hispanic, and Native American children were found in the child protection system at three times their proportion to the nation's population.[94]

More current data shows that in 1998, 30% of the children waiting for adoptive homes were white and 40% were black, while in 1999, 40% of the children adopted were white and 43% of the children adopted were black.[95]

Because of the disproportionate lack of homes for minority youth, ethnicity was categorized as a "special need" factor for agency adoption purposes and also resulted in passage of the Multiethnic Placement Act of 1994 (MEPA).[96] MEPA was intended to strengthen child protection practice relative to children of color, and to remove barriers to interethnic adoption. MEPA was amended by provisions of the Interethnic Placement Act (IEPA) in 1996. As amended, states and state entities that receive federal funds and are involved in adoption and foster care may not:

> ....deny to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person or of the child involved; or....delay or deny the placement of a child for adoption or into foster care on the basis of the race, color or national origin of the adoptive or foster parent or the child involved...

MEPA makes it clear that agencies are required to make special efforts to recruit minority foster care and adoptive homes. The Act prohibits agency practices that routinely require ethnic matching of child and family and prohibits delays resulting from attempts to find same-ethnicity placements.[97] MEPA allows consideration of ethnicity, color or national origin based on facts of specific cases but gives no clear guidelines for these exceptions.

The North American Council on Adoptable Children (NACAC),[98] many social workers and many judges believe that ethnicity is important to consider in child placement. However, because of the lack of clear guidelines, and because a pending lawsuit against an Ohio child welfare agency alleges violation of the Civil Rights Act of 1964 and MEPA

by using ethnicity as a factor in adoptive placement, courts and child welfare agencies are currently unclear regarding how ethnicity can be considered and under what circumstances.

Until clearer guidelines emerge regarding when ethnicity can be considered as a factor, NACAC suggests that when transethnic placements occur (approximately 18% to 20% of adoptions are transethnic)[99], agencies must prepare families to handle the unique responsibilities of transethnic parenting. Transethnic adopting families need access to information and resources so they can effectively teach their children how to take pride in their heritage and prosper as a member of a minority culture.[100]

The judicial role in dealing with MEPA complexities includes:

- As judges monitor reasonable efforts throughout a case, to ensure that agency policies and practices do not deter reunification services and relative placements for families of color.
- To ensure that the agency has adequate programs for the recruitment of foster families and adoptive families that are reflective of the ethnicity of the children needing such placements.
- When an adoptive home must be recruited for a minority child, to ensure that all available specialized placement agencies are being used.
- To ensure that ethnicity does not delay or deny a child an appropriate foster or adoptive placement.
- To ensure that when a transethnic placement occurs, the child and parents receive adequate preparation, information and resources to make the placement a success.

At any given time, an estimated 1.5 % of foster children – about 8,000 – are available for adoption and, as yet, no adoptive family has been identified for them.[101]

B. Adoption Recruitment Best Practices

ASFA requires that reasonable efforts extend beyond the permanency planning hearing to achievement of permanency for a child and closure of the case. Adoption recruitment is one of the activities that judges must now determine to be "reasonable." This determination includes whether the child welfare agency has:

- adequate programs to recruit and identify prospective adoptive parents both locally and beyond state boundaries;
- adequate staff to complete home studies in a timely manner and to prepare adoption assistance agreements and interstate documentation; and
- appropriate and accessible services to place and stabilize a child in the permanent home.

Adoption recruitment must encourage collaboration with other agencies and the community. For an Indian child, it is essential that recruitment include the child's tribal community in order to create the possibility of recruiting a Native American home. Recruiters must reach out to families, bring families forward who express interest and recruitment processes must be designed to retain the families' interest by assisting them through a timely process of application, approval, full disclosure and placement.[102] Among the components of effective adoption recruitment are:[103]

- a clear understanding of the demographics of children awaiting adoption;
- a strong agency reputation in the community with validation by respected community organizations and leaders – or, in the alternative, collaboration with agencies who do have a strong community reputation and who will serve as the "front door" to the recruitment process;
- excellent "customer service" to families who express interest

throughout the process, starting with a timely and supportive response to the initial inquiry, and extending to access to supports and services both before and after achievement of permanence and closure of the case;
- a consistent agency-wide philosophical approach to adoption, including foster care units and adoption units who can communicate and work together effectively, necessary staff resources including staff training, and accessibility of offices and services to targeted communities;
- cultural competence, with a congruent set of behaviors, policies, and attitudes, and community outreach that understands and is respectful of the community's culture;
- programs that make sure that foster parents are encouraged and supported, when appropriate, to become adopting families;
- recruitment programs that include both public awareness and information, and child-specific components such as television, newspaper, billboards, and adoption exchanges;
- printed materials, public information announcements, adoption events, and community outreach;
- internet sites and other means by which adoption information can be made readily available both locally and nationally;
- contracts with other states and non-profit organizations to conduct recruitment activities in geographic areas outside of the agency's jurisdiction;
- good relations with previous adoptive and foster parents, since word of mouth is such an effective recruitment tool; use of parents who have already adopted children as "parent buddies" to help guide prospective adoptive parents through the process; and
- strong and active collaboration between agencies and jurisdictions, so that children waiting for adoption can be placed with a family in another agency, county or state.

In order to make meaningful reasonable efforts findings, judges must understand the agency's overall adoption policies and processes as well as know how these processes are working in an individual case. Not only is it important for judges to make reasonable efforts findings in individual cases, but judges must also advocate and collaborate with the child welfare agency and community leaders to ensure that all components of effective adoptive recruitment exist for the neglected and abused children in their community.

When judges consistently find that reasonable efforts in adoption recruitment are *not* being made due to a lack of resources, they should work with their child welfare agency, child welfare professionals, the community and local or state government policy makers to develop a plan to reorganize or increase resource allocation to meet this important need. When courts have adequate information systems to provide data on this population and the consequences of delayed adoptions, judges have a strong foundation to develop the case for the cost-effectiveness of such a reallocation.

C. Interjurisdictional Adoptions and Interstate Compact on the Placement of Children (ICPC)[104]

ASFA contains two provisions that relate to interjurisdictional adoption issues. ASFA requires that state child welfare plans: [105]

- specify that the state will not deny or delay the placement of a child for adoption when an approved family is available outside of the court jurisdiction which has the responsibility for handling the case of the child; and
- contain assurances that the state will develop plans for the effective use of cross-jurisdictional

resources to facilitate timely adoptive or permanent placements for waiting children.

Furthermore, ASFA establishes a penalty to be assessed against federal foster care funds for states that are found to deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction.

ICPC provides the legal framework for the placement of children across state lines, including adoptive placement. All interjurisdictional adoptive placements must be approved by the ICPC with the exception of those occurring within Indian reservations.[106]

Because the children for whom adoptive homes must be recruited are among the most difficult to place due to an older age, their need to be placed with siblings or other special considerations, such children are likely candidates for adoptive placement across jurisdictions. Searching across jurisdictional lines for an adoptive family for hard-to-place children may increase the likelihood that they will be matched with an appropriate family.

While the number of interjurisdictional adoptions is relatively small, the process is longer and more complex than the adoption process within a jurisdiction.[107] Consequently, courts must watch for three potential problem areas and ensure that these problems are being addressed. These problems and potential solutions are:

1. There is no nationally accepted standard for home studies, and public child welfare agencies do not have the authority to specify the contents of a home study prepared in another jurisdiction. Consequently, the home study from the other jurisdiction may not meet the requirements of the jurisdiction that holds custody of the child.

   However, if the requesting agency notifies the agency preparing the home study of its specific requirements in advance, it is probable that the agency doing the home study will be willing to ensure that all requirements are covered.[108]

2. Although the Constitution sets the framework for states to accept the court orders of other states, neither the Congress nor case law has specifically addressed acceptance of termination of parental rights orders or adoption decrees. The Supreme Court has ruled that states are not obligated to judicial actions of other states in situations where minimum standards of due process have not been provided to those affected.

   There are two methods to deal with this issue. First, if a court has implemented the recommendations of the *RESOURCE GUIDELINES* and these *ADOPTION AND PERMANENCY GUIDELINES* regarding due process issues, minimum standards of due process should be easily met.[109] Second, some states specify in their adoption statutes that the state will accept such orders from any other state.

3. Finally, states may need to improve procedures for administering and implementing the ICPC. Delays caused by the sending or receiving state's preparation of the ICPC approval request could cause unnecessary delays in the adoptive placement of a child.

   Judges must advocate to ensure that their state's ICPC requests are promptly processed. Ideally, an ICPC request related to adoption would be processed through the state's ICPC division within 3 days. For jurisdictions that routinely place children in a neighboring jurisdiction, border agreements can be worked out to alleviate delays in beginning home studies requested through the ICPC office.[110]

P.L. 96-272 directed states to protect the interstate interests of adopted

children. The Interstate Compact on Adoption and Medical Assistance (ICAMA) was established in 1986 to meet the P.L. 96-272 mandate. Once an interstate adopting home is found and approved for a child, ICAMA provides assistance by formalizing the delivery of medical and other services to children and their adopting families on an interstate basis. The compact recognizes that adopting parents may move from one state to another while under adoption assistance agreements and that many special needs children will be placed with families across state lines. Operation of ICAMA is the responsibility of a designated compact administrator in each state. This administrator is located in the Title IV-E agency that coordinates with in-state and out-of-state officials to facilitate the provision of benefits and services for special needs adopted children. Approximately two-thirds of the states are members of ICAMA.

D. Adoption Assistance Subsidies[111]

For many special needs children, adoption assistance subsidies can make adoption feasible where it might otherwise not be possible. All 50 states and the District of Columbia have both *federally* funded and *state* funded adoption assistance programs. These programs are designed to ensure that families who adopt are provided with the financial resources and necessary services to meet a child's often costly special needs.

The Federal Adoption Assistance Program was established by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) as an open ended entitlement program. It provides payments for IV-E eligible children with special needs who are adopted through public child welfare agencies and private child placement agencies. The federal reimbursement rate is 50% to 75%, with the match covered by state and/or county funds. Children who are receiving federal maintenance subsidies are counted as IV-E children in determining the state's IV-E penetration rate. Adoption assistance payments may continue until the child is age 18, or *at state option,* until the age of 21 if the child is mentally or physically disabled.

To be eligible for this funding, a state must have a plan describing how it will provide this assistance to adopting families. The state plan describes what adoption assistance is available and the eligibility criteria, what efforts must be undertaken to place a child without assistance before eligibility applies, when assistance will begin (i.e. on placement of the child in a prospective adoptive home), and when it will end.

There are two conditions a child must meet in order to be eligible for the federally funded assistance program. First, the child must be IV-E eligible. Second, the child must have special needs. IV-E eligibility is based on the birth parent's financial eligibility for AFDC or the child's eligibility for SSI. Income of the adopting parent(s) is not a factor. In order to be IV-E eligible, the court must have made determinations of "best interests" and "reasonable efforts" before ruling out a plan of reunification and approving a plan of adoption.

Federal regulations define a child with special needs as a child who has a specific condition or factor that makes a child difficult to place for adoption. This definition leaves room for states to develop their own detailed definitions of special needs. Some states define special needs more narrowly than others. The North American Council on Adoptable Children has recognized the state of Ohio as a state that broadly defines special needs in order to be inclusive of as many children as possible. Ohio uses the following factors to define special needs in its adoption assistance plan:

- a sibling group of two or more;
- an ethnic background that is non-Caucasian;
- any child age 6 or older;
- a documented physical, mental or developmental disability or disorder, or emotional disturbance or behavior problem;
- an identified or reasonably identifiable risk of developing a physical

or developmental disability, mental disability or disorder, emotional disturbance or behavior problem that is related to the child's history of abuse or neglect, genetic factors or other environmental traumas; or
- psychological attachment to the foster care giver due to placement of at least one year, such that placement with another family would not be in the child's best interests.

Sometimes when judges ask the child welfare worker questions about available benefits, they are given the impression that limitations on adoption assistance subsidies are due to federal mandates and therefore unchangeable. Often, however, the limitation is selected by their state as states have flexibility in several areas. For instance:

- extending assistance to age 21 if the child is physically or emotionally disabled,
- what defines special needs, and
- how much assistance it gives to adopting parents.

Regarding the amount of assistance available to adopting parents, federal law allows federally funded adoption assistance to be *up to* the amount that the adopting parent received as the fostering subsidy. This means that when states reduce the amount paid to an adopting parent after the adoption is finalized, they are doing so at their own choice. In addition, nothing in federal law prevents states from providing, at their own expense, *additional* benefits beyond the federal assistance.

It is important for judges to know the details of their state plan and which components are federally mandated as opposed to choices made by the state child welfare agency.

Federal regulations require that states receiving federal dollars for adoption assistance must also offer the *same assistance* options to children with special needs who are not IV-E eligible, with one exception. The exception is that "means testing" of the adopting family is permitted as eligibility criteria for non IV-E eligible children. Assistance to non-IV-E eligible special needs children is totally funded by state and/or county dollars. Since all 50 states and the District of Columbia are involved in the federal adoption assistance program.

All states must provide adoption assistance to **all** special needs children.

This information is particularly important for judges who may believe that it is appropriate to make a finding that reasonable efforts to find an adopting family have not been made but are concerned that doing so will prevent an adopting family, when located, from being able to receive adoption assistance subsidy. Such a finding will *not* prevent the child from being eligible for adoption assistance when an adopting family is finally recruited.

E. Non-Recurring Adoption Expenses and Medical Expenses[112]

The Federal Adoption Assistance Program also provides matching funds for non-recurring adoption expenses for both IV-E and non-IV-E eligible special needs children. State or county funds cover the portion of the costs that the match does not cover. Generally, this reimbursement is available to the adopting parent for 100% of costs up to $2,000 for the actual expenses of the adoption, i.e., legal and court fees, the adoption home study, adoption fees, and other expenses directly related to adoption of the child.

All children who receive adoption assistance under Title IV-E are categorically eligible to receive Title XIX Medicaid in the state in which they live, whether or not it is the state that is party to an adoption assistance agreement. Children who receive state funded adoption assistance are not automatically eligible for Medicaid. However, states have the option of *choosing* to extend Title XIX Medicaid

to these children, without regard to the income of their adopting parents, if they meet eligibility criteria.[113] Since ASFA requires that states provide health insurance to children for whom there is an adoption assistance agreement and who need medical assistance for physical, mental, or rehabilitative care, most states have elected the option to make children under state funded adoption assistance agreements Medicaid eligible.[114]

F. Post-Adoptive Services[115]

Many families who adopt children with special needs will require supportive services throughout childhood and adolescence. The availability of these supportive services can be the determining factor in the long-term success of many adoptions of children with special needs.

While adoption subsidies provide financial and medical assistance, many adopting parents find themselves with very troubled children, for whom their repertoire of parenting techniques and the usual configuration of community services are inadequate. Often the special needs of children are not obvious at the time of their adoptive placement. The damage to children from prenatal substance exposure or maltreatment may not manifest itself until well after the adoption is finalized.

Finalizing an adoption does not end the impact of the child's abusive and neglectful history. The adoption process can also have a substantial impact on family dynamics.

Adopting families for special needs children are likely to have continuing needs that peak at certain developmental periods or at times of family stress.

Many of these children, even though placed in the most loving, nurturing adoptive homes, are likely to have ongoing problems.

In order to provide the full range of services to families adopting special needs children, post-adoptive service systems should include:

- **Clearinghouse** – A clearinghouse should include information on all aspects of the adoption process, special needs, and adoption search. Parents and professionals should be able to easily access information on upcoming training and conferences, parent support groups, therapists, etc., through a website.

- **Help Line –** A toll-free telephone help line should exist with trained staff to provide support and assistance to families seeking general information on adoption and special needs. It should provide crisis intervention and information and referral regarding available services, as well as names of specific service providers who have a special proficiency in working with adopting families and adopted children.

- **Parent Training and Education –** Parents need on-going training and education on adoption issues including separation, grief, loss and attachment, as well as education on the specific special needs of their children such as attention deficit hyperactivity disorder, fetal alcohol syndrome and fetal alcohol effect, learning disabilities, and the long-term effects of neglect and abuse.

- **Parent Support Groups –** The experiences of other adopting parents are invaluable to special needs adopting parents. Parent groups offer support through the sharing of experiences that are unique to special needs adoption. By offering education and support, parent groups help keep families together and may become an excellent resource for prospective adoptive parents.

- **Individual and Family Counseling** – Few parents are prepared to rear children who come from the foster care system. Many of these vulnerable children have experienced physical and emotional trauma as well as multiple placements and will need ongoing therapy in order to integrate into a permanent family.

- **Advocacy –** When interacting with the educational, social services and medical communities, adoptive families often become intimidated and frustrated trying to secure needed services for their children. Providing a trained advocate and offering advocacy training to parents enables them to communicate effectively on behalf of their children.

- **Respite Care –** Families often face many challenges rearing their special needs children and need time away from the daily pressures and ongoing stress. Respite care comes in many forms, including hourly care, in-home respite care, and residential programs.

- **Intensive Home Based Services and Day Treatment Programs –** Some children with multiple and severe needs may need extra in home supports. Specially trained workers can come into the home or school to help teach the parent and teacher better methods of managing the child's problem behaviors. Some children's problems may be so severe they require special programming in a day treatment environment.

- **Residential treatment –** For certain periods of time in their development, some children require more care than can be provided in a family setting. Residential programs can encompass psychological, emotional, behavioral and medical treatment.

Judges should have information about the post-adoptive service system that exists in their jurisdictions, not only for effective review of an individual case, but also to advocate for a comprehensive and effective system for all children. Many states do not offer adequate funding for post-adoptive services.

Courts need to be satisfied that the necessary services will be available to support these families so they can achieve successful permanence for their adopted children.

The North American Council on Adoptable Children has identified Ohio and Illinois as two states with successful models of post-adoptive services. Descriptions of these two state systems are included in Appendix L. After reviewing these two systems to determine what is possible, judges should assess the adequacy of the system in their jurisdiction by asking the following questions:[116]

1) Are funds available for needed services in addition to routine maintenance payments?
2) Are regulations interpreted broadly to expand eligibility to the maximum appropriate degree?
3) If funds are provided directly to the adoptive parent to purchase services, are the needed services available for purchase?
4) If the funds are provided directly to the adopting parent(s) to purchase services, can funds be made available up front when needed?
5) If funds are provided directly to service providers, are the services consumer friendly and easily accessible to the child and adopting family?
6) Is there a mechanism to collect consumer satisfaction information from the adopting parents who are purchasing or using the post-adoptive services? If so, what does the information identify as the strengths and weaknesses of the post-adoptive service system?
7) Does the service system include all of the necessary services listed on preceding pages to provide a full range of services to adopting families?
8) Are funds flexible enough to allow the purchase and installation of items such as wheelchair ramps, special vans for the handicapped,

Juvenile and family courts should have a vested interest in the quality and quantity of post-adoptive services available to the families who step forward to adopt abused and neglected children with special needs.

etc., and for emergency needs when there is no other source of such funding and when lack of such funding could result in the breakup of the adopting family?

If judges find the post-adoptive services system in their jurisdiction lacking, they should make the consequences of the lack of services known to the policy makers and then advocate for improved systems of post-adoptive services.

G. Adoption Assistance Agreements

Prior to finalization of a special needs adoption, an adoption assistance agreement should be made in writing between the adopting parent(s) and the social services agency. This agreement should include:

- the nature and amount of adoption assistance to be provided to the child and adopting parent(s) after the adoption is finalized;
- agreed services that will be provided to the child and family post-finalization and the method of funding for these services;
- how medical needs of the child will be covered;
- under what circumstances the agreement can be modified either to increase or decrease payments or services;
- the continued effectiveness of the agreement if the adoptive parents move out of state; and
- names and phone numbers of persons adopting parents can contact for assistance if additional questions or needs arise.

The court should be aware of this information during review hearings to ensure that these issues are resolved with the adopting parent(s) well before the adoption is ready to be finalized.

Endnotes

91. See Chapter I, Section A for a description of the Indian Child Welfare Act.

92. Rosenthal, J., Groze, V., Adoption, race and identity: From infancy through adolescence, 1992. Praeger, New York, NY.

93. Submitted under contract to DHHS, Office of Human Development Services, Rockville, MD. 1986.

94. Lakin, D. and Whitfield, L., supra.

95. Data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) was provided by Dr. Penelope L. Maza, Senior Policy Research Analyst, the Children's Bureau.

96. 42 USC 5115a.

97. It is important to note that MEPA expressly excludes ICWA cases from its requirements.

98. RACE MATTERS, by Diane Riggs and Joe Kroll, Adoptalk, a publication of the North American Council on Adoptable Children, Spring 2000.

99. Data reported by Joe Kroll, Director, North American Council on Adoptable Children.

100. RACE MATTERS, supra note 99.

101. FOSTER CARE: HHS Could Better Facilitate the Interjurisdictional Adoption Process, GAO/HEHS-00-12, November 1999.

102. See Appendix K for a description of the activities of the two courts in the NCJFCJ Permanency Planning for Children Department's Expedited Adoption Project. The two courts are Multnomah County Juvenile Court in Portland, Oregon and the Hamilton County Juvenile Court in Cincinnati, Ohio.

103. Taken in part from Lakin, D. and Whitfield, L., Adoption Recruitment: Meeting the Needs of Waiting Children, Adoption Policy and Special Needs Children, 1997. Auburn House, Westport, CT.

104. Information condensed from the GAO report Foster Care: HHS Could Better Facilitate the Interjurisdictional Adoption Process, November 1999.

105. These plans are required under Title IV-E of the Social Security Act in order for states to receive federal foster care funds for maintenance of foster children, specific administration costs associated with foster care programs and adoption assistance.

106. The ICPC is explained in Chapter 1, Section A and in Appendix C.

107. Health and Human Services administrative data place the number of finalized adoptions of foster children across state lines at less than 250 in 1998.

108. It should be noted that for Indian children, the child's tribe establishes its community standards for home studies.

109. For example, who should be present at hearings, proper service of process, proper legal representation, etc.

110. See Appendix D for a sample Border Agreement.

111. Liz Oppenheim, Manager, Association of Administrators of the Interstate Compact on Adoption and Medical Assistance, American Public Human Services Association made a substantial contribution to this section.

112. Ibid.

113. This option was established by the Consolidated Omnibus Reconciliation Act of 1985.

114. Adoption and Safe Families Act, November 1997, Sec. 306.

115. Joe Kroll and Ginny Blade of the North American Council on Adoptable Children made substantial contributions to this section.

116. From *Preliminary Survey of Post-Adoptive Services in Ohio, Illinois, Indiana & Michigan* prepared by Barbara Seibel for NCJFCJ, June 1999.

CHAPTER VI

REVIEW HEARINGS THAT FOLLOW PERMANENCY HEARINGS OR TERMINATION OF PARENTAL RIGHTS HEARINGS

TABLE OF CONTENTS

A. Purpose 52
B. Timing of Review Hearings 52
- Timing of Review Hearings for Children for Whom Adoptive Homes Must be Recruited 53

C. Preparation for the Hearing 54
- The Child Welfare Agency and GAL or CASA 54
- The Court 54

D. Conducting the Hearing 54
- Who Should be Present 55
- Questions that Must be Answered 55
  - In All Cases, what are the Child's Special Needs? 55
  - If Reunification is the Permanent Plan 55
  - If Permanent Guardianship or Permanent Custody is the Permanent Plan 55
  - If Relative or Foster Home Adoption is the Permanent Plan 56
  - If an Adoptive Home has been Recruited Since the Last Hearing but the Child has not yet Been Placed in the Home 56
  - If the Child Has Been Placed in an Adoptive Home Since the Last Hearing 57
  - If the Child Has Been in the Adoptive Home Since the Last Hearing 57
  - If the Agency is Recruiting an Adoptive Home 58
  - If Another Plan is the Permanent Plan 58

E. Findings and Conclusions 58
Endnotes 59

A. Purpose

At this point in the court process one of three circumstances exists for the abused and neglected child who remains under court jurisdiction:

1) The permanency hearing determined that reunification, permanent guardianship or permanent custody or some other permanent plan was appropriate for the child, but this plan has not been fully implemented.
2) Parental rights have been terminated, the child is in the home of the adopting family, but the adoption is not yet finalized.
3) Parental rights have been terminated and an adoptive home is being recruited for the child.

In all of these circumstances, permanence has not been fully achieved and it is the responsibility of the court to continue to review the case.

These review hearings are important to ensure continued momentum toward achieving permanence and case closure.

They should continue on a regular basis until the permanent home is finalized and court involvement ends.

The child welfare system has significant challenges that can impede the progress of cases. Two of the most significant system challenges for children at this point are:[117]

- Public agencies have placed relatively little emphasis on adoption of special needs children because the dramatic increase in abuse reports during the past decade has required agencies to devote most of their staff time and resources to child protective services and foster care.
- Lack of coordination between adoption and foster care units within public child welfare agencies can result in delays to the adoption process, especially adoptions by foster parents, which account for the majority of adoptions from foster care.

The court has the continuing responsibility to evaluate whether reasonable efforts are being made by the child welfare agency to achieve permanence. The child welfare agency remains responsible to make sure that every timely effort is being made to implement the permanency plan, to finalize the adoption, or to find an adopting family.

Timely attention to case progress is just as important at this stage as it is in all of the preceding stages of the court process. *The court must ensure that the child does not languish without permanence while the court or child welfare agency turns their attention to other crises.*

B. Timing of Review Hearings

Time lines for review hearings that follow a permanency hearing or termination of parental rights hearings are not specifically set out in federal law. Case circumstances should drive the time frames for these review hearings. However, the review process should, in most cases, be expedited to accommodate a review *at least* every 90 days.

It is better for children and more efficient for courts and agencies to hold frequent reviews that produce timely case finalization than it is to hold less frequent reviews that allow case finalization to linger over an extended period of time.

Specific examples of recommended time frames for review hearings that follow permanency hearings or termination of parental rights hearings are:

- When **reunification is the plan**, the court should ensure that reunification occurs within 90 days of the permanency hearing. A 90 day review hearing should have been set at the permanency hearing. Ideally, a review or progress report should also be set at 45 days to ensure significant move-

ment toward the goal, thereby allowing the court to move the final hearing forward if the child can return home earlier than previously anticipated. The final hearing should celebrate the parent's success in making the home safe for the child's return. If reunification has not been achieved at 90 days, however, a new permanent plan should be determined and either a termination of parental rights petition filed within 30 days or another review hearing set within 30 days to implement an alternative plan of permanent guardianship or permanent custody.

- When the plan at the permanency hearing was **permanent guardianship or permanent custody** and the plan could not be fully implemented at the permanency hearing, a 90-day review hearing should have been scheduled. The court should expect the plan to be fully implemented within this 90 day period unless there is an exceptional reason otherwise. As with reunification, a review or progress report should also occur at 45 days to ensure significant movement toward the goal so the court can move the final hearing forward, if appropriate.
- When parental rights have been terminated and the plan is for **adoption by the family with whom the child has been residing,** everything should be in place to finalize the adoption as soon as statutory time frames allow. The court should monitor such situations a minimum of every 90 days until the adoption is finalized and more frequently if there are complexities that could cause delays in the finalization.
- When, due to compelling reasons, **another plan not involving reunification, termination of parental rights or permanent guardianship or custody** was approved at the permanency hearing, the specific time frame for review hearings depends on the circumstances of the child but reviews should be held a *minimum* of every 90 days.[118]

Timing of Review Hearings for Children for Whom Adoptive Homes Must be Recruited

When parental rights have been terminated and an adoptive home must be recruited, the court carries a special obligation to monitor the case *very closely* until the adoptive home is identified and the child is placed in the adopting home. After the child has been placed in the adopting home, reviews must continue regularly thereafter until finalization.

The court should initially review the case as often as every 30 to 60 days to make sure all avenues for recruitment of an adoptive home are being actively pursued. The court should make sure the case file has been thoroughly reviewed to identify any prior attachments between the child and a foster parent or other involved adult (i.e., a teacher, minister, neighbor or coach). The court must ensure that the agency, the GAL and the CASA are actively investigating all interested and appropriate persons as potential adopting families. For Indian children, the court must ensure that the agency has contacted the child's tribe and is actively seeking assistance from the tribe in identifying and investigating all interested adoptive families.

Some judges set aside one day each month on their dockets and schedule reviews for *every* child whose parental rights have been terminated but an adoptive home has not yet been found.[119] Other judges set a specific time frame, i.e., 45 days, and if an adoptive home has not been approved, the judge sets the child's case for review. Some courts use Citizen Review Boards to review these cases so that reviews can be more frequent for these children. The Review Board recommends

For the group of children for whom adoptive homes require intensive recruitment, these reviews are most critical.

to the judge the docketing of cases where reasonable efforts to find an adoptive home may not be occurring.

Judges must move out of the courtroom and into the community, raising community awareness that these are **our** children who need new families. Judges must engage the community in the effort to find a permanent home for every child.

C. Preparation for the Hearing

The Child Welfare Agency and GAL or CASA

A summary report that provides information covering all pertinent questions listed in "Questions that Must be Answered" (see section D) should be prepared by the caseworker and provided in advance of the hearing to all parties and the court.[120] This report should clearly set forth the efforts the agency has made toward accomplishment of the permanent plan as well as current information about the well being of the child. If any changes to the court approved plan, time line or services to the child are being recommended, sufficient facts should be set forth to justify the recommended change.

The GAL or CASA should also prepare a report, setting out contacts made with the child, any other new information and an assessment of progress made toward the permanent goal.

The Court

At the preceding permanency, termination of parental rights or review hearing, a date and time for a subsequent review hearing would have been set. This review hearing would have been scheduled before the same judicial officer who presided over the permanency hearing or the termination of parental rights trial.

The length of time needed for the review may vary depending on the circumstances of the case. The court would have been in a position to make this assessment at the preceding hearing. Thirty minutes may be adequate for cases where the child is in the permanent home, there are no problem issues and the case is moving expeditiously toward achieving the permanent plan. However, in all other circumstances, one hour will generally be necessary to hold a thorough and effective review.

Prior to the hearing, the judicial officer should review the court file and the reports provided in advance to the court and all parties by the agency, GAL or CASA, and the child's tribe if the child is an Indian child. The judicial officer should pay particular attention to:

- the date the child was first removed from the home, age at removal, and circumstances surrounding the removal;
- placement history, status of the child's health and well-being, current photo of the child, and known needs, including cultural needs;
- findings of fact and conclusions of law from the permanency hearing, the termination of parental rights hearing, or the previous review hearing;
- details of the permanent plan, including time lines for accomplishing interim steps;
- specific progress toward the permanent plan, with events needed to complete the process outlined in detail;
- whether social services agency staff assigned to the case have changed;
- a listing of parties, attorneys and other representatives, and current care providers (foster parent/adoptive parent); and
- recent progress reports and other reports and evaluations.

D. Conducting the Hearing

This review hearing allows a judge to identify and resolve disputes, make a record of agency and other party progress and discourage delay. To accomplish these purposes, "paper reviews" are inadequate and do not comport with good practice, even when facts

and recommendations in the pre-hearing report are agreed. Parties should be present to express understanding and acceptance of pre-hearing reports, including the recent history of the case. If birth parents' rights have not been terminated, the review hearing provides a forum for determining parents' viewpoints and permanent plan recommendations. The court should ensure that an Indian child's tribe has an opportunity to offer the tribe's views which may differ from those offered by any other party.

Who Should be Present:[121]

- the judge who has monitored the case from the first hearing;
- the child, unless inappropriate for a specific reason;[122]
- parent(s) whose rights have not been relinquished or terminated;[123]
- attorney(s) for the parent(s);
- assigned social services worker(s);[124]
- prosecuting or agency attorney;
- for Indian children, a representative from the child's tribe, if applicable, and tribal attorney, if any;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney, or volunteer or CASA;
- attorney for the child, if applicable;
- foster parent(s), legal risk foster parent(s) or adoptive parent(s);
- relatives, other interested persons and witnesses;[125]
- court reporter or suitable recording technology; and
- court security and other court staff.[126]

Children should be present at some point during the hearing to give the judge an opportunity to observe them. Children can provide the court with verbal and nonverbal information as to their needs. Older children can offer perceptions and concerns and will often have questions regarding their circumstances, the case plan, and projected time frames for achieving permanent goals. A child should seldom, if ever, be absent from an entire hearing.

Questions that Must be Answered:[127]

In order to determine that reasonable efforts are being made toward achieving the permanent plan, the court must ensure that it has sufficient information to answer all of the following questions.

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Updates on health and educational information;
- Updates on what is being offered to address the child's cultural needs, if applicable;
- A description of the child's current placement adjustment; and
- A description of the services that are being provided to the child, the progress the child has made and issues that still need to be addressed.

IF REUNIFICATION IS THE PERMANENT PLAN:

- What progress has been made on each of the issues that prevented implementation of this plan at the permanency hearing?
- How often is visitation occurring and what is the impact on the child and family?
- What is the date and detailed plan for the child's safe return home and follow-up supervision after family reunification?
- What are the plans to continue any necessary services to the child?
- What are the plans to continue any necessary services to the family?
- If a change of school will occur, what will be done to prepare for the transition?
- If the family has not made adequate progress to enable a safe return home, what alternate permanent plan is recommended and what are the steps and time frames for its implementation?

IF PERMANENT GUARDIANSHIP OR PERMANENT CUSTODY IS THE PERMANENT PLAN:[128]

- What progress has been made on each of the issues that prevented implementation of this plan at the permanency hearing?
- What contact is occurring between the child and parents, siblings, other family members, tribal and clan members, if applicable, and is this contact working well for the child and all involved individuals?
- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- What are the plans to continue any necessary services to the child? How will these services be funded after guardianship or custody has been granted?
- What is the plan for financial support from the biological parents?
- Is there any reason that permanent guardianship or permanent custody should not be granted today?[129]
- If sufficient progress has not been made to enable the granting of permanent guardianship or permanent custody at this hearing, what alternate permanent plan is recommended and what are the steps and time frames for its implementation?

IF RELATIVE OR FOSTER HOME ADOPTION IS THE PERMANENT PLAN:

- What progress in approving the relative or foster home as the adoptive home has been made since the termination of parental rights hearing? If it is not yet approved, why not, what remains to be done, and when will it be approved?
- Has there been full disclosure regarding the child's history, and current or potential disabilities?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings, other family members or tribal and clan members, if relevant, and is this contact working well for the child and all involved individuals?
- How soon can the adoption be finalized? What specific steps must occur and what is the time frame for each of the steps?
- Has the adoption assistance agreement been negotiated? If not, why not? Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- Has the relative or foster parent been made aware of ways to access needed services after the adoption is finalized? Has the relative or foster parent been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF AN ADOPTIVE HOME HAS BEEN RECRUITED SINCE THE LAST HEARING BUT THE CHILD HAS NOT YET BEEN PLACED IN THE HOME:

- A detailed description of the family and the neighborhood in which the family lives. Is there another person who spends significant time in the home and if so, has this individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences established in ICWA, and, if not, why not? What efforts has the agency made to identify a placement under ICWA?
- Has there been full disclosure to the adopting family of the child's circumstances, history, special needs and potential disabilities?
- Have all available subsidies been identified and discussed with the adopting family?
- Is the adopting family aware of any adoption with contact agreement and are they accepting of the agreement?

- What is the visitation and placement plan and its time frame? If visits have begun, how are the child and the adopting family adjusting?
- If the home is out of state, have all the ICPC and ICAMA regulations been followed?[130] Are there any known or anticipated issues relative to these compacts that may cause delays and if so, what is being done to resolve or avoid the delays?
- What remains to be done, if anything, to process and approve the home and what are the time frames for this to be completed?
- If the family's ethnicity is different from the child's, what efforts will be made to support relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another locality from where the child currently lives, what are the plans to meet the child's educational and special needs for services? How will educational and service transitions occur?
- After placement in the adoptive home, what contact will the child have with the prior caretaker and others with whom the child has had positive relationships?

IF THE CHILD HAS BEEN PLACED IN AN ADOPTIVE HOME SINCE THE LAST HEARING:

- A detailed description of the family and the neighborhood in which the family lives. Is there another person who spends significant time in the home and if so, has this individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences established in ICWA, and, if not, why not?
- What efforts has the agency made to identify a placement under ICWA?
- When was the child placed in the home and what was the pre-placement process?
- How is the child adjusting to the new home?
- If the home is out of state, have all the ICPC and ICAMA regulations been followed?[131] Are there any known or anticipated issues relative to these compacts that may cause delays and if so, what is being done to resolve or avoid the delays?
- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- If the family's ethnicity is different from the child's, what efforts will be made to support relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another community from where the child previously lived, what are the plans to meet the child's educational and special needs for services? How have or will the educational and service transitions occur?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings or other family members and is this contact working well for the child and all involved individuals?
- What contact will the child have with the prior caretaker and others with whom the child has had positive relationships?
- What is the time frame for adoption finalization? What specific steps must occur and what is the time frame for each of the steps?
- When will the adoption assistance agreement be negotiated? What plans are there to identify all appropriate subsidies and when will paperwork be completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting

family aware of the details of all appropriate subsidy issues?
- Has the adopting family been made aware of ways to access needed services after the adoption is finalized? Has the adopting family been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF THE CHILD HAS BEEN IN THE ADOPTIVE HOME SINCE THE LAST HEARING:

- What progress has been made since the last hearing toward finalization? When will finalization occur? What specific steps must occur and what are the time frames for each step?
- Have any new problems or issues occurred since the last hearing? What is the plan to address the problems or issues?
- If full disclosure regarding the child's background history and current or potential disabilities had not yet occurred at the last hearing, has it now occurred?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings or other family members and is this contact working well for the child and all involved individuals?
- Has the adoption assistance agreement been negotiated? If not, why not? Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- Has the adopting family been made aware of ways to access needed services after the adoption is finalized? Has the adopting family been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF THE AGENCY IS RECRUITING AN ADOPTIVE HOME:

- What efforts have been made since the termination of parental rights hearing or last review hearing to identify potential adoptive homes both locally and in other jurisdictions?
- If the child is an Indian child, what efforts are being made to identify potential adoptive homes within the child's tribal community?
- What is the status of investigations of adults with whom the child has or has had a positive relationship with regard to their potential to become adopting families?
- On what adoption exchanges and internet sites is the child listed?[132]
- How many potential families have expressed interest in the child and what is the status of investigating each family?
- What efforts are being made by the agency to comply with ICWA placement preferences, if applicable?

IF ANOTHER PLAN IS THE PERMANENT PLAN:

- What progress has been made since the permanency hearing and is the existing permanent plan still in the child's best interests?
- Do the compelling reasons not to proceed with reunification, TPR, permanent guardianship or permanent custody that existed at the permanency hearing still apply?
- If they do not, what is the new permanent plan and how is it in the child's best interests? What are the steps and time frames that have occurred, or still need to occur to fully implement this new plan?
- What frequency and duration of contact is occurring between the child and parents, siblings, other family members, tribal or clan members or other significant adults? Is this contact working well for the child and all involved individuals?

- What is the plan to prepare the child for independent living?
- If a change of placement is planned:
  - Why is this change necessary and in the best interests of the child?
  - What is the plan for pre-placement visits? Have they begun and how is the child responding? What is the detailed plan for the child's placement in this home and follow-up supervision after placement?
  - If a change of school or service providers will occur, what will be done to ease the transition?

E. Findings and Conclusions

Findings of fact and conclusions of law should be stated in language understandable by the parties and should create a definitive and legally sufficient record of what has occurred for reference in later hearings. The court's findings and conclusions should be set out in writing and made available to all parties at the conclusion of the hearing. They should include:

- Who is present at the hearing and whether absent parties were provided with appropriate notice. If the child is an Indian child, the court should verify whether the child's tribe received notice and was offered an opportunity to participate. It should be verified that reports provided to the court were made available to all parties prior to the hearing.
- A finding as to whether the agency has made reasonable efforts to finalize a permanent home, with detail to support the finding. If the child is in an adoptive home, the finding should state whether the agency is doing everything possible, as quickly as possible, to approve the home, complete all aspects of the adoption assistance agreement including subsidies and services, and move toward finalization. If an adoptive home must be recruited, the finding should state if the agency is doing everything possible, as quickly as possible, to list the child on all appropriate exchanges, internet sites, and with all appropriate private agencies, and to promptly screen and complete home studies on prospective adopting parents.
- If the child is an Indian child, a finding as to whether the agency has complied with the placement preferences within ICWA, and if not, the efforts made to comply.
- If there are any changes or adjustments to the plan, a description, implementation time lines and the reasons these adjustments or changes are in the best interests of the child.
- If visitation issues, including agreements for adoption with contact apply, are the terms and schedules of visitation being complied with and are they effective.
- A statement addressing special needs of the child, what services are being provided to address the needs and how the child is progressing.
- Any specific orders to be implemented.
- Unless the permanent plan is finalized at the hearing, the date and time for the next review or the finalization hearing.

Endnotes

117. *A Place to Call Home: Adoption and Guardianship for Children in Foster Care,* by Steve Christian and Lisa Ekman, National Conference of State Legislatures, March 2000.

118. See Chapter I, Section C for a description of compelling reasons and recommended time frames for reviews.

119. See Appendix F, *FIRST MONDAY TPR REVIEWS FOR CHILDREN IN NEED OF ADOPTIVE HOMES,* Judge Sharon P. McCully, Third District Juvenile Court, Salt Lake City, Utah.

120. Judges should make these questions available to the child welfare agency and guardian programs so that they can be incorporated into training programs that prepare workers for court presentation.

121. The *RESOURCE GUIDELINES* first set out a listing of who should be present at various hearings in a child abuse and neglect case. This listing now includes foster parents, as clarified under the Adoption and Safe Families Act. There is also now a greater emphasis on including children in all or part of a hearing.

122. If exclusion of the child is being considered, determine whether the child's presence for part of the hearing is appropriate.

123. If a parent is not conversant in English, a translator qualified in the language and dialect of the parent should be present.

124. If a separate adoption worker has been assigned to the case, that worker should be present along with the ongoing caseworker.

125. This can include relatives, service providers, therapists, educators, probation and parole officers, and any others who can provide relevant information to the court.

126. If case managers, clerks or other court staff are needed to assist in the courtroom with scheduling hearings, compiling files, and retrieving electronic information, they should also be present.

127. Judges should make these questions available to child welfare agencies, GALs and CASAs so that they can incorporate them into training programs for their staff on how to properly prepare for court hearings.

128. Whenever the plan is permanent guardianship or permanent custody, it is critical that the court ensures that this legal relationship includes all of the components described in Chapter I, Section C. Permanency Characteristics.

129. If this is a possibility, the judge should be prepared to follow the steps described in Chapter VII.

130. See Chapter I, Section A, Chapter V, Section C and Appendix C.

131. Ibid.

132. See Appendix G for a list of adoption exchanges.

CHAPTER VII

HEARINGS TO FORMALIZE CASE CLOSURE AND FINALIZE ADOPTIONS

TABLE OF CONTENTS

A. Purpose 62

B. Timing of the Hearing 62

C. Preparation for the Hearing 62
- The Child Welfare Agency and GAL or CASA .. 62
- The Court 62

D. Conducting the Hearing 63
- Who Should Be Present 64

E. Questions That Must Be Answered 64

F. Findings and Conclusions 64

Endnotes 65

Chapter VII: Hearings To Formalize Case Closure

A. Purpose

The hearings described in this final chapter represent the conclusion of the court's involvement in a hearing process for an abused or neglected child that has lasted from many months to several years. The court has monitored the child's placement in a safe, temporary home and ensured that appropriate services have been delivered to meet both the child's and the family's needs. For children who could be reunified, the reunification hearing has been held and has celebrated the families' success in providing a safe home for their child. For children who could not be reunified with their family, a new permanent home has been found and everything possible has been done to ensure that this new permanent home will be able to meet the child's needs through adulthood.

The court is now ready to finalize an adoption or grant permanent guardianship or permanent custody to the child's new family.[133] This hearing concludes the temporary nature of the prior relationship between the child, the foster family, the relative, the guardian or the adopting family.

The new parent(s) are assuming the permanent role of parental care, custody, and control of the child. They are making a commitment to the child protection system, the court, and the child that they will provide for the child's safety, health, education, and well being.

This hearing legally executes closure and concludes the decision-making and monitoring roles of the court.

B. Timing of the Hearing

ASFA requires the permanency decision to be made within 12 months of a child's entry into foster care. If reunification or permanent guardianship or custody was the plan, the final hearing described in this chapter should occur either at the permanency hearing or within 90 days from that hearing.

When adoption is the plan, it is possible that the termination of parental rights process, completing the appeals process, if applicable, and meeting the statutory time frame for finalization could add an additional year or more from the time of the permanency hearing. Ideally, when a foster parent or a relative with whom the child was living prior to termination of parental rights is adopting the child, state statutes would allow adoption finalization within six months of the TPR decision. When an adopting family must be recruited, unless exceptional circumstances exist, finalization should occur no later than 12 months after the child is placed with the adopting family.

Judges must ensure that the final hearing to formalize case closure occurs at the earliest possible time that the child's best interests and state statutes permit.

C. Preparing for the Hearing

The Child Welfare Agency and GAL or CASA

The child welfare agency must comply with any publication or other notice requirements of state law. At least two weeks in advance of the final hearing, the caseworker and guardian *ad litem* or CASA should prepare a report and distribute the report to the court and all parties. This report should confirm that all issues necessary to conclude the case are completed, and should, in the case of adoption finalization, include a copy of the signed adoption assistance agreement.

The Court

During the review process, the court should be able to predict with a significant degree of accuracy when the next hearing will be the final proceeding for this case. At the last review hearing before the final hearing to formalize case closure, the judge must ensure that all of the necessary preparation will be complete before the final hearing. Each of these preparatory issues is fully covered in Chapter VI but can be summarized here as:

- Full disclosure of all known information regarding the child's history and needs;
- A plan for all needed services to continue after formal case closure; and
- If the child is being adopted, a written adoption assistance agreement that covers subsidies, post-finalization contact plans and available support systems.

State law should include a requirement that any contestant to the adoption, permanent custody, or permanent guardianship file their appearance and grounds 30 days in advance of the final hearing.[134] If review hearings have been thorough, such issues should not arise at the last minute but rather should be identified and resolved during the review hearing process. When a contestant files such grounds, the court should order a settlement conference in advance of the final hearing to work toward agreement of contested issues.

Prior to the hearing that formalizes case closure by granting permanent custody, permanent guardianship, or finalizing an adoption the court should review:

- the entry from the last hearing;
- the caseworker and GAL or CASA reports;
- a report from the child's tribe, if applicable; and
- the adoption assistance agreement, if applicable.

The court should make a final review of the court file to confirm that all due process issues have been covered in full.

D. Conducting the Hearing

It is strongly preferred that the same judicial officer who ordered the neglected or abused child into temporary agency care has the responsibility and the privilege to hold this final hearing. This hearing culminates all of the court's prior efforts into a successful ending.

All of the professionals involved, as well as the child and the new permanent family should participate in the celebration.

If adoption finalizations, permanent custody or permanent guardianships are generally handled by another court, efforts should be made to have this final hearing transferred to the juvenile court judge. However, if such a transfer is not possible under state law, then the juvenile court should consider holding a final hearing after the other court has completed adoption, custody or guardianship proceedings.

If the adoption, guardianship or custody is contested (i.e., there are rival prospective adoptive parents or guardians, or the agency has denied consent to adoption or custody but the prospective parents have filed a petition for the adoption or custody to be approved by the court) the hearing should be bifurcated to address contested issues first. At the conclusion of the evidence, if it is found that the adoption, custody or guardianship should be granted, the court should then proceed to finalization of the permanent plan.

The formalization of a new permanent family relationship between a child and the adoptive parents or guardian is of great importance in the lives of the child and the new family. Courtroom ceremony can be an important part of the event. The ceremony of this occasion should include a brief history of the case, milestones for the child since first being removed from the home and the judicial officer's hopes for the child's future with the new, permanent family.

Although this chapter focuses on hearings to finalize adoptions, permanent custodies and permanent guardianships, it is important to note that a similar hearing with similar ceremony should occur whenever a child is successfully reunified with the parent(s).

The hearing should include an explanation of the rights and responsibilities of this newly created parent-child relationship. All parties present at the hearing should have an opportunity to make a statement and share their hopes.

Who Should be Present:

- the judge who has monitored the case since the first hearing;
- the child;[135]
- the child's tribe, if applicable;
- the adoptive parent(s), permanent custodian or guardian and their children and relatives;
- parent(s) whose rights have not been relinquished or terminated;[136]
- contestants of the action;[137]
- assigned social services worker and adoption worker, if applicable;
- attorney, guardian *ad litem* or CASA for the child;
- attorneys for the parties;
- other interested parties and witnesses;
- court reporter or suitable recording technology; and
- court security and other court staff.[138]

The child should always be present for the non-contested portion of a hearing to formalize case closure.

E. Questions That Must Be Answered[139]

The following questions must be answered prior to the conclusion of the hearing:

- What is the child's current adjustment in the home, school and community?
- Why is finalization of this permanency arrangement in the best interests of the child?
- Do the adopting parent(s), the permanent custodian(s) or the permanent guardian(s) understand the rights and responsibilities of this newly created parent-child relationship?
- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- If required by law, does the child consent to the adoption?
- If applicable, do the adopting parent(s), the permanent custodian(s) or the permanent guardian(s) understand and agree with ongoing contact that is proposed with the child's biological family or other significant persons in the child's life?
- If this is an adoption finalization, has the adopting family signed the adoption assistance agreement and are there any questions regarding the agreement?[140]
- If this is a permanent custody or permanent guardianship, do all parties understand the residual rights of the parents? What are the arrangements for financial support from the biological parents to the custodians or guardians?
- Are all necessary services and support systems in place?
- Does the new family know whom to contact if they need assistance in the future?
- Have all legal requirements been met?

F. Findings and Conclusions

Findings of fact and conclusions of law should be stated in language understandable by the parties and should create a definitive and legally sufficient record of what has occurred for the benefit of the child, the family and the court. The court's findings and conclusions should be set out in writing and made available to all parties at the conclusion of the hearing. They should include:

- Who is present at the hearing and whether absent parties were provided with legal notice, including the child's tribe if an Indian child. It should be verified that reports provided to the court were made available to all parties prior to the hearing.
- If any issues were contested, the court's decision and reasons for the decision.

- A finding as to why the adoption, permanent custody or permanent guardianship is in the best interests of the child.
- A finding that full disclosure of the child's history and current or potential problems has been made.
- A finding that reasonable efforts were made to finalize a permanent home.
- A statement and description of the new legal relationship and its terms and conditions, including any post-finalization contact agreements.
- If required by state law, a finding that the child consents to the adoption, custody, or guardianship.
- If this is an adoption finalization, a finding that all rights of birth parents have been relinquished or terminated and that any necessary consents to the adoption have been obtained.
- If this is an adoption finalization, incorporation of the adoption assistance agreement by reference.
- If custody or guardianship is granted, clear definition of visitation and support orders relating to the biological parent(s).
- A clear statement that the court's involvement in this case is now concluded.

Endnotes

133. Whenever the plan is permanent guardianship or permanent custody, it is critical that the court ensure that this legal relationship includes the components described in Chapter I, Section C, Permanency Characteristics.

134. Time lines for challenges in ICWA cases are governed by the ICWA.

135. If the finalization is contested, it may be appropriate to exclude the child for the contested portion of the hearing.

136. Under certain circumstances, it might be appropriate for parent(s) involved in extensive adoption with contact agreements to attend if the adopting family requests.

137. Contestants to the action should be present during that portion of the bifurcated hearing dealing with whether the adoption, permanent guardianship or permanent custody should be granted.

138. If case managers, clerks, or other court staff are necessary to assist with scheduling hearings, compiling files, and retrieving electronic information, they should also be present.

139. Judges should make these questions available to the child welfare agency, GAL and CASA programs so that they can be incorporated into training programs that prepare workers for court presentation.

140. This agreement covers many issues including subsidies, services and transferability if the family moves out of the jurisdiction. See Chapter V, Section G for more information about adoption assistance agreements.

PERMANENCY HEARING (Chapter II)

WHO SHOULD BE PRESENT:

- the judge who has monitored the case from the first hearing;
- the child, unless inappropriate for a specific reason;
- parent(s) whose rights have not been relinquished or terminated;
- the Indian custodian, the child's tribe and attorney, if applicable;
- attorney(s) for the parent(s);
- assigned child welfare caseworker(s);
- prosecuting or agency attorney;
- attorney for the child, if applicable;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney or CASA;
- foster parent(s), legal risk foster parent(s) or adoptive parent(s);
- relatives, other interested persons and witnesses;
- court reporter or suitable recording technology; and
- court security and other court staff.

QUESTIONS THAT MUST BE ANSWERED:

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Updates on health and educational information.
- A description of the child's current placement and behavior.
- A description of the services provided to the child, the progress the child has made and issues that still need to be addressed, including cultural needs.
- If a member of a sibling group, information on the status of the relationship and contact between siblings.

IF REUNIFICATION IS RECOMMENDED:

- How have the conditions or circumstances leading to the removal of the child been corrected?
- Why is this plan in the best interests of the child?
- How often is visitation occurring and what is the impact on the child?
- What is the date and detailed plan for the child's safe return home and follow-up supervision after family reunification?
- What are the plans to continue any necessary services to the child?
- What are the plans to continue any necessary services to the family?
- If a change of school will occur, what will be done to prepare for the transition?

IF TERMINATION OF PARENTAL RIGHTS AND ADOPTION ARE RECOMMENDED:

- What are the facts and circumstances supporting the grounds for termination?
- What reasonable efforts were made to reunify?
- Why is this plan in the best interests of the child?
- Has the petition been filed and if not, what is the date it will be filed?
- Are there relatives who will adopt the child if TPR is granted? If so, is the child living with the relative? If not, why not? If there are no relatives willing and able to adopt, why not?
- If relative adoption is not the plan, is adoption by the foster parents the plan? If not, why not?
- If an adoptive home must be recruited, what efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? Are there adults with whom the child has a positive relationship and are they potential adopting families?
- Will adoption with contact be recommended and why or why not?

- What counseling will occur to assist the child to deal with this change of plan?
- If the child is an Indian child, have ICWA requirements been met?

IF PERMANENT GUARDIANSHIP OR PERMANENT CUSTODY IS RECOMMENDED:

- Why is this option preferable to TPR and adoption? Why is it in the best interests of the child?
- What reasonable efforts were made to reunify?
- What are the facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent family to the child? Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness?
- Has there been full disclosure to the family of the child's circumstances and special needs?
- What is the plan to ensure that this will be a permanent home for the child?
- What contact will occur between the child and parents, siblings and other family members?
- What financial support will be provided by the biological parents?
- What are the plans to continue any necessary services to the child? How will these services be funded after guardianship or custody has been granted?
- If the child is not already placed in this home, why not and:
  - How often is visitation occurring and what is the impact on the child?
  - What is the date and detailed plan for the child's placement in this home and follow-up supervision after placement?
  - If a change of school will occur, what will be done to prepare for the transition?

IF ANOTHER PLAN IS BEING RECOMMENDED:

- What are the compelling reasons not to proceed with reunification, TPR, permanent guardianship or permanent custody? What is the plan, and why is this plan in the child's best interests?
- What reasonable efforts were made to reunify the child with the parent(s)?
- How will this plan provide stability and permanency for the child?
- What contact will occur between child and parents, siblings and other family members?
- What are the plans to continue any necessary services to the child?
- If the child is a teenager, what is the plan to prepare the child for independent living?
- If the child is not already placed in this home, why not and:
  - How often is visitation occurring and what is the impact on the child?
  - What is the detailed plan for the child's placement in this home and follow-up supervision after placement?
  - If a change of school will occur, what will be done to ease the transition?

FINDINGS AND CONCLUSIONS

- Persons present and whether absent parties were provided with appropriate notice; verification that reports offered into evidence have been provided to all parties in advance of the hearing.
- A finding as to what reasonable efforts the agency has made to reunify the family and to finalize a permanent plan. A well-designed, appropriate case plan and meaningful case reviews should prevent unexpected findings of "no reasonable efforts" at this stage of a case. Should it be found that additional remedial steps are necessary, specific expectations should be set

out in a detailed order, with a short time frame (e.g., 30 days) for holding the follow-up permanency hearing. A copy of the order should be forwarded to the head of the social services agency.

- A statement addressing special factors or conditions of the child that are identified as special needs, what services are to be provided to address these needs and who is responsible for providing the services.
- The court's determination of the permanent plan for the child and why the plan is in the best interests of the child. The order should state the steps to be taken and time lines for accomplishing the permanent goal. If the plan is reunification, the date for reunification should be stated.
- If the plan is termination of parental rights and the petition has not yet been filed, the order should state expected time frame for filing a petition for TPR that must be within 30 days. If the petition has been filed, the court should schedule pre-trials, mediation and trial dates.
- If the plan is termination of parental rights, and a parent wishes to relinquish parental rights at the permanency hearing, the court should be prepared to accept the relinquishment and include the relinquishment in the order.
- For any plan, next hearing date and purpose unless all court and agency involvement is terminated (i.e., permanent guardianship, permanent custody or reunification without protective supervision).

TERMINATION OF PARENTAL RIGHTS HEARINGS (Chapter III)

WHO SHOULD BE PRESENT:

- the judge who has monitored the case from the first hearing;
- the child;
- parent(s);
- attorney(s) for the parent(s);
- if an Indian child, the child's tribe, the attorney for the child's tribe, if any, and the Indian custodian;
- assigned social services worker(s);
- prosecuting or agency attorney;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney, or CASA;
- attorney for the child, if applicable;
- foster parent(s), legal risk foster parent(s) or adoptive parent(s);
- relatives who are caretakers of the child or who are involved in an adoption with contact agreement, when applicable;
- court reporter or suitable recording technology; and
- court security and other court staff.

QUESTIONS THAT MUST BE ANSWERED TO DETERMINE WHETHER GROUNDS EXIST FOR TERMINATION OF PARENTAL RIGHTS AND WHETHER TERMINATION AND ADOPTION ARE IN THE BEST INTERESTS OF THE CHILD:

WHEN MEDIATION RESULTS IN VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS:

- Was the parental consent to relinquishment voluntary and informed?
- Have both biological parents consented to relinquishment?
- Why are relinquishment and adoption in the best interests of the child?
- Is there a recommendation for adoption with contact? How is this recommendation, or lack thereof, in the best interests of the child?

For Indian children, the court must comply with the requirements of the ICWA which states that voluntary relinquishments must be:

- Executed in writing.
- Recorded before a judge and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian.
- Certified by the court that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood.
- Any consent given prior to or within 10 days after the birth of the child shall not be valid.

WHEN THE CASE GOES TO TRIAL:

- Were all parties properly identified and served?
- Has the evidence presented shown that statutory grounds for termination of parental rights exist?
- Were reasonable efforts made to reunify?
- Is termination of parental rights in the best interests of the child?

QUESTIONS THAT MUST BE ANSWERED TO DETERMINE WHETHER REASONABLE EFFORTS ARE BEING MADE TOWARD ADOPTION AND TO FINALIZE THE PERMANENT PLAN

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Current health and educational information.
- A description of the child's current placement.
- A description of the services provided to the child, the progress the child has made and the issues still to be addressed, including cultural needs.
- Has the child received counseling with regard to termination of parental rights and how is the child adjusting to the plan of adoption?

IF THE PLAN IS RELATIVE OR FOSTER HOME ADOPTION:

- What, if anything, remains to be done before the home is approved as the adoptive home? Can the adoption home study be waived and replaced with the kinship care or foster home study?
- Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness?
- Has there been full disclosure to the relative or foster parent regarding the child's history and any current or potential disabilities?
- What is the time frame for finalization?
- Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?

IF AN ADOPTIVE HOME HAS BEEN RECRUITED:

- A detailed description of the family. Is there another person who spends significant time in the home, and if so, has that individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences list in ICWA, and if not, why not? What efforts has the agency made to identify a placement under ICWA?
- Has there been full disclosure to the adopting family of the child's circumstances and special needs?
- What remains to be done, if anything, to process and approve the home?
- What is the visitation and placement plan and time frame? If visits have begun, how are the child and the adopting family adjusting?
- If the family's ethnicity is different from the child's, what efforts will be made to ensure relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another locality from where the child currently lives, what are the plans to meet the child's educational and special needs for services? How will the educational and service transition occur?
- Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- After placement in the adoptive home, what contact will the child have with the prior caretaker and others who have had positive

relationships? Is the adopting family agreeable to any contact plan that may have been recommended with the biological parent(s)?

IF AN ADOPTIVE HOME MUST BE RECRUITED:

- What efforts are being made to identify potential adoptive homes both locally and in other jurisdictions? On what adoption exchanges and internet sites is the child listed? What other efforts such as newspapers, television spots and match parties are being made?
- What is the status of investigating adults with whom the child has or has had a positive relationship with regards to their potential to become adopting families?
- How many potential families have expressed interest in the child and what is the status of the investigation of each family?

FINDINGS AND CONCLUSIONS

- Persons present and how absent parties were provided with appropriate notice, paying particular attention to any biological parent, tribal representative or Indian custodian not present.
- If there was a voluntary relinquishment of parental rights, efforts made by the court to ensure the relinquishment was voluntary and informed. For Indian children, this must include the special requirements of ICWA.
- How reasonable efforts were made to reunify the family. If no efforts were reasonable, a statement that based on family circumstances and child health and safety all reasonable efforts were made. For Indian children, reasonable efforts findings must include the special requirements of ICWA.
- If the case went to trial, whether or not termination of parental rights is granted. If so, under what statutory grounds and the specific reasons why the statute applies in this case. For Indian children, findings must include the special requirements of ICWA.
- Why termination of parental rights and adoption is in the best interests of the child.

IN A SEPARATE ENTRY:

- What is being done to ensure that reasonable efforts are being made to find an adoptive home, with specific steps and time frames that are to occur.
- A description of any special factors or conditions of the child that are identified as special needs, what services are to be provided to address these needs and who is responsible for providing each service.
- The date and time of the next review set for within 90 days.

REVIEW HEARINGS THAT FOLLOW PERMANENCY HEARINGS OR TERMINATION OF PARENTAL RIGHTS HEARINGS (Chapter VI)

WHO SHOULD BE PRESENT:

- the judge who has monitored the case from the first hearing;
- the child, unless inappropriate for a specific reason;
- parent(s) whose rights have not been relinquished or terminated;
- attorney(s) for the parent(s);
- assigned social services worker(s);
- prosecuting or agency attorney;
- for Indian children, a representative from the child's tribe and tribal attorney, if any;
- guardian *ad litem* for the child, whether attorney, social worker or other paid non-attorney, or volunteer or CASA;
- attorney for the child, if applicable;
- foster parent(s), legal risk foster parent(s) and/or adoptive parent(s);
- relatives, other interested persons and witnesses;
- court reporter or suitable recording technology; and
- court security and other court staff.

QUESTIONS THAT MUST BE ANSWERED:

IN ALL CASES, WHAT ARE THE CHILD'S SPECIAL NEEDS?

- Updates on health and educational information.
- Updates on what is being offered to address the child's cultural needs, if applicable.
- A description of the child's current placement adjustment; and
- A description of the services being provided to the child, the progress the child has made and issues that still need to be addressed.

IF REUNIFICATION IS THE PERMANENT PLAN:

- What progress has been made on each of the issues that prevented implementation of this plan at the permanency hearing?
- How often is visitation occurring and what is the impact on the child and family?
- What is the date and detailed plan for the child's safe return home and follow-up supervision after family reunification?
- What are the plans to continue any necessary services to the child?
- What are the plans to continue any necessary services to the family?
- If a change of school will occur, what will be done to prepare for the transition?
- If the family has not made adequate progress to enable a safe return home, what alternate permanent plan is recommended and what are the steps and time frames for its implementation?

IF PERMANENT GUARDIANSHIP OR PERMANENT CUSTODY IS THE PERMANENT PLAN:

- What progress has been made on each of the issues that prevented implementation of this plan at the permanency hearing?
- What contact is occurring between the child and parents, siblings, other family members and tribal and clan members, if applicable, and is this contact working well for the child and all involved individuals?

- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- What are the plans to continue any necessary services to the child? How will these services be funded after guardianship or custody has been granted?
- What is the plan for financial support from the biological parents?
- Is there any reason that permanent guardianship or permanent custody should not be granted today?
- If sufficient progress has not been made to enable the granting of permanent guardianship or permanent custody at this hearing, what alternate permanent plan is recommended and what are the steps and time frames for its implementation?

IF RELATIVE OR FOSTER HOME ADOPTION IS THE PERMANENT PLAN:

- What progress in approving the relative or foster home as the adoptive home has been made since the termination of parental rights hearing? If it is not yet approved, why not, what remains to be done, and when will it be approved?
- Has there been full disclosure regarding the child's history, and current or potential disabilities?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings, other family members, or tribal and clan members, if relevant, and is this contact working well for the child and all involved individuals?
- How soon can the adoption be finalized? What specific steps must occur and what is the time frame for each of the steps?
- Has the adoption assistance agreement been negotiated? If not, why not? Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- Has the relative or foster parent been made aware of ways to access needed services after the adoption is finalized? Has the relative or foster parent been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF AN ADOPTIVE HOME HAS BEEN RECRUITED SINCE THE LAST HEARING BUT THE CHILD HAS NOT YET BEEN PLACED IN THE HOME:

- A detailed description of the family and the neighborhood in which the family lives. Is there another person who spends significant time in the home, and if so, has this individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences listed in ICWA and if not, why not? What efforts has the agency made to identify a placement under ICWA?
- Has there been full disclosure to the adopting family of the child's circumstances, history, special needs and potential disabilities?
- Have all available subsidies been identified and discussed with the adopting family?
- Is the adopting family aware of any adoption with contact agreement and are they accepting of the agreement?
- What is the visitation and placement plan and its time frame? If visits have begun, how are the child and the adopting family adjusting?
- If the home is out of state, have all the ICPC and ICAMA regulations been followed? Are there any known or anticipated issues relative to these compacts that may cause delays and if so, what is

being done to resolve or avoid the delays?
- What remains to be done, if anything, to process and approve the home and what are the time frames for this to be completed?
- If the family's ethnicity is different from the child's, what efforts will be made to support relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another locality from where the child currently lives, what are the plans to meet the child's educational and special needs for services? How will educational and service transitions occur?
- After placement in the adoptive home, what contact will the child have with the prior caretaker and others with whom the child has had positive relationships?

IF THE CHILD HAS BEEN PLACED IN AN ADOPTIVE HOME SINCE THE LAST HEARING:

- A detailed description of the family and the neighborhood in which the family lives. Is there another person who spends significant time in the home, and if so, has this individual been interviewed for appropriateness?
- If the child is an Indian child, does the home meet the placement preferences listed in ICWA and if not, why not?
- What efforts has the agency made to identify a placement under ICWA?
- When was the child placed in the home and what was the pre-placement process?
- How is the child adjusting to the new home?
- If the home is out of state, have all ICPC and ICAMA regulations been followed? Are there any known or anticipated issues relative to these compacts that may cause delays and if so, what is being done to resolve or avoid the delays?
- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- If the family's ethnicity is different from the child's, what efforts will be made to support relationships between the child and others of the same ethnicity? Does the adopting family understand the special aspects of the child's ethnicity?
- If the home is in another community from where the child previously lived, what are the plans to meet the child's educational and special needs for services? How have or will the educational and service transitions occur?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings or other family members and is this contact working well for the child and all involved individuals?
- What contact will the child have with the prior caretaker and others with whom the child has had positive relationships?
- What is the time frame for adoption finalization? What specific steps must occur and what is the time frame for each of the steps?
- When will the adoption assistance agreement be negotiated? What plans are there to identify all appropriate subsidies and when will paperwork be completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- Has the adopting family been made aware of ways to access needed services after the adoption is finalized? Has the adopting family been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF THE CHILD HAS BEEN IN THE ADOPTIVE HOME SINCE THE LAST HEARING:

- What progress has been made since the last hearing toward finalization? When will finalization occur? What specific steps must occur and what are the time frames for each step?
- Have any new problems or issues occurred since the last hearing? What is the plan to address the problems or issues?
- If full disclosure regarding the child's background history and current or potential disabilities had not yet occurred at the last hearing, has it now occurred?
- If adoption with contact has been agreed upon, what contact is occurring between the child and parents, siblings or other family members and is this contact working well for the child and all involved individuals?
- Has the adoption assistance agreement been negotiated? If not, why not? Have all appropriate subsidies been identified and has all paperwork been completed with regard to these subsidies? Will services follow the family if they move out of state? Is the adopting family aware of the details of all appropriate subsidy issues?
- Has the adopting family been made aware of ways to access needed services after the adoption is finalized? Has the adopting family been given contacts for support groups or other adopting families who can serve as mentors and supports?

IF THE AGENCY IS RECRUITING AN ADOPTIVE HOME:

- What efforts have been made since the termination of parental rights hearing or last review hearing to identify potential adoptive homes both locally and in other jurisdictions?
- If the child is an Indian child, what efforts are being made to identify potential adoptive homes in the child's tribal community?
- What is the status of investigating adults with whom the child has or has had a positive relationship with regard to their potential to become adopting families?
- On what adoption exchanges and Internet sites is the child listed?
- How many potential families have expressed interest in the child and what is the status of investigating each family?
- What efforts are being made by the agency to comply with ICWA placement preferences, if applicable?

IF ANOTHER PLAN IS THE PERMANENT PLAN:

- What progress has been made since the permanency hearing and is the existing permanent plan still in the child's best interests?
- Do the compelling reasons not to proceed with reunification, TPR, permanent guardianship or permanent custody that existed at the permanency hearing still apply?
- If they do not, what is the new permanent plan and how is it in the child's best interests? What are the steps and time frames that have occurred, or still need to occur to fully implement this new plan?
- What is the frequency and duration of contact that is occurring between the child and parents, siblings, other family members, tribal or clan members or other significant adults? Is this contact working well for the child and all involved individuals?
- What is the plan to prepare the child for independent living?
- If a change of placement is planned:
  - Why is this change necessary and in the best interests of the child?

- What is the plan for pre-placement visits? Have they begun and how is the child responding? What is the detailed plan for the child's placement in this home and follow-up supervision after placement?
- If a change of school or service providers will occur, what will be done to ease the transition?

FINDINGS AND CONCLUSIONS:

- Who is present at the hearing and whether absent parties were provided with appropriate notice. If the child is an Indian child, the court should verify whether the child's tribe received notice and was offered an opportunity to participate. It should be verified that reports provided to the court were made available to all parties prior to the hearing.
- A finding as to whether the agency has made reasonable efforts to finalize a permanent home with detail to support the finding. If the child is in an adoptive home, the finding should indicate whether the agency is doing everything possible, as quickly as possible, to approve the home, complete all aspects of the adoption assistance agreement including subsidies and services, and move toward finalization. If an adoptive home must be recruited, the finding should indicate whether the agency is doing everything possible, as quickly as possible, to list the child on all appropriate exchanges, internet sites, and with all appropriate private agencies, and to promptly screen and complete home studies on prospective adopting parents.
- If the child is an Indian child, a finding as to whether the agency has complied with the placement preferences within ICWA, and if not, the efforts made to comply.
- If there are any changes or adjustments to the permanent plan, a description with time lines for implementation and the reasons that these adjustments or changes are in the best interests of the child.
- If visitation issues, including agreements for adoption with contact apply, are the terms and schedules of visitation being complied with and are they effective.
- A statement addressing special factors or conditions of the child that are identified as special needs, what services are being provided to address the needs and how the child is progressing.
- Any specific orders that are to be implemented.
- Unless the permanent plan is finalized at the hearing, the date and time for the next review or the finalization hearing.

HEARINGS TO FORMALIZE CASE CLOSURE AND FINALIZE ADOPTIONS (Chapter VII)

WHO SHOULD BE PRESENT:

- the judge who has monitored the case since the first hearing;
- the child;
- the child's tribe, if applicable;
- the adoptive parent(s), permanent custodian or guardian and their children and relatives;
- parent(s) whose rights have not been relinquished or terminated;
- contestants of the action;
- assigned social services worker and adoption worker, if applicable;
- attorney, guardian *ad litem*, or CASA for the child;
- attorneys for the parties;
- other interested parties and witnesses;
- court reporter or suitable recording technology; and
- court security and other court staff.

QUESTIONS THAT MUST BE ANSWERED:

- What is the child's current adjustment in the home, school and community?
- Why is finalization of this permanency arrangement in the best interest of the child?
- Do the adopting parent(s), the permanent custodian(s) or the permanent guardian(s) understand the rights and responsibilities of this newly created parent-child relationship?
- Has there been full disclosure regarding the child's background history and current or potential disabilities?
- If required by law, does the child consent to the adoption?
- If applicable, do the adopting parent(s), the permanent custodian(s) or the permanent guardian(s) understand and agree with any ongoing contact that is proposed with the child's biological family or other significant persons in the child's life?
- If this is an adoption finalization, has the adopting family signed the adoption agreement and are there any questions regarding the agreement?
- If this is a permanent custody or permanent guardianship, do all parties understand the residual rights of the parents? What are the arrangements for financial support from the biological parents to the custodians or guardians?
- Are all necessary services and support systems in place?
- Does the new family know who to contact if they need assistance in the future?
- Have all legal requirements been met?

FINDINGS AND CONCLUSIONS:

- Who is present at the hearing and whether absent parties were provided with legal notice. It should be verified that reports provided to the court were made available to all parties prior to the hearing. If the child is an Indian child, whether the child's tribe was notified of the hearing and the opportunity to participate and if not, why not?
- If any issues were contested, the court's decision(s) and reasons for the decision(s).
- A finding as to why the adoption, permanent custody, or permanent guardianship is in the best interest of the child.
- A finding that full disclosure of the child's history and current or potential problems has been made.
- A finding that reasonable efforts were made to finalize a permanent home.

- A statement and description of the new legal relationship and its terms and conditions, including any post-finalization contact agreements.
- If required by state law, a finding that the child consents to the adoption, custody, or guardianship.
- If this is an adoption finalization, a finding that all rights of birth parents have been relinquished or terminated and that any necessary consents to the adoption have been obtained.
- If this is an adoption finalization, incorporation of the adoption assistance agreement by reference.
- If custody or guardianship is granted, clear definition of visitation and support orders relating to the biological parent(s).
- A clear statement that the court's involvement in this case is now concluded.

GLOSSARY

Excerpted, in part, from Glossary of Selected Legal Terms for Juvenile Justice Personnel *(1988),* Integrated Glossary of Normal Child Sexuality and Child Sexual Abuse Terms for Juvenile Justice Professionals (1987) *and the* RESOURCE GUIDELINES: Improving Court Practice in Neglect and Abuse Cases *(1995), National Council of Juvenile and Family Court Judges, Reno, Nevada; also includes excerpts from the* Dave Thomas Foundation for Adoption Glossary of Terms.

Adoption assistance agreement – Agreements between child welfare agencies and adopting parent(s) covering financial assistance, services, support systems, medical assistance and interjurisdictional transferability after an adoptive placement pursuant to Title IV-E, Federal Payments for Foster Care and Adoption Assistance, of the Social Security Act, 42 USC 671, 673(a)(1)(A); 475(3) and state regulations.

Adoption disruption – Termination of an adoptive placement prior to the finalization. Failure of an adoption after finalization is termed a "dissolution."

Adoption with contact (a.k.a. Open adoption) – An adoption in which the adopting parent agrees to the sharing of information or some form of post-adoption contact between the child and his or her birth family.

Adoption exchange – A registry that seeks to match waiting children with prospective adoptive parents.

Adoption hearing (a.k.a. Adoption finalization) – Judicial proceeding in which a permanent parental relationship is legally established between adult individual(s) who are not the biological parents and a child whose parental rights have been terminated. The entry by a court of a final decree of adoption.

Adoptive parent – An adult person, not the biological parent, with whom a permanent legal relationship has been established to a child after parental rights have been terminated. Under the adoptive relationship, the child becomes the heir and is entitled to all other privileges belonging to a natural child of the adopting parent.

Adoptive placement – Placement of a child with prospective adoptive parents prior to finalization of the adoption.

ASFA – Adoption and Safe Families Act of 1997, P.L. 105-89 which amended Titles IV-B and IV-E of the Social Security Act to clarify certain provisions of P.L. 96-272 and to speed the process of finding permanent homes for children.

Case flow management – Administrative and judicial processes designed to reduce delays in litigation; processes which assist the court in monitoring child welfare agencies to make sure dependency cases are moved diligently and decisively toward completion.

Child abuse – To hurt or injure a child by maltreatment. As defined by statutes in the majority of states, generally limited to maltreatment that causes or threatens to cause lasting harm to a child.

Child neglect – To fail to give proper attention to a child; to deprive a child; to allow a lapse in care and supervision that causes or threatens to cause lasting harm to a child.

Child-specific recruitment – Recruitment of adopting families that promotes specific children for adoption, as opposed to general appeals to adopt.

Citizen Review Board – See Foster Care Review Board.

Court Appointed Special Advocate (CASA) – A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child abuse, neglect, or other dependency matters, and submits a formal report of advisory recommendations as to the best interests of a child. In some jurisdictions,

volunteers without formal legal training, such as CASAs, are appointed to represent abused and neglected children, serving in the capacity of a guardian *ad litem*. See guardian *ad litem*.

Dependent child – A child subject to the jurisdiction of the court because of child abuse, neglect or lack of proper care through no fault of the parent.

Direct calendaring – An administrative scheduling system used by courts in which child abuse and neglect cases involving a single family are assigned to a single judge or judicial officer at the time the case is first filed, and for the duration of government involvement with a specific family. The initially assigned judge conducts all subsequent hearings, conferences and trials.

Extended family member – A term used in the Indian Child Welfare Act (ICWA) that means a person who has reached the age of 18 and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Family conferencing or Family decision-making (a.k.a. Family group conferencing or Family group decision-making) – A method of bringing family members together to come up with a recommendation to the court for a safe and permanent plan for a child. It differs from the traditional child welfare case conferencing in that although the caseworker participates in an information-sharing capacity, the family and not the child welfare worker is "in charge" of the meeting and responsible to create the recommended plan.

Foster care – Temporary 24-hour substitute care provided to a minor child away from the parent or guardian pursuant to an allegation or finding of abuse, neglect or dependency, and for whom the state child protection agency has placement and care responsibility; can include care by a relative, a non-biological foster family, group care, residential care, or institutional care.

Foster Care Review Board (FCRB) – A panel of screened and trained volunteers preferably appointed by juvenile or family courts to regularly review cases of children in substitute placement such as foster care, examine efforts to identify a permanent placement for each child, and give advisory recommendations to the court.

Foster family care – A form of foster care involving placement of a child with a relative or non-biological family that is approved and supervised by the state.

Guardian *ad litem* – 1. In certain dependency matters, a person with formal legal training appointed by a judge to represent the best interests of an allegedly abused or neglected child; differs from the legal advocate for the child who specifically represents the child's wishes before the court. See Legal advocate for the child. 2. A recruited, screened and trained volunteer without formal legal training appointed by a judge to represent the best interests of an allegedly abused or neglected child. See Court Appointed Special Advocate (CASA).

Guardianship – A legally established relationship between a child and adult who is appointed to protect the child's best interests and to provide the child's care, welfare, education, discipline, maintenance and support. Where guardianship is awarded to an individual or couple, it includes the right to physical possession of the child. In many states, guardianship of this type is awarded by the probate court. Therefore, appointing a guardian for a foster child may require the action of two courts: the court hearing the abuse or neglect (e.g., the juvenile or family court) and the probate court.

Home study – An assessment usually conducted by a child welfare or adoption agency of the suitability of a prospective adopting family prior to an adoptive placement.

ICAMA – Interstate Compact on Adoption and Medical Assistance. Established in 1986 to ensure delivery of medical and other services to children and their adopting families on an interstate basis.

ICPC – Interstate Compact on the Placement of Children. Designed to provide the legal framework for placements, including adoptive placements, in which more than one state is involved.

ICWA – Indian Child Welfare Act, passed in 1978, which addresses the removal of Indian children from their home and their placement with non-Indian families.

Interjurisdictional adoption – An adoption by a family living in one state or county of a child who is under the jurisdiction of a court of another state or county.

Judicial officer – Person who serves in an appointive capacity at the pleasure of an appointing judge, and whose decisions are subject to review by that judge; referred to in some jurisdictions as an associate judge, magistrate, referee, special master, hearing officer or commissioner.

Judicially supervised settlement conference – A judicially mandated meeting at which the judge is present, involving all attorneys and parties to a proceeding. The meeting typically occurs at a fixed time and place at least 10 days before a trial, and provides identification of issues to be tried, experts to be called, necessary reports, and witness availability.

Judge – One who conducts or presides over a court of justice and resolves controversies between parties. In the foregoing text, the term also encompasses persons serving in an appointive capacity whose decisions are subject to review by a judge, including associate judges, magistrates, referees, special masters, hearing officers, and commissioners.

Kinship care – Care of a child by a relative; can include a relative who is licensed as a foster parent and can lead to the relative becoming the adopting parent when parental rights are terminated.

Legal advocate for the child – In certain dependency matters, a person with formal legal training appointed by a juvenile or family court to specifically represent the wishes of an allegedly abused or neglected child under the court's jurisdiction; differs from a guardian *ad litem* appointed to represent the best interests of a child before the court. See Guardian *ad litem*.

Long–term foster care – Extended care away from the biological parents provided to a minor child placed pursuant to a neglect or dependency hearing; can include care by a relative, a non-biological foster family, group care, residential care, or institutional care.

Master calendaring – An administrative scheduling system used by courts in which child abuse and neglect cases may be reassigned to different judges at different stages of the case. This calendaring system is not recommended.

Mediation – Process by which a neutral mediator assists all parties in voluntarily reaching a consensual agreement about issues at hand; a process of facilitated communication between parties designed to resolve issues and agree upon a plan of action. When mediation occurs as a part of the court process, it is sometimes referred to as "formal" mediation.

MEPA – Multiethnic Placement Act of 1994, 42 USC 5115a. Intended to remove barriers to interethnic adoption.

Motion – An application to a court made in reference to a pending action, addressed to a matter within the discretion of a judge.

Open adoption – See Adoption with contact.

Parent – Any biological parent or parents of a child or any person who has lawfully adopted a child, excepting the unwed father where paternity has not been acknowledged or established.

Permanency hearing – A special type of post-dispositional proceeding designed to reach a decision concerning the permanent living arrangement for a child with a family; the time of the hearing represents a deadline within which the final direction of a case is to be determined.

Permanency planning – The process by which a court determines the permanent placement of an abused or neglected child who has been removed from her or his home.

Permanent child custody – A permanent and self-sustaining legal relationship that can be established in some states between a child whose parental rights have not been terminated and a person or couple who is not the biological parent of the child. The permanent custodian has legal authority to determine the physical care, supervision and discipline of the child. The biological parent does not have the legal right to petition the court for return of custody of the child to them.

Photolisting – A display of photographs and brief descriptions, either in book form or on the Internet, of children waiting adopting homes.

Post–Adoption services – Support services provided to families after finalization of an adoption.

Pre–trial settlement conference – A meeting of attorneys and parties held for the purpose of reaching a negotiated settlement involving joint solutions.

Putative father – The alleged or supposed male parent; the person alleged to have fathered a child whose parentage is at issue.

Reasonable efforts – Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 requires that reasonable efforts be made to prevent or eliminate the need for removal of a dependent, neglected, or abused child from the child's home and to reunify the family if the child is removed. The reasonable efforts requirement of the federal law is designed to ensure that families are provided with services to prevent their disruption and to respond to the problems of unnecessary disruption of families and foster care drift. To enforce this provision, the juvenile court must determine in each case where federal reimbursement is sought, whether the agency has made the required reasonable efforts (42 U.S.C. 671(a)(15), 672(a)(1).) ASFA added a new requirement for reasonable efforts to find permanent homes for children who cannot safely be reunited with their parent or guardian.

Residential care – A form of foster care involving placement in group or congregate care.

Respite care – Temporary child care intended to provide a family with an interval of rest and relief.

Review hearing – Court proceedings which take place after disposition, after the permanency hearing or after termination of parental rights in which the court comprehensively reviews the status of a case, examines progress made by the parties since the conclusion of the prior hearing, provides for correction and revision of the case plan, and makes sure that cases progress and children spend as short a time as possible in temporary placement.

Targeted recruitment – Recruitment of adoptive families directed at specific groups, such as minorities or those willing to accept a handicapped child.

Termination of parental rights (a.k.a. TPR) – The extinguishment of the legal relationship of parent and child on the basis of abuse, neglect, abandonment or similar grounds.

Temporary child custody – A temporary legal relationship between a child and a person or couple who is not the biological parent of the child or a state or county child protective agency. The temporary custodian has legal authority to determine the physical care, supervision and discipline of the child. The biological parent has the legal right to petition the court for return of custody of the child to them.

Termination of parental rights hearing (a.k.a. TPR hearing) – The hearing following either a voluntary relinquishment of parental rights or a trial determining that parental rights should be terminated; after determining whether grounds exist for the termination of parental rights and after determining that adoption is in the best interest of the child, the court must also determine whether reasonable efforts are being made to find the child an adoptive home.

Termination of parental rights trial (a.k.a. TPR trial) – A formal proceeding usually sought by a state agency in which severance of all legal ties between child and parents is sought against the will of one or both parents, and in which the burden of proof must be by clear and convincing evidence; the most heavily litigated and appealed stage of dependency proceedings; also referred to in some states as a severance, guardianship with the power to consent to adoption, permanent commitment, permanent neglect, or modification hearing.

Title IV–E – The title of the Social Security Act that authorizes grants to states for child welfare services, foster care payments and adoption assistance.

Title IV–E Waiver – Authorization by the federal government to use Title IV-E funds in ways not otherwise permitted by statute.

Voluntary relinquishment – A legal process through which a biological parent voluntarily gives up parental rights with the intent that the child will be adopted.

APPENDICES
TABLE OF CONTENTS

A. Judicial Monitoring of the Child Abuse and Neglect Caseload 91

B. The Adoption and Safe Families Act 93

C. Interstate Compact on the Placement of Children..... 95

D. Sample Border State Agreement 101

E. Profiles of Children With Special Needs for Whom Adoptive Homes Were Successfully Recruited 105

F. First Monday TPR Reviews for Children in Need of Adopting Homes..... 109

G. List of State, Regional and National Adoption Exchanges 111

H. Post-Adoption Contact Statutes 119

I. Statutes and Court Rules that Expedite the Appellate Process 125

J. Adoption Disruption 127

K. Reports from Two NCJFCJ Model Courts 129
- The Expedited Adoption Project of Multnomah County, Oregon 129
- The Hamilton County Juvenile Court Expedited Adoption Project in Cincinnati, Ohio 132

L. Post-Adoptive Services in Ohio and Illinois 135

M. National Organizations and Resources 139

Judicial Monitoring of the Child Abuse and Neglect Caseload

To ensure better court practice, courts must understand how they are managing caseloads in terms of numbers, timelines and outcomes for neglected and abused children. They must use technology to create management information systems that can ensure compliance with statutory time limits, track overall compliance with goals, analyze trends and evaluate the effectiveness of programs and policies. Such systems not only provide important research and evaluative information to help improve outcomes for children, but also provide information to justify increased resources when needed.

Caseload benchmarks for **children achieving permanency and case closure prior to the permanency hearing** include:

- the number of children in this category and the age at first removal;
- average number of placements;
- average length of time from the child's out-of-home placement to adjudication and disposition;
- the breakdown of case closure status by type, proportion of children and length of time to achieve case closure; and
- percentages of case re-openings due to new incidents of abuse or neglect.

Caseload benchmarks for cases that reach the **permanency hearing** include:

- the number of children in this category and the age at first removal;
- average number of placements and type of current placement;
- average length of time from child's out-of-home placement to adjudication and disposition;
- average length of time from child's out-of-home placement to the permanency hearing;
- percentage of children who achieve case closure at the permanency hearing and type of permanency achieved; and
- for those children whose cases are continued at the permanency hearing, reasons for continuance and the permanent plan.

Caseload benchmarks at the point of **termination of parental rights** include:

- the number of children in this category and the age at first removal;
- length of time between the permanency hearing and the filing of the TPR petition;
- percentage of termination cases voluntarily settled after filing the petition;
- for cases that go to trial, length of time between the filing of the TPR petition and the TPR trial;
- average length of the TPR trial;
- average length between conclusion of the trial and completion of the court's entry;
- percentage of children placed in pre-adoptive homes at time of the termination; hearing by type of pre-adoptive home (i.e., relative, foster home, third party);
- numbers of appeals, and grounds for appeal, from termination trials; and
- average length of time between the filing of an appeal and the appellate decision.

Caseload benchmarks when **permanency has not been achieved within 18 months** from removal and a termination of parental rights petition has not been granted or is not pending include:

- the number of children in this category and the age at first removal;
- reasons why the children have not achieved permanency;

- profiles of the children including age at removal and special needs;
- type of current placement;
- number of placement moves; and
- type of plans whether permanency plans or other long-term care plans.

Caseload benchmarks for children whose parental rights have been terminated but who are **not in an adoptive home** include:

- the number of children in this category and the age at first removal;
- length of time since the TPR was granted;
- profiles of the children regarding special needs;
- type of current placement;
- number of placement moves; and
- number of adoptive placement disruptions.

Caseload benchmarks for children achieving **case closure** after the permanency hearing include:

- length of time from the permanency hearing to case closure by type of case closure;
- percentage of children who achieved the permanent plan determined at the permanency hearing;
- length of time from initial removal to case closure by type of permanency achieved;
- for children adopted by relative or foster parent with whom they were living at the time of TPR, average length of time between the TPR and adoption finalization;
- for children adopted by third parties, length of time between when the TPR was granted and placement in the adoptive home and length of time between placement in the adoptive home and adoption finalization;
- for all children adopted, whether adoption with contact was part of the agreement and if so, type of contact; and the percentage of cases with adoption assistance agreements; and
- frequencies of re-entry of children into the child protection system by type of case closure.

Most courts do not have the resources to conduct longitudinal studies after cases have been closed. Minimal research exists that is specifically applicable to the abused and neglected population to assist courts in understanding the long-term impact of decisions such as adoption with contact and the success of relative adoption as compared to relative custody. Whenever possible, courts should collaborate with universities and other organizations which have the desire and resources to undertake such studies.

The Adoption and Safe Families Act

Taken in part from A Place to Call Home: Adoption and Guardianship for Children in Foster Care, *by Steve Christian and Lisa Ekman for the National Conference of State Legislatures, March 2000.*

In 1997, the Adoption and Safe Families Act (ASFA) (P.L. 105-89) amended Titles IV-B and IV-E of the Social Security Act to clarify certain provisions of P.L. 96-272 and to speed the process of finding permanent homes for children. The provisions of ASFA are summarized below:

- In determining reasonable efforts, the child's health and safety shall be the paramount concern.
- Foster parents, relative caretakers and pre-adoptive families must be given notice of court hearings and must be given the opportunity to speak if they attend the court hearing.
- Foster and adopting parents must undergo criminal record checks.
- Reasonable efforts to reunify are not required with respect to a parent of a child if the court determines that the parent has subjected the child to aggravated circumstances. The aggravated circumstances are to be determined by state law and may include, but need not be limited to:
  - abandonment, torture, chronic abuse or sexual abuse;
  - murder or voluntary manslaughter of another child;
  - aiding or abetting, attempting, conspiring or soliciting to commit murder or voluntary manslaughter of another child;
  - felony assault that results in serious bodily injury to the child or another child of the parent; or
  - parental rights of the parent to a sibling have been terminated voluntarily.
- Permanency hearings must take place no later than 12 months after a child has entered foster care. For purposes of this requirement, children are considered to have "entered foster care" on the earlier of a judicial finding that the child has been subjected to child abuse or neglect, or 60 days after the child is removed from the home.
- A form of legal guardianship that is intended to be a permanent relationship and a self-sustaining relationship is defined. (See Chapter I, Section C, Permanency Characteristics.)
- The state must, subject to certain exceptions, petition for the termination of parental rights after a child has been in foster care for 15 of the last 22 months.
- If the court determines that reunification is not the permanent plan, states must document to the court a compelling reason for any permanent plan other than adoption, legal guardianship, permanent custody or placement with a relative.
- If the court determines that reunification is not the permanent plan, the court must determine that reasonable efforts are being made to secure a permanent home for the child. This determination must include factors such as child specific recruitment efforts and use of state, regional and national adoption exchanges.
- At the point that a termination of parental rights petition is filed, the child welfare agency is required to concurrently seek to identify, recruit, process and approve a qualified family for adoption.
- States must develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. States are prohibited from delaying or denying the adoptive placement of a child when an approved family is available outside of the jurisdiction.

- States must provide health insurance coverage for any child receiving state-funded adoption assistance who the state has determined cannot be placed without medical assistance because the child has special needs for medical, mental health or rehabilitative care.
- States are required to use a portion of their Family Preservation and Support grants on adoption promotion and support services. This may include pre- and post-adoptive services and activities designed to expedite the adoption process and to support adopting families. ASFA provides incentive payments to states to encourage adoption of children out of foster care.
- The federal government is required to issue annual report cards on state performance in meeting certain child welfare outcome measures, including the number of adoptions from foster care.

ASFA regulations were passed January 25, 2000, and made effective as of March 27, 2000. Additional information can be found in the Federal Register Vol. 65, No. 16, pages 4019 - 4093 or at the web site: http://www.gpo.gov/

Interstate Compact on the Placement of Children

This section was written by Frank Barthel, retired Secretariat for the Association of Administrators of the ICPC, American Public Human Services Association.

The Interstate Compact on the Placement of Children (hereinafter ICPC or Compact) is statutory law, which has been enacted uniformly in all 50 states, the District of Columbia, and the U.S. Virgin Islands. Since the Compact is also a contract among the states as well as a statute in each of them it must be interpreted and implemented uniformly by all of them.

The Compact is designed to provide the necessary legal framework for placements, including adoptive placements, in which more than one state is involved. This point is important because jurisdiction over a child ends at the state line. The ICPC, though only one of many state laws which govern the placement of children, is the only tool states have to ensure that children placed across state lines are protected.

OVERVIEW OF THE COMPACT

The Compact is a means of permitting child placement activities to be pursued throughout the country in much the same way and with the same safeguards and services as though they were being conducted within a single state or jurisdiction. The Compact promotes the availability of services to children who are placed on an interstate basis, and it secures greater assurance that those making the interstate placements will discharge their responsibilities toward the children involved throughout the placement period. Without the Compact, the boundaries of each single state or jurisdiction present obstacles to the rendering of services and the enforcement of responsibility. In the absence of the Compact, public authorities in one state are not obligated to make pre-placement investigations or, for example, supervise post-adoptive placements for the sending state.

The Compact sets forth through its 10 articles:

- the types of placement situations covered by the law;
- the persons or agencies who, when they place a child from one party state into another party state, must follow Compact procedures; and
- the specific protections, services and requirements available by virtue of its enactment.

The highlights of the law are summarized on the following pages.

WHO MUST FOLLOW THE COMPACT?

The law defines the persons and agencies who, when they place a child from one state into another state, must follow ICPC procedures. These persons and agencies are called "sending agencies" and include the following:

- A state, or any officer or employee of a state;
- A subdivision of a state, or any officer or employee of the subdivision;
- A court of a state; and
- Any person, corporation, association, or charitable agency of a state.

The Compact also exempts certain persons from following the Compact, but only when one of the classes of exempted persons both sends and receives the child. The persons specifically exempted from the Compact include a child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, and a non-agency guardian.

INTERSTATE PLACEMENTS

An interstate placement occurs when a person or agency sends or brings a child, or causes a child to be sent or brought, across a state line. However, the interstate placement of a child cannot occur until the appropriate public authorities in the receiving state notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child (see Article III (d) of the ICPC). The sending agency does not have to have physical custody or legal control over the child, but need only be involved in facilitating the placement for the placement to be covered under the Compact.

Agencies and courts should *not* place children out-of-state until the receiving state does a home assessment and allows the placement to occur. Delays in the completion of home studies occur too frequently. ICPC Regulation No. 7, Priority Placement (see the following section on Issues to be Resolved) is a method to reduce delays for interstate placements.

Not all arrangements for a child's care in the receiving state are considered placements under the Compact. The law specifically exempts from the Compact placements into any institution caring for the mentally ill, mentally defective or epileptic, or any institution primarily educational in character, and any hospital or other medical facility.

In general, the kinds of placements which require that the Compact be followed include:

- placements with parents, close relatives, and non-agency guardians unless a parent, close relative, or non-agency guardian makes the placement;
- adoptive placements;
- foster home placements;
- child-caring facilities, including residential treatment, group homes, and institutions; or
- placements of adjudicated delinquents in institutions in other states.

In making a placement, the sending agency is required to retain financial and legal responsibility for the child until termination of the interstate placement. Termination of jurisdiction may occur when:

- the sending agency's termination of the placement is with the concurrence of the Compact Administrator in the receiving state;
- the child reaches the age of majority;
- the child is adopted; or
- the child returns to the sending state upon the request or direction of the sending agency.

Dismissal of state custody of a child who is to be placed out-of-state or dismissal of custody of a child in an interstate placement is a violation of state law unless one of the above provisions prevails.

INTERSTATE CHILD PLACEMENT NEEDS AND SAFEGUARDS

Finding the most appropriate home or placement resource for a child is a big job and rarely an easy one. Often there are more children than homes available in a given state. For some children, appropriate permanent homes with prospective adoptive parent(s) or with relatives are available in other states. Children already in a foster family home may want to stay with the family when they move to another state. Children who require the services of a specialized residential facility unavailable in their own state may benefit from an out-of-state placement. For these reasons, the needs of children cannot be met by restricting child placement to the territory of a single state or jurisdiction.

Among the safeguards provided by the Compact to the child, as well as to receiving and sending states, are the following:

- provides for home studies and an evaluation of each interstate placement before the placement is made;

- allows the prospective receiving state to ensure all its applicable child placement laws and policies are followed before it approves an interstate placement;
- gives the prospective receiving state the opportunity to consent to or deny a placement before it is made;
- provides for continual supervision and regular reports on each interstate placement;
- guarantees the child legal and financial protection by fixing these responsibilities with the sending agency or individual; and
- ensures that the sending agency or individual does not lose legal jurisdiction over the child once the child is moved to the receiving state.

COMPACT RELATIONSHIP TO OTHER STATE LAWS

The Compact must interact with other state laws. The Compact specifies that certain procedures must be followed when an interstate placement is contemplated or made. Furthermore, the Compact law itself is neutral on the question of the desirability of interstate placements, and does not mention who may place a child or under what circumstances a child may be placed for adoption. Other state laws and policies govern these decisions and, along with the Compact, become a state's pre-adoption requirements.

HOW IS THE INTERSTATE COMPACT ADMINISTERED?

The Compact is administered by an office in the state department of social services or the state's equivalent agency. Each state has appointed a Compact Administrator and one or more Deputy Administrators who oversee or perform the day-to-day tasks associated with the administration of the ICPC. The Association of Administrators of the Interstate Compact on the Placement of Children (hereinafter AAICPC or Association) formed a working association with the American Public Human Services Association (APHSA, formerly the American Public Welfare Association), which provides Secretariat services to the Association. The AAICPC, working in conjunction with the Secretariat, has adopted procedures and developed standard forms for implementing the ICPC.

The Association, under the authority given to it in the Compact law, has adopted regulations which further clarify provisions of the ICPC. The Association and Secretariat also work to resolve problems among the party states.

ISSUES TO BE RESOLVED

Many of the original problems for which the Compact was written have been surmounted, but other issues have emerged. These issues include ways in which the Compact can be used more creatively to protect children, as well as to facilitate interstate placements when children are moving into permanent homes across state lines.

In conjunction with the National Council of Juvenile and Family Court Judges and the National Association of Public Child Welfare Administrators, AAICPC is working to resolve delays in the interstate placement of children. The AAICPC passed Regulation No. 7, Priority Placement that establishes time frames in which an ICPC referral must be completed. Section 5 (a) of the regulation pertains to specific facts that must be in place before the regulation can be used. However, section 5 (b) refers to all ICPC referrals that have been pending for over 30 working days and a decision has not been made to allow or to deny the placement.

Another procedure to reduce delays and facilitate the timely completion of home studies, is the creation of border state agreements. (See Appendix D for an example of a Border State Agreement.) The basic premise of these agreements is to allow a local social worker in the sending state to complete a home study in the receiving state while the ICPC referral packet is reaching the appropriate authorities in the states involved in a particular child's case. There are provisions in the agreements

whereby local social workers in both states are involved in the home study process.

Another issue that needs attention of the courts, child welfare administrators, and compact administrators is that of unilateral dismissal of jurisdiction by the courts of child custody prior to an interstate placement or subsequent to a child's placement out of state. Known as "dumping," unilateral dismissal of jurisdiction often causes the receiving state to assume the financial responsibility of the child should the placement disrupt or otherwise not be successfully completed. Services that the child and family need in order continue a positive placement may be discontinued contributing to a disruptive placement. Once custody is dismissed, supervision of the placement will not occur until the child comes back into the child welfare system.

A final problem is the issue of which state adoption consent law applies. Most ICPC adoption cases are private agency or individual adoption cases. Finalization of the adoption often occurs in the receiving state. Prior to the child being placed with prospective adoptive parent(s), the sending agency will require a signed consent by the biological parent(s) freeing the child for adoption. However, when finalization occurs in the receiving state, the latter may require that their state's consent procedure be followed, thereby requiring the biological parent(s) to sign another consent. Not only can the signing of another consent form cause delays in finalization of the adoption, it can result in the biological parent(s) deciding that they no longer want the adoption. This can lead to further court action at the trial and appellate levels. One possible solution is for the receiving state to recognize and accept a valid consent from a sister jurisdiction.

The following regulation was adopted to provide an expedited process for interstate placements:

REGULATION NO. 7

1. Words and phrases used in this regulation shall have the same meanings as those ascribed to them in the Interstate Compact on the Placement of Children (ICPC). A word or phrase not appearing in ICPC shall have the meaning ascribed to it by special definition in this regulation or, where not so defined, the meaning properly ascribed to it in common usage.

2. Whenever a court, upon request, or on its own motion, or where court approval is required, determines that a proposed priority placement of a child from one state into another state is necessary, the court shall make and sign an order embodying that finding. The court shall send its order to the Sending Agency within two (2) business days. The order shall include the name, address, telephone number, and if available, the FAX number, of the judge and the court. The court shall have the sending agency transmit, within three (3) business days, the signed court order, a completed Form 100A ("Request for Placement") and supporting documentation pursuant to ICPC Article III, to the sending state Compact Administrator. Within a time not to exceed two (2) business days after receipt of the ICPC priority placement request, the sending state Compact Administrator shall transmit the priority placement request and its accompanying documentation to the receiving state Compact Administrator together with a notice that the request for placement is entitled to priority processing.

3. The court order, ICPC-100A, and supporting documentation referred to in Paragraph Two (2) hereof shall be transmitted to the receiving state Compact Administrator by overnight mail together with a cover notice calling attention to the priority status of the request for placement. The receiving state Compact Administrator shall make his or her determination pursuant

to Article III (d) of ICPC as soon as practicable but no later than twenty (20) business days from the date the overnight mailing was received and forthwith shall send the completed 100A by FAX to the sending state Compact Administrator.

4. (a) If the receiving state Compact Administrator fails to complete action as the receiving state prescribed in Paragraph Three (3) hereof within the time period allowed, the receiving state shall be deemed to be out of compliance with ICPC. If there appears to be a lack of compliance, the court, which made the priority order, may so inform an appropriate court in the receiving state, provide that court with copies of relevant documentation in the case, and request assistance. Within its jurisdiction and authority, the requested court may render such assistance, including the making of appropriate orders, for the purpose of obtaining compliance with this Regulation and ICPC.

(b) The foregoing shall not apply if:

(1) within two (2) business days of receipt of the ICPC priority placement request, the sending state Compact Administrator determines that the ICPC request documentation is substantially insufficient, specifies that additional information is needed, and requests the additional documentation from the sending agency. The request shall be made by FAX, or by telephone if FAX is not available; or

(2) within two (2) business days of receipt of the ICPC priority placement request, the receiving state Compact Administrator notifies the sending state Compact Administrator that further information is necessary. Such notice shall specifically detail the information needed. For a case in which this subparagraph applies, the twenty (20) business day period for the receiving state Compact Administrator to complete action shall be calculated from the date of the receipt by the receiving state Compact Administrator of the information requested.

(c) Where the sending state court is not itself the sending agency, it is the responsibility of the sending agency to keep the court, which issued the priority order, informed of the status of the priority request.

5. A court order finding entitlement to a priority placement shall not be valid unless it contains an express finding that one or more of the following circumstances applies to the particular case and sets forth the facts on which the court bases its finding:

(a) the proposed placement recipient is a relative belonging to a class of persons who, under Article VIII(a) of ICPC could receive a child from another person belonging to such class, without complying with ICPC and; (1) the child is under two years of age; or (2) the child is in an emergency shelter; or (3) the court finds that the child has spent a substantial amount of time in the home of the proposed placement recipient.

(b) the receiving state Compact Administrator has a properly completed ICPC-100A and supporting documentation for over thirty (30) business days, but the sending agency has not received a notice pursuant to Article III (d) of ICPC determining whether the child may or may not be placed.

6. Time periods in this regulation may be modified with a written agreement between the court which made the priority order, the sending agency, the receiving state Compact Administrator, and the sending state Compact Administrator. Any such modification shall apply only to the single case to which it is addressed.

7. To fulfill its obligations under ICPC, a state and its local agencies must process interstate cases no less quickly than intrastate and give no less attention to interstate hardship cases than to intrastate hardship cases. If in doing so, a receiving state Compact Administrator finds that extraordinary circumstances make it impossible for it and its local agencies to comply with the time requirements set forth in this regulation, it may be excused from strict compliance therewith. However, the receiving state Compact Administrator shall, within two (2) business days of ascertaining inability to comply, notify the sending state Compact Administrator via FAX of the inability to comply and shall set forth the date on or before which it will complete action. The notice shall contain a full identification and explanation of the extraordinary circumstances which are delaying compliance.

8. Unless otherwise required or allowed by this regulation, all transmittals of documents or other written materials shall be by overnight express mail carrier service.

9. This regulation shall take effect on October 1, 1996.

This regulation is adopted pursuant to Article VII of the Interstate Compact on the Placement of Children by action of the Association of Administrators of the Interstate Compact on the Placement of Children at its annual meeting on April 28, 1996.

Sample Border State Agreement

This sample agreement was provided by Dennis Eshman of the American Public Human Services Association.

Border state agreements facilitate the timely completion of home studies and help to reduce delays in interstate placements. Following is the border state agreement used by Kansas and Missouri:

AGREEMENT FOR PERFORMANCE OF CERTAIN HOME STUDIES PURSUANT TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

The State of Kansas and the State of Missouri, acting by Joyce Allegrucci, Commissioner of Kansas Commission of Children and Family Services and Carmen K. Schulze, Director of Missouri Division of Family Services hereby agree as follows:

1. Definitions

As used in this Agreement:

(a) Terms shall have the same meanings as in the Interstate Compact on the Placement of Children (herein referred to as "ICPC" or "the Compact"), except as otherwise defined in this Agreement. If not expressly defined in the Compact or in this agreement, a term shall have its ordinary meaning in English usage.

(b) "Home study" means an investigation, evaluation, and written report on a prospective adoptive, foster or relative placement recipient (or placement recipients), including:

- one or more interviews with the prospective placement recipient(s), and where appropriate, other members of the recipient's household and other persons; and
- on-site inspection of the prospective placement recipient's home and immediate neighborhood; and
- appropriate child abuse/neglect and criminal background checks.

The child abuse/neglect and criminal background checks shall be completed by the local public agency in the receiving state as quickly as possible whenever the home study is to be completed by a worker from the sending state.

(c) "Home" means a place of abode, including a family residence or other facility in which it is proposed that a child would live if placed with the placement recipient(s).

(d) "Child" means a minor individual who has been made a dependent ward of the juvenile/family court and whose legal custody has been granted to the local public child welfare agency.

(e) "Adoption" for the purpose of this Agreement, pertains only to public agency adoptions and does not apply to licensed private child-placing agencies or independent/private adoptions.

2. Geographic Area

The geographic area to which this Agreement applies is the common boundary between the states of Kansas and Missouri and includes Johnson, Leavenworth, Miami and Wyandotte Counties in Kansas and Cass, Clay, Jackson and Platte Counties in Missouri.

3. Home Studies Completed by Personnel from Other State

(a) It is recognized that the preparation and completion of a home study is the primary responsibility of the receiving state (refer to Articles I (c) and III of the Compact), but that there are extenuating circumstances which may justify its performance by personnel from the state in which a placement is proposed to originate.

(b) Personnel who may prepare and complete home studies in the other party state must be professional level employees or contractors of the state government or of a local public agency (excluding student interns and trainees) who prepare home studies within their own jurisdictions as part of their regular employment.

(c) Personnel from Kansas or Missouri as the case may be, may prepare a home study in the other state only when: (1) there has been court intervention; and (2) an ICPC referral has been sent to the receiving state through regular channels; and (3) one of the following conditions apply to the particular case involved:

(i) A court has issued an order embodying a finding that the proposed placement pursuant to ICPC Regulation 7 merits priority placement processing (refer to Appendix C, Page 98 for ICPC Regulation 7); or

(ii) The receiving state compact administrator (or designee) informs the sending agency and the sending state compact administrator (or designee) that due to the existence of extenuating circumstances (set forth in the notification), the personnel of the receiving state who would normally prepare the home study are unable to do so within thirty working days.

(d) In addition to item (c) above, a sending agency may complete the home study for a proposed adoptive placement if an ICPC referral has been submitted through regular channels and if the sending and receiving state ICPC units have given their approval.

(e) Personnel from the sending state who are qualified to prepare home studies may do so pursuant to this Agreement in the furtherance of interstate cooperation but are not required to do so, except as directed by their own supervisors in their own departments or agencies.

4. Uses of Home Studies

The agency whose employee or contractor has performed a home study pursuant to this Agreement shall submit copies thereof to the receiving state compact administrator (or designee) and to the local public agency that would have completed the home study if not completed pursuant to this Agreement.

If within five working days of its receipt by the local public agency in the receiving state, the receiving state compact administrator (or designee) is not notified by the local public agency that it considers the home study to be inadequate or incorrect, the receiving state compact administrator (or designee) shall consider the home study to have the same standing as a home study completed by the local public agency.

However, before using the home study, the receiving state compact administrator (or designee) shall make a telephone inquiry of the local public agency to ascertain whether the latter has an objection.

The receiving state compact administrator (or designee) may use the home study in making the finding as required by Article III (d) of the Compact and the sending agency may use the home study in deciding whether to make a proposed placement.

5. Supervision

In any case where a placement is allowed by the receiving state compact administrator (or designee) and where the home study used is one completed pursuant to this Agreement, the receiving state shall have full responsibility for supervising the placement as required by the Compact.

6. Limitations

(a) It is expressly understood that if a child has been placed with a caretaker in the receiving state in violation of Article III (d) of the Compact, this Agreement may not be utilized in order to obtain a home study on the placement recipient.

(b) This Agreement applies only to the preparation and completion of home studies.

(c) The completion of a home study pursuant to this Agreement shall be for a specific child (or children). Unless the worker has identified specific child(ren) and proposed placement recipients(s), this Agreement cannot be utilized in order for a home study to be completed by a worker in the sending state.

(d) During the time a worker is preparing and completing a home study pursuant to this Agreement, the worker must be under the direct supervision of a supervisor who is familiar with the preparation of home studies.

(e) The worker who prepares the home study must sign his/her name at the bottom of the home study and enter the date the home study was completed. The home study will be incomplete unless it is signed and dated by the worker who prepared it. If required by local policy, the worker's immediate supervisor shall also sign and date the home study as a means of documentation that the home study was reviewed and approved by the supervisor.

(f) After the home study has been reviewed by the agency in the receiving state, the name, title and address of the supervisor who reviewed the home study must be added to the document and the supervisor who reviewed the home study must sign his/her name to the home study and enter the date of the home study review.

7. Scope of Employment

A person engaged in the preparation of a home study pursuant to this Agreement shall be deemed to be so engaged in the course and within the scope of his/her regular employment duties.

8. Costs

It is understood that the parties to this Agreement will not charge each other fees, either directly or indirectly, for home studies completed under the auspices of this Agreement.

9. Termination

This Agreement may be terminated by sixty days notice given in writing by either party to the other. However, any home studies in progress on the date of termination may be completed and any placement procedure pending on such termination date may continue with the same effect as though the termination has not occurred.

10. Effective Date of this Agreement

This Agreement shall become effective January 1, 1999, and shall remain in effect until termination as specified in item 9 above.

_____

Joyce Allegrucci
Commissioner
Commission of Children and
Family Services
State of Kansas

_____

Carmen K. Schulze
Director
Division of Family Services
State of Missouri

Profiles of Children With Special Needs For Whom Adoptive Homes Were Successfully Recruited

This section provided by Diane Riggs of the North American Council on Adoptable Children.

PROFILE 1: ADOPTION RESULTING FROM ADOPTION MONTH POSTER

In 1998, Glenda was a passive 10-year old Native American girl (Oglala Sioux) from South Dakota who, despite severe disabilities, responded well to attention and affection. She played contentedly with toys that provided auditory and tactile stimulation and enjoyed swinging and horseback riding with close supervision.

Glenda suffers from severe psychomotor retardation and developmental delays and is also blind. She does not speak, but can hear and vocalize. Due to her blindness, she spends much of her time in a sitting position and relies on hand-over-hand and one-on-one assistance at home and at school.

Because of her disabilities, Glenda is constantly monitored for health problems and is dependent on gastrostomy feedings. Though her arms and legs are thin, Glenda has active range in all four extremities and is gaining weight on her current diet. Aside from recurring ear infections, Glenda has experienced few health problems during the past year.

Glenda needed a two-parent family who could provide for her special needs and stay committed to a child who has severe disabilities. Workers believed she would do best in a family who could provide one-on-one 24-hour care and help her maintain ties with her Native American culture. For example, pow-wow music, they said, would be good for auditory stimulation. Though preferable, it was not essential that prospective parents be members of a Native American tribe.

In 1998, a family in Indiana saw Glenda on the 1997 Adoption Month poster (an annual poster produced by the North American Council on Adoptable Children with support from the Dave Thomas Foundation for Adoption and federal funding through Adoption Opportunities grants). They saw the poster at a social services agency. They began the home study process after seeing Glenda and fortunately received very good services from their worker in Indiana and the worker in South Dakota. As it happens, the adopting mother's grandfather is Native American.

PROFILE 2: ADOPTION RESULTING FROM A NEWSPAPER FEATURE

Described as a good conversationalist and an able athlete, Michael was an intelligent and personable nine-year-old who functioned well in small group situations and liked to participate in sports. Basketball and baseball were Michael's two favorite games, and his career goal – which had not wavered for three years – was to become a professional baseball player.

Since his graduation from a residential treatment center, Michael had been living in a family foster home to learn more about normal family life. He bonded more easily with women than men and had become very attached to his new foster mom. To express his affection, Michael did nice things for her and told her that he loved her.

Michael had been in therapy for some time, but he had only recently begun to deal more directly with his abuse history and its ramifications. His therapist reported that Michael's acting out behaviors, which had increased somewhat, showed that he was psychologically starting to work through past abuse issues. His

behaviors – many of which are indicative of attention deficit hyperactivity disorder (ADHD) – were not harmful or aggressive toward others and Michael had made tremendous progress developing insights and inner strength.

At school, Michael attended a specialized class for children with emotional disturbances. Teachers said he was academically capable of functioning at grade level in a regular classroom, but had not yet been mainstreamed because of his intense anxiety about his unsettled future. To his credit, Michael could concentrate and attend to a task when not distracted by too many people or too much stimulation.

Michael had waited a long time for a family to call his own, and his past and present caretakers believed he was capable of giving to people he cared about. Workers believed he would do well in a family with older siblings who could serve as positive role models and provide extra attention and encouragement.

His greatest need was for a family who could weather the testing he would put them through while he examined the family's commitment level and trustworthiness. Workers believed that parents who could help Michael learn that he is a good person who deserves love and that his behaviors will not lead a family to turn him away were key to helping Michael recover and reach his full potential.

Workers tried many different methods of finding a home for Michael including featuring him on NACAC's 1997 Adoption Month poster. In 1998, at age 10, Michael was placed with a family who learned about him through a local newspaper spot. It was while getting updated information and photos of Michael for the NACAC poster that the worker also sent Michael's profile to *The Oregonian,* which led to his placement.

PROFILE 3: ADOPTION RESULTING FROM A MATCHING PARTY

The final two profiles are from the Spring 2000 issue of Heartlines (the Adoption Exchange newsletter). The article says the data is from the National Resource Center for Permanency Planning Newsletter, Winter 1999.

Jessica was 12 years old when she finally found an adopting family. She had experienced about 14 moves since age 6 (including three adoption disruptions), had trouble in school, and had a reputation for chronic lying and stealing. Many child welfare professionals believed Jessica was unadoptable, but when Greg and Susie met Jessica at an adoption party, they knew they wanted to adopt her.

The couple certainly had fears. Would Jessica ever attach to them? Would she lie and steal from them? Would she hurt the family dog? What about all the labels and diagnoses that Jessica carried? What did those diagnoses mean for Jessica's life and for their lives? But when they looked at Jessica, they saw a sweet 12-year-old girl with a zest and spirit for life. Jessica was placed with this family at the age of 12 and legally adopted one year and one day later. She is now 14. In the last two and one-half years, her negative behaviors have decreased, and her academic performance has improved. The family is very attached to one another, and, as Greg put it, despite the challenges, "It's fun!"

When Jessica was asked what she thought about all of the teens without families, she said that she thinks it's a stereotype that older kids are unadoptable. She said that when a young person lives in a group home, the focus is on behavior, and that young people do not *want* to get close to people. Susie added that "...people don't know or see children's true potential through all the labeling and the problems caused by multiple moves...group homes are not a fair territory to judge children on whether or not they are adoptable." "Or loveable," added Jessica.

Jessica, by the way, has some lofty dreams for her future. She wants to be a singer in a band. She even has a name for the band – "The Broken Butterflies." When she wins her first Grammy, she said she will save her parents for last in the list of people she thanks in her acceptance speech. After all, you have to save the most important people for last.

PROFILE 4: ADOPTION RESULTING FROM SEEKING OUT A FORMER FOSTER FAMILY

Jama also spent many years in the foster care system. She entered the system at age 12 due to her birth parents' substance abuse, and when Jama was 16, social services and the courts determined that she would never be returned home. Her permanency goal officially changed from reunification with her birth family to emancipation. She had spent four years of her life in a variety of different placements and the first 12 years of her life being severely neglected. When she aged out of foster care at 18, Jama spent much energy being fiercely independent – trying not to need anyone. She worked on holidays to avoid the loneliness.

One day she picked up the phone and reconnected with one of her sister's former foster families. Jama started to spend time with the family and became very close with the whole family. Finally, Jama mustered the courage and asked them to be her family.

Jama was 19 years old when she found a family for herself. The new family responded with a very serious discussion with Jama about what it means to be a family. Jama became a member of this family as a result of her bravery and assertiveness and their openness and love for Jama. It only took a couple of months for her to start referring to them as "mom" and "dad." Jama is now 22 and works as an Emergency Medical Technician. Jama describes her family as "the world, and then some."

First Monday TPR Reviews for Children in Need of Adopting Homes

Third District Juvenile Court, Salt Lake City, Utah – Judge Sharon P. McCully

Beginning November 1, 1999, Judge Sharon McCully implemented a program of monthly reviews of all children in her court whose parental rights had been terminated and who were awaiting finalization of adoption. The purpose of these hearings was to determine what "reasonable efforts" were being made to identify an adopting family for each of these children, to identify obstacles and barriers to permanent placement, and to assist the adoption caseworkers and legal counsel in overcoming those barriers. Judge McCully determined a need for these reviews after becoming aware, often many months, or even a year following the entry of a termination of parental rights order, that some children had not been placed in adopting or other permanent homes.

These reviews, called TPR (Termination of Parental Rights) or Adoption Reviews, are held on the first Monday of every month. All cases are set at 3:30 p.m., and all adoption caseworkers assigned to these cases are expected to attend, beginning at 3:30 p.m. These are the only hearings that Judge McCully sets at a "group" time, but because the children and parents are not expected to attend, it is most efficient to expect all caseworkers to be present at 3:30 p.m. Also present at all hearings are the Assistant Attorney General assigned to all cases in Judge McCully's courtroom, and the guardian *ad litem* attorney assigned to all children in this courtroom. Reports are prepared and submitted to the judge at least 48 hours in advance of the hearings.

The expected and realized benefit of these review hearings is to keep these difficult cases on the forefront of the caseworkers' duties. Knowing that a report on placement efforts will need to be presented to the court every month tends to keep a sense of urgency which is necessary in these cases. On occasion, when financial and administrative hurdles seem to be the primary reasons for placement difficulties or are obstacles to finalization of adoption, the court requires supervisors, administrators, and other agency personnel to attend the hearings. If a family has been identified and placement made, but the family has concerns which delay finalization, the foster/adopting parents are invited to attend the hearings to express their concerns and help work toward a resolution.

While only the most difficult cases appear on this review docket month after month, the experience has been that after only six months, these reviews are effective in resolving problems, jointly looking for innovative solutions, and achieving permanent placement for children who have been very difficult to place in permanent family situations. Intensive efforts are often made from one First Monday to the next to avoid having to report another month of failed efforts and frustration.

Because it is the court's responsibility under the Adoption and Safe Families Act to assure that reasonable efforts are being made to achieve adoptive or other permanent placements for children, reviews such as these "First Monday" reviews are very helpful to the court in making those findings and holding all involved parties accountable to make those efforts.

List of State, Regional, and National Adoption Exchanges

This listing was provided by Diane Riggs of the North American Council on Adoptable Children.

STATE EXCHANGES

Source: National Adoption Information Clearinghouse

ALABAMA

Family Finders
Alabama Department of Human Resources, Office of Adoption
1933 Richard Arrington Jr.
Boulevard South, Suite 102
Birmingham, AL 35209
(205) 271-1703/ Toll Free: (800) 926-8887
Fax: (205) 271-1770
Web: http://www.familyfinders.org

ALASKA

Alaska Adoption Exchange
P.O. Box 110630
Juneau, AK 99811-0630
(907) 465-3631

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

ARIZONA

Arizona Adoption Exchange Book c/o Arizona Families for Children
P.O. Box 17951
Tucson, AZ 85731
(520) 327-3324
Web: http://www.adopt.org

ARKANSAS

Arkansas Department of Human Services
P.O. Box 1437, Slot 808
Little Rock, AR 72203-1437
(501) 682-8462
Web: http://www.state.ar.us/dhs/adoption/adoption.html

CALIFORNIA

California Waiting Children
California Department of Social Services
744 P Street, MS 19-68
Sacramento, CA 95814
(916) 445-9124/ Toll Free: (800) 543-7487
Web: http://www.childsworld.org/

COLORADO

Colorado Adoption Resource Registry (CARR)
Colorado Department of Human Services Child Welfare Services
1575 Sherman Street, 2nd Floor
Denver, CO 80203-1714
(303) 866-3209
Web: http://www.cdhs.state.co.us/cyf/cwelfare/cwweb.html

The Adoption Exchange
14232 East Evans Avenue
Aurora, CO 80014
(303) 755-4756/ Toll Free: (800) 451-5246
Web: http://www.adoptex.org
E-mail: kids@adoptex.org

CONNECTICUT

Office of Foster and Adoption Services
505 Hudson Street
Hartford, CT 06106
(860) 550-6469
Fax: (860) 566-6726
Web: http://www.state.ct.us/dcf

DELAWARE

Deladopt
Delaware Department of Services for Children, Youth and Their Families
1825 Faulkland Road
Wilmington, DE 19805
(302) 633-2655

D.C. – none listed

FLORIDA

Adoption Information Center Daniel Memorial, Inc.
134 East Church Street
Jacksonville, FL 32202
(904) 353-0679/ Toll Free: (800) 962-3678
Fax: (904) 353-3472
Web: http://www.state.fl.us/cf_web/adopt/

Florida's Adoption Exchange
Florida Department of Children and Families
1317 Winewood Boulevard
Building 7 Room 208
Tallahassee, FL 32399-0700
(850) 487-2383
Fax: (850) 488-0751

GEORGIA

Georgia State Adoption Exchange
Office of Adoptions
Two Peachtree Street NW, Suite 3-323
Atlanta, GA 30303-3142
(404) 657-3550

My Turn Now, Inc.
Two Peachtree Street NW, Suite 3-323
Atlanta, GA 30303-3142
(404) 657-3479
Web: http://www.myturnnow.com/

HAWAII

Central Adoption Exchange of Hawaii
810 Richards Street, Suite 400
Honolulu, HI 96813
(808) 586-5698
Fax: (808) 586-4806

IDAHO

Idaho Department of Health and Welfare
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5700
Web: http://www.nwae.org

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

ILLINOIS

Adoption Information Center of Illinois (AICI)
188 W. Randolph, Suite 600
Chicago, IL 60606
(312) 346-1516/ Toll Free: (800) 572-2390
Fax: (312) 346-0004
Web: http://www.adoptinfo-il.org
E-mail: aici@adoptinfo-il.org

INDIANA

Indiana Adoption Resource Exchange
Indiana Division of Family and Children
402 W. Washington Street, Third Floor, W-364
Indianapolis, IN 46204-2739
(317) 233-1743
Web: http://www.state.in.us/fssa/adoption/

IOWA

Iowa Adoption Resource Exchange
Adults, Children, and Family Services
Hoover State Office Building, 5th Floor
Des Moines, IA 50319
(515) 281-5358
Web: http://www.adopt.org

KANSAS

Lutheran Social Services
Kansas Families for Kids (KFFK)
603 S. Topeka Boulevard, Suite 206
Topeka, KS 66603
(785) 354-4663/ Toll Free: (800) 210-5387
Fax: (785) 354-4684
Web: http://www.kffk.org
E-mail: patricial@kffk.org

KENTUCKY

Kentucky Adoption Resource Exchange
Department of Social Services
275 E. Main Street, 6th Floor, West
Frankfort, KY 40621
(502) 564-2147

Special Needs Adoption Program
Cabinet for Family and Children, Department for Community-Based Services
908 W. Broadway, 8W
Louisville, KY 40203
(502) 595-4303

Special Needs Adoption Project (SNAP)
Department of Social Services
710 W. High Street
Lexington, KY 40508
(859) 246-2256
Web: http://cfc.state.ky.us/cbs-snap

LOUISIANA

Louisiana Adoption Resource Exchange (LARE) Louisiana Department of Social Services, Office of Community
P.O. Box 3318
Baton Rouge, LA 70821
(225) 342-4040/ Toll Free: (800) 259-3428
Web: http://www.adopt.org/la/

MAINE

Northern New England Adoption Exchange
Department of Human Services
221 State Street, State House
Augusta, ME 04333
(207) 287-5060

MARYLAND

Maryland Adoption Resource Exchange (MARE)
Social Services Administration
311 W. Saratoga Street
Baltimore, MD 21201
(410) 767-7359
Web: http://www.dhr.state.md.us/adpt_pg1.htm

MASSACHUSETTS

Massachusetts Adoption Resource Exchange, Inc. (MARE)
45 Franklin Street, 5th Floor
Boston, MA 02110-1301
(617) 542-3678/ Toll Free: (800) 882-1176
Fax: (617) 542-1006
Web: http://www.mareinc.org

Open Door Society of Massachusetts, Inc.
1750 Washington Street
Holliston, MA 01746-2234
(508) 429-4260/ Toll Free: (800) 932-3678
Fax: (508) 429-2261
Web: http://www/odsma.org
E-mail: odsma@odsma.org

MICHIGAN

Kinship/Family Adoption Registry
30215 Southfield Road
Southfield, MI 48076
(248) 443-0306/ Toll Free: (800) 267-7144
Web: http://www.mare.org

Michigan Adoption Resource Exchange
P.O. Box 6128
Jackson, MI 49201
(517) 783-6273/ Toll Free: (800) 589-6273
Fax: (517) 783-5904
Web: http://www.mare.org
E-mail: njennings@voyager.net

MINNESOTA

Minnesota Adoption Resource Network
2409 West 66th Street
Minneapolis, MN 55423
(612) 861-7115
Fax: (612) 861-7112
Web: http://www.mnadopt.org
E-mail: MNadopt@aol.com

MISSISSIPPI

Mississippi Adoption Resource Exchange
P.O. Box 352
Jackson, MS 39205
(601) 359-4407/ Toll Free: (800) 821-9157
Web: http://www.mdhs.state.ms.us/fcs_adopt.html

MISSOURI

Missouri Adoption Exchange
Missouri Division of Family Services
615 Howerton Court, PO Box 88
Jefferson City, MO 65103-0088
(573) 751-2981
Fax: (573) 522-2199
Web: http://www.dss.state.mo.us/dfs/adopt/

MONTANA (state photolisting)

Treasure Book Photo Listing
Helena, MT
Toll Free: (888) 937-5437

NEBRASKA

Nebraska Adoption Resource Exchange
Division of Protection & Safety, Nebraska Department of Health & Human Services
P.O. Box 95044
Lincoln, NE 68509
(402) 471-9331
Web: http://www.hhs.state.ne.us/adp/adpxchan.htm

NEVADA

Nevada Adoption Exchange
Division of Child and Family Services
610 Belrose Street
Las Vegas, NV 89107
(702) 486-7800
Web: http://www.adopt.org/adopt/photo.html

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

NEW HAMPSHIRE

New Hampshire Division for Children, Youth and Families
Department of Health and Human Services
129 Pleasant Street, Brown Building
Concord, NH 03301
(603) 271-4707
Fax: (603) 271-4729
Web: http://www.adopt.org
E-mail: catkins@dhhs.state.nh.us

NEW JERSEY

Division of Youth and Family Services Adoption Exchange
Adoption Operations
50 E. State Street, P.O. Box 717
Trenton, NJ 08625
(609) 984-5453
Web: http://www.state.nj.us/humanservices/adoption/childsplash.htm

NEW MEXICO

New Mexico Adoption Exchange
New Mexico Children, Youth and Families Department
P.O. Drawer 5160
Santa Fe, NM 87502
(505) 827-8422
Web: http://cyf_abq.state.nm.us/adopt/ninos.html
E-mail: clgarcia@cyf_abq.state.nm.us

The Adoption Exchange
Katherine Apodaca
Adoption Specialist
610 Gold Ave. S.W., #222
Albuquerque, NM 87102
(505) 247-1769
Fax (505) 247-1790

NEW YORK

New York State Adoption Service
Office of Children and Family Services
Riverview Center, 6th Floor
40 North Pearl Street
Albany, NY 12243
Toll Free: (800) 345-KIDS
Web: http://www.dfa.state.ny.us/adopt

NORTH CAROLINA

NC Kids
University of North Carolina at Greensboro
Center for Study of Social Issues
P.O. Box 26170
Greensboro, NC 27402-6170
(877) 625-4371

North Carolina Adoption Resource Exchange
Division of Social Services
325 N. Salisbury Street
Raleigh, NC 27603-5905
(919) 733-3801
Web: http://www.dhhs.state.nc.us/dss/adopt

NORTH DAKOTA

Department of Human Services
Children and Family Services
600 E. Boulevard Avenue
State Capitol Building
Bismarck, ND 58505
(701) 328-2316
Web: http://www.adopt.org

OHIO

Ohio Adoption Photo Listing (OAPL)
Bureau of Child and Adult Protection
65 E. State Street, 5th Floor
Columbus, OH 43215
(614) 466-9274
Web: http://www.state.oh.us/scripts/odhs/oapl/query.asp

Southwest Ohio Adoption Exchange
Department of Human Services
628 Sycamore Street
Cincinnati, OH 45202
(513) 632-6366

OKLAHOMA – none listed

OREGON

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

The Boys and Girls Aid Society of Oregon
018 SW Boundary Court
Portland, OR 97201
(503) 222-9661
Web: http://adoptions.scf.hr.state.or.us/adopt.htm

PENNSYLVANIA

Pennsylvania Adoption Exchange
Office of Children, Youth and Families
P.O. Box 2675
Harrisburg, PA 17105
(717) 772-7015/ Toll Free: (800) 227-0225
Web: http://www.dpw.state.pa.us/adoptpakids
E-mail: JewellM@dpw.state.pa.us

Statewide Adoption Network
Pennsylvania Office of Children, Youth and Families
P.O. Box 2675
Harrisburg, PA 17105
(717) 772-7040/ Toll Free: (800) 585-7926
Fax: (717) 772-6857
E-mail: sandyg@dpw.state.pa.us

Statewide Adoption Network's Prime Contractor
Common Sense Adoption Services
5021 E. Trindle Road
Mechanicsburg, PA 17055
(717) 766-6449/ Toll Free: (800) 445-2444
Fax: (717) 766-8015
Web: http://www.csas-swan.org/frame.htm

RHODE ISLAND

Adoption Rhode Island
500 Prospect Street
Pawtucket, RI 02860
(401) 724-1910
Fax: (401) 724-1910
Web: http://www.adoptionri.org/
E-mail: adoptionri@ids.net

SOUTH CAROLINA

South Carolina Seedlings
2627 Millwood Avenue, Suite AA
Columbia, SC 29205
(803) 783-2226/ Toll Free: (888) 515-2622
Web: http://www.sc-adopt.org/
E-mail: sccoac@thestate.infi.net

SOUTH DAKOTA – none listed

TENNESSEE

Resource Exchange for Adoptable Children in Tennessee
201 23rd Avenue, North
Nashville, TN 37203-9000
(615) 321-3867
Web: http://www.state.tn.us/youth/adoption/react.htm

TEXAS

Texas Adoption Resource Exchange
Texas Department of Protective and Regulatory Services
P.O. Box 149030, M.C. E-557
Austin, TX 78714-9030
Toll Free: (800) 233-3405
Web: http://www.tdprs.state.tx.us/adoption/tare.html
E-mail: TARE@tdprs.state.tx.us

UTAH

Department of Human Services
Division of Child and Family Services
P.O. Box 45500
Salt Lake City, UT 84145-0500
(801) 538-4100

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

The Adoption Exchange
610 East South Temple, Suite 40
Salt Lake City, UT 84102
(801) 412-0200
Fax: (801) 412-0202

VERMONT

Northern New England Adoption Exchange
Department of Human Services
221 State Street, State House
Augusta, ME 04333
(207) 287-5060

VIRGINIA

Adoption Resource Exchange of Virginia (AREVA)
Virginia Department of Social Services
730 E. Broad Street
Richmond, VA 23219-1849
(804) 692-1280/ Toll Free: (800) 362-3678
Web: http://www.adopt.org/va/browse.htm
E-mail: lxl2@dss.state.va.us

WASHINGTON STATE

Northwest Adoption Exchange
600 Stewart Street, Suite 1313
Seattle, WA 98101
(206) 441-6822/ Toll Free: (800) 927-9411
Fax: (206) 441-7281
Web: http://www.nwae.org
E-mail: nwae@nwresource.org

WEST VIRGINIA

West Virginia Department of Health and Human Resources
West Virginia's Adoption Resource Network
350 Capitol Street, Room 691
Charleston, WV 25301
(304) 558-2891
Fax: (304) 558-8800
Web: http://www.adopt.org
E-mail: lgoodman@wvdhhr.org

WISCONSIN

Special Needs Adoption Network
1126 S. 70th Street, Suite N509A
Milwaukee, WI 53214-3151
(414) 475-1246
Fax: (414) 475-7007
Toll Free: (800) 762-8063
Web: http://www.wiadopt.com
E-mail: wiadopt@execpc.com

WYOMING

The Adoption Exchange
14232 East Evans Avenue
Aurora, CO 80014
(303) 755-4756/ Toll Free: (800) 451-5246
Web: http://www.adoptex.org
E-mail: kids@adoptex.org

OTHER REGIONAL, NATIONAL, OR SPECIALTY EXCHANGES[12]

The Adoption Exchange
14232 E. Evans Avenue
Aurora, CO 80014
(303) 755-4756/ Toll Free (800) 451-5246
Fax: (303) 755-1339
E-mail: kids@adoptex.org
Web: www.adoptex.org

Adoption and Resource Exchange for Single Parents (ARESP)
8605 Cameron Street, #220
Silver Spring, MD 20910
(301) 585-5836
Fax: (301) 585-4864
E-mail: arespinc@aol.com
Web: www.aresp.org

Children Awaiting Parents, Inc.
700 Exchange Street
Rochester, NY 14608
(716) 232-5110
Fax: (716) 232-2634
E-mail: cap@adopt.org
Web: www.capbook.org

National Adoption Center
1500 Walnut Street, #701
Philadelphia, PA 19102
(215) 735-9988/ Toll Free (800) 862-3678
Fax: (215) 735-9410
E-mail: nac@adopt.org
Web: www.adopt.org

Northwest Adoption Exchange
600 Stewart Street, #1313
Seattle, WA 98101
(206) 292-0082/ Toll Free (800) 704-9273
Fax: (206) 441-7281
E-mail: nwae@nwresource.org
Web: www. nwae.org

Southeastern Exchange of the U.S. (SEEUS)
P.O. Box 1453
Greenville, SC 29602-1453
(864) 242-0460
Fax: (864) 242-8176
E-mail: seeus@gateway.net

Appendix G

MILITARY FAMILIES

Adoption Exchange Association
14232 E. Evans Avenue
Aurora, CO 80014
(303) 755-8152
Fax: (303) 755-8293

National Military Family Association
6000 Stevenson Avenue, #304
Alexandria, VA 22304
(703) 823-6632
Fax: (703) 751-4857
E-mail: families@nmfa.org
Web: www.nmfa.org

JEWISH ADOPTION

Jewish Children's Adoption Network
P.O. Box 16544
Denver, CO 80216
Web: www.users.uswest.net/~jcan

SPECIAL NEEDS ADOPTION

AASK (Adopt A Special Kid)
287 17th Street, #207
Oakland, CA 94612
(510) 451-1748
Fax: (510) 451-2023
E-mail: andrea@adoptaspecialkid.org
Web: www.adoptaspecialkid.org

Adopt America Network
1025 N. Reynolds Road
Toledo, OH 43615
(419) 534-3350/ Toll Free (800) 246-1731
Fax: (419) 534-2995
E-mail: adoptamer@aol.com
Web: www.adoptamerica.org

Post-Adoption Contact Statutes

Joan Heifetz Hollinger prepared this Appendix for the 1999 Release of Adoption Law and Practice *2 vol. (Matthew Bender Co., 1988-99). This excerpt has been updated to take account of legislative developments at the end of 1999.*

STATES WITH STATUTES THAT RECOGNIZE OPEN ADOPTION AGREEMENTS FOR DIFFERENT KINDS OF POST-ADOPTION CONTACT BETWEEN MEMBERS OF ADOPTIVE AND BIRTH FAMILIES

As of January 2000, at least 17 states have enacted statutes that allow courts to approve certain kinds of open adoption or post-adoption contact agreements entered into during an adoption proceeding. Most of these statutes include the substantive legal rule stated in the Uniform Adoption Act (UAA) §3-707 (1994) that the validity of a decree of adoption .... may not be challenged for failure to comply with an agreement for visitation or communication with an adoptee. The remaining statutes contain a version of the UAA rule, such as the existence of, or failure to comply with, an agreement for post-adoption visitation or communication is an insufficient basis for setting aside, vacating, or revoking an adoption decree, a consent, a relinquishment, or an order terminating parental rights.

In addition to recognizing that agreements for continuing contact between adoptive and birth families can co-exist with a legal adoption, and not threaten its security or finality, these statutes also provide, or courts have construed them to provide, for a separate civil action to specifically enforce or modify these agreements until the adopted child's 18th birthday. Among the other important features these statutes have in common are that they do not authorize courts to impose post-adoption contact on anyone over their objection. The adoptive parents and the child, if over the age of 12 or 14, must request or agree to maintain contact with the child's birth parent, or in some cases, a sibling, grandparent, or other relative. Finally, the best interests of the child standard is supposed to govern judicial decisions to approve, modify, or enforce post-adoption contact agreements, and a few of the statutes say that in determining whether to approve or enforce an agreement, the court should consider the effect of continued contact on the stability and autonomy of the adoptive family.

Beyond these common features, the statutes vary greatly. Some apply to all adopted children whether placed privately or through the public child welfare system; others apply only to older children adopted from foster care or by relatives. Some require the consent of the agency and the child's guardian *ad litem* (GAL) as well as of the adoptive parents; others restrict enforceable post-adoption contact privileges to a birth parent; others permit adoptive parents to enter potentially enforceable agreements with their child's biological sibling, grandparent, or other individuals with significant emotional ties to the child. Some encourage mediation in the event of a dispute and provide for the recovery of costs, including attorney's fees, by a prevailing party in a litigated dispute; *most are silent about the procedures applicable to enforcement actions*.

Alaska Stat. 25.33.130(c) [court can approve agreement for post-adoption visitation with birth parents and other birth relatives; case law indicates that, when warranted by the child's best interests, the court can fashion an open adoption order even when parties cannot agree; however, a parent whose rights have been involuntarily terminated cannot insist on being allowed to have contact with child (In re Adoption of A.F.M., 960 P.2d 602 [Alaska 1998])].

Arizona: 1999 Ariz. ALS 347 add §8-116.01 [court can approve agreement for post-adoption communication upon finding agreement is in best interests of child and that it is accepted by adoptive parents, birth parent, child if 12 years or older, and agency representative if child was in agency custody; agreement shall state that adoptive parent may terminate contact between the birth parent and the adoptive child at any time if adoptive parent believes contact is not in child's best interests; agreement is enforceable in court only after good faith effort to mediate disputes is unsuccessful].

California Kinship Adoption Agreements, Fam. Code §8714 [applicable only to children adopted by relatives as broadly defined; subject to a best interests finding, court can approve written agreement by adoptive parent, child if over age 12, and birth parents, siblings, or other birth relatives for post-adoption visitation or contact and information-sharing in future years; enforceable in civil action but only after good faith efforts to resolve dispute through mediation or other non-adversarial process].

Florida Stat. §39.811(7)(a) and (b): [at termination of parental rights hearing for child in state custody, court may order continued contact with child by birth parents, siblings, or other relatives, if in child's best interests and pending adoption; order is reviewable at adoption hearing and, by implication, may be continued subject to agreement by adoptive parents and favorable recommendation by child's GAL or other representative].

Indiana Code §31-3-1-13 [applicable only to children age 2 or older who have significant emotional attachment to a birth parent who has consented to adoption or voluntarily terminated parental rights; subject to a best interests finding and favorable comments by public agency or child's GAL, court can approve written agreement by adoptive parents and child, if 12 years or older, to grant post-adoption visitation privileges to a birth parent; enforceable or modifiable by court that entered adoption decree].

Md. Code Ann., Fam. L. §5-312 (e) [adoptive parent and a non-consenting natural parent may agree to visitation privileges with child by parent or siblings; not clear if agreements can be made with consenting as well as non-consenting parents when child is adopted by unrelated adults; not clear if court approval is required nor if agreement is enforceable, although cases indicate courts will enforce agreements between non-custodial parent and adoptive stepparent subject to best interests finding Weinschel v. Strople, 466 A.2d 1301, 1305 (Md. Ct. Spec. App. 1983)].

Massachusetts 1999 Mass ALS 3; 1999 Mass. H.B. 3965; amends ch. 210 [allows consensual post-adoption contact agreements between birth and adoptive parents, best interests test, validity of adoption not affected by existence of post-adoption contact agreement; agreement may be enforced in action for specific performance].

Minnesota Code §259.58 [applicable only to children who have resided with a birth relative before being adopted; subject to best interests finding, court can approve agreement for post-adoption communication or contact with child if agreement is signed by adoptive parents, birth relative, and agency that has legal custody of child; enforceable or modifiable by court after parties attempt to mediate dispute; for child subject to ICWA, birth relative includes extended family members as defined by tribal custom].

Montana Code Ann. §42-5-301 [written agreements between the placing parent and adoptive parents for post-adoption contact or communication are subject to enforcement independently of the adoption proceedings unless the court finds enforcement is detrimental to the

child, undermines the adoptive parent's parental authority, or, because of a change of circumstances, compliance would be unduly burdensome for one or more of the parties].

Nebraska Code Ch. 43 Infants §§43:162-165 [written agreements between adoptive and birth parents for post-adoption communication or contact can be approved by court subject to best interests finding based on specific factors, including whether child and birth parent lived together for substantial period, degree of attachment or bonding between child and birth parent, and whether adoptive parent was child's foster parent until birth parent voluntarily relinquished parental rights; agreements can be enforced or modified in civil action and prevailing party can be awarded costs and attorney's fees].

New Mexico Stat. Ann. §32A-5-35 [subject to a best interests finding, court can approve an open adoption agreement between adoptive parents and a birth parent or other birth relatives for future exchange of information or visitation; enforceable or modifiable in civil action if in child's best interests].

New York Soc. Serv. Law §383-c(5)(b) [applicable only to children in foster care who are voluntarily surrendered by birth parent to public agency; court can approve birth parent's explicit reservation of post-adoption communication or visitation privileges in the written surrender; cases indicate that birth parent with these reserved privileges cannot challenge validity of the surrender, but has standing to seek enforcement in later civil action against adoptive parents (In re Sabrina H. and Allan H., 666 N.Y.S.2d 531 (A.D. 1997); In re Patricia YY, 656 N.Y.S.2d 414 (A.D. 1997); In Re Alexandra C., 157 Misc. 2d. 262, 596 N.Y.S.2d 958 (1993)); adoptive parents are not party to birth parent's surrender, but, by implication, have to enter separate agreement with agency to honor terms of surrender (In re Ronald D., Sr., 1998 N.Y. Misc. Lexis 153); parties to independent private adoption may enter post-adoption contact agreements, but cases indicate that these are purely voluntary and not subject to court approval (In re *Adoption of Baby Boy D.*, 1998 N.Y. Misc. Lexis 318 (Erie Co. Surr. Ct, 1998)); under some circumstances, courts may have equitable authority to enforce visitation by siblings or grandparents when they had significant prior relationship with child].

Oregon Code §109.305 [court can approve written agreement by adoptive parents, birth parents, and child to permit continuing contact between child and birth relatives; enforceable or modifiable in civil action after parties attempt to mediate dispute].

Rhode Island Gen. Laws §15-7-14 [court can approve post-adoption privileges to a birth parent who has consented to adoption or voluntarily terminated parental rights; subject to written agreement by adoptive parents and child, if 12 years or older, and to best interests finding based on specific factors, including significant emotional attachment between the child and the birth parent and recommendations of child's CASA or GAL or child-placing agency; enforceable or modifiable in civil action].

South Dakota Cod. Laws §25-6-17 [birth and adoptive parents may enter written agreement for post-adoption visitation or contact; nonetheless, post-adoption visitation is an extraordinary remedy and may be exercised only by the adoptive parents when in the child's best interests].

Washington State §26.33.295 [subject to finding that post-adoption communication or contact with birth parent is in child's best interests, court can approve written open adoption agreement signed by adoptive parents, birth parent, child's attorney or GAL, and agency that has legal custody of child; enforceable or modifiable in civil action

and prevailing party can be awarded costs and attorney's fees].

West Virginia Code §48-4-12(e) [subject to a determination of child's best interests, court has discretion to enforce an agreement for post-adoption visitation or communication with the child; no express provisions concerning who may be a party to this agreement].

Note: As of March 1999, legislation similar to that in Indiana, Nebraska, Minnesota, and Rhode Island was pending in Kansas and several other states. [Kansas Bill was defeated Spring 1999; as drafted, it would have allowed courts to impose post-adoption contact agreement on adoptive parents, whether or not parents had objections].

STATES THAT EXPRESSLY RECOGNIZE NON-BINDING OPEN ADOPTION AGREEMENTS

In contrast to the states listed in the previous section which have enacted statutes that expressly authorize courts to approve and enforce agreements for post-adoption contact in certain kinds of adoptions, most other states neither prohibit nor permit these agreements. Adoption attorneys and private as well as public agencies generally assume that courts will not prevent adoptive parents from agreeing to allow a child's birth parents, siblings, or other birth relatives to maintain some kind of contact with the child and the adoptive family. They further assume that these agreements will be based on mutual trust and respect, not on court orders, and are modifiable or terminable at the parties' own discretion. Nonetheless, there is a risk that some state courts will rule, as they have in the past, that an adoption can be set aside because a contact or visitation agreement is deemed to contradict the transfer of all legal rights and duties from the birth to the adoptive parents which is a basic consequence of a legal adoption. To avoid this risk, some states have enacted statutes that do not allow judicial recognition or enforcement of post-adoption contact or visitation, but specifically provide that an adoption is not invalid because of the existence of a discretionary private agreement for post-adoption contact or visitation.

Missouri 1998 S.B. 674: [court shall not have jurisdiction to deny continuing contact between adoptee and birth parent, or between adoptive parent and birth parent; but statute has no provision for enforcing an agreement for continuing contact; parties have discretion to decide for themselves whether to have contact and what kind of contact to have].

Ohio Rev. Code Ann. §3107.62-63: [birth parent who voluntarily places child for adoption can ask agency or attorney who arranges the placement to help negotiate a non-binding open adoption agreement with the adoptive parents].

Tennessee Code Ann. §36-1-121: [court shall not place any conditions on child's adoption; any provision in court order or written agreement between birth parent and adoptive parents requiring visitation is void and of no effect whatsoever; except that adoptive parents are not prohibited, in their sole discretion, from allowing birth parent, sibling, or other birth relatives from visiting or communicating with child].

PROPOSALS IN MODEL STATE LAWS AND FEDERAL GUIDELINES CONCERNING POST-ADOPTION CONTACT

The Proposed Uniform Adoption Act (UAA) approved by the Conference on Uniform State Laws in 1994 and by the American Bar Association in 1995, requires that adoptive parents be provided with all reasonably available medical, social, and other non-identifying information available about an adoptee and the birth family. The UAA allows birth and adoptive parents to share as

much or as little identifying information as they wish to share during and after the adoption proceeding.

Adoptive parents are the legal parents of the adoptee for all purposes and have all the rights and duties of the parent-child relationship. Because adoptive parents have the legal right to decide who may or may not have contact with their adopted child, they are not precluded from allowing birth relatives to maintain contact, including visitation, with the adoptee after the adoption is final. The UAA has specific provisions for court approval and enforcement of post-adoption contact or visitation agreements only in the context of an adoption by a stepparent. In other kinds of adoptions, the parties' agreements are based on mutual trust and respect. As a proposed uniform state law, the UAA does not prevent a particular state from enacting additional provisions, including provisions for enforcement or recognition of open adoption agreements.

In contrast to the UAA which applies primarily to direct placement or private agency adoptions, the 1997 federal Adoption and Safe Families Act (ASFA) of 1997, P.L. 105-89, Sec. 104, applies to public child welfare agencies, states, and other entities that receive federal funding and are involved in placing dependent, abused, or neglected children in foster care or permanent adoptive families. In shifting federal child welfare policy towards achieving permanency for children whose original families are unable to care for them, ASFA favors prompt actions to terminate parental rights and to place children with a new permanent family, preferably an adoptive family. Although ASFA itself does not provide for open adoption or post-adoption contact agreements, a Work Group of more than forty child welfare and legal experts convened by the Children's Bureau of the U.S. Dept. Health & Human Services to draft Guidelines for State Legislation to Implement ASFA and other Federal Adoption Initiatives is recommending that states enact legislation that recognizes post-adoption contact agreements in the context of adoptions of children who have been subject to state custody and have spent time in out-of-home care.

EXCERPT ON OPTIONS FOR PERMANENCY

The following excerpt is from the Children's Bureau of the U.S. Health and Human Services Guidelines published in October 1999. The Guidelines are available for downloading from Children's Bureau website: *http://www.dhhs.gov/programs/cb/*

Post-Adoption Contact Agreement: State law should authorize a court terminating parental rights or granting adoption of a child in foster care to approve an agreement by the adoptive parent or parents to allow post-adoption contact between the child and a birth parent, sibling, grandparent, or other relative or individual who has a significant emotional tie to the child. State law should provide for the legal enforcement of an agreement for post-adoption contact, subject to the following:

(a) Adoption is irrevocable, even if the post-adoption contact agreement is violated, modified, or set aside;
(b) A birth parent's voluntary relinquishment of parental rights may not be set aside if a post-adoption contact agreement is violated, modified, or set aside;
(c) The court may approve the post-adoption contact agreement only if the parties agree, including the child if over the age of 12, and the court finds that the agreement is in the best interests of the child;
(d) The court may approve post-adoption contact ranging from occasional exchanges of cards, photographs and information to regular personal visits in whatever level of detail agreed to by the parties and the court deems appropriate;
(e) Any party to the post-adoption contact agreement may petition the court to modify the agreement, order a person to comply with

the agreement, or terminate the agreement;

(f) The court may order compliance, modify, or terminate the post-adoption contact agreement only if the parties agree or circumstances have changed and the court finds the request is in the best interests of the child. The court may use its contempt power to enforce compliance as appropriate.

Statutes and Court Rules that Expedite the Appellate Process

Research performed by Connie A. Crim, Staff Attorney, and Jo-El Huck, Research Assistant, to Justice Evelyn Lundberg Stratton of the Supreme Court of Ohio.

Alabama:	Ala. Code §26-10A-16.
Alaska:	Alaska R. App. P. 218.
Arizona:	Ariz. Rev. Stat. §8-235; Ariz. Juv. Ct. R. P. 24.
California:	Cal. R. Ct. 39.1A; Cal. Civ. Proc. Code §45.
Colorado:	Colo. Rev. Stat. §19-1-109.
Florida:	Fla. Stat. Cl. §39.815.
Hawaii:	Ha. Rev. Stat. §571-54.
Illinois:	750 Ill. Comp. St. 50/20.
Indiana:	Ind. Code §31-19-14-1.
Iowa:	Iowa R. App. P. 17.
Louisiana:	La. Sup. Ct. R. 34; La. Ct. of App., 2nd Cir. Rule 6-1; La. Stat., Art. 1143.
Maine:	Me. Rev. Stat. Ann. Tit. 18-A. §9-309.
Maryland:	Md. Code Ann.; Cts Jud. Pros. 8-207.
Michigan:	Mich. R. Admin. Order 1981-6.
Montana:	Mont. Code Ann. §42-2-619; Mont. Code Ann. §42-5-203.
Nebraska:	Neb. Rev. Stat. § 43-2, 106.01.
Nevada:	Nev. Sup. Ct. R. 251.
New Mexico:	N.M. Stat. Ann. §32-A-1-17 (B).
New York:	N.Y. Dom. Rel. Law §112-a.
Ohio:	Ohio R. C. 3107.16; Sup. Ct. Rules of Prac. II, III, IV, V, VI, IX, X, XI.
Oklahoma:	Okla. Stat. tit. 10, §7505-7.1; Okla. Sup. Ct. R. 1.34.
Oregon:	Ore. R. App. P. 10.15.
South Dakota:	S. D. Codified Laws §15-24-3.
Tennessee:	Tenn. Code Ann. §36-1-124(b).
Texas:	Tex. Fam. Code Ann. §109.002.
Vermont:	Vt. Stat. Ann. tit. 15A, §3-706.
Washington:	Wash. Rev. Code §26-33.260(2).
West Virginia:	W. Va. Code §48-4-12.
Wisconsin:	Wis. Stat. §48.915; Wis. R. App. P. 809.107.

Adoption Disruption

No child who needs a permanent home should be considered unadoptable. However, for children with special needs being adopted from the child protection system, occasional adoption disruption cannot be avoided. It is important to note, however, that one or more adoption disruptions does not preclude a child from a future successful adoption finalization. (See Appendix E, Profile 3 for an example of a successful adoption for a child with prior disruptions.)

Studies of adoption disruption consistently find rates of between 10% and 20%, with no significant differences between the percentages of adoptions that disrupt before and after finalization of the adoption.[1] The factors contributing to disruption include many which can be addressed by improving court and agency practices in child protection cases.

Among the factors associated with adoption disruption are:[2]

A. Child Characteristics

- *Demographic characteristics:* increase in age of children is associated with increased disruption rates; gender and race are *not* found to be factors.
- *Historical characteristics:* multiple placements and previous disruptions increase risk of disruption; whether parental rights were terminated voluntarily or involuntarily does *not* appear to be a factor.
- *Special problems or needs:* emotional, physical and cognitive disabilities are risk indicators for disruption, especially aggressive behaviors, sexual acting out, and vandalism.
- *Attachment and family relationships:* definitions and identification of specific factors are relatively primitive, but a lowering rating over time by the parent of the degree to which the child exhibits curiosity, a decrease over time in the parent's ability to meet the child's need for attention, a decrease over time in the child's ability to show spontaneous affection, and a decrease over time in whether the child cares about whether a parent approves of behavior, were found to relate to disruption.
- *Sibling placements:* placement of a child in a home with other non-sibling adopted children or biological children is a risk factor; sibling placement has some correlation to stability.

B. Family Characteristics

- *Age of parents:* older parental age is associated with adoption stability.
- *Two- and single-parent families:* single parent adoptions are no more likely to disrupt than two-parent adoptions.
- *Working mother:* a working mother is *not* associated with greater risk of disruption.
- *Household income:* most studies have not found a correlation between family income and stability.
- *Transethnic adoption:* most studies have not found a relationship between transethnic adoptions and disruption.
- *Social support:* families with little social support have greater risks of disruptions, and relative support is more critical to adoption stability than is support from friends and acquaintances.

C. Service Characteristics

- *System characteristics:* the time lag between referral and adoptive placement is a significant contributor to disruption.
- *Recruitment, screening and assessment:* better information about the process, the child, and services is a preventative to disruption.

- *Matching:* attention to child and parent needs and expectations, and informed decision-making can lessen risk of disruption.
- *Availability of assistance:* educational tutoring and subsidies for special schooling have been associated with adoption stability more than other post-placement services; family therapy and psychotherapy have no relation to adoption stability.

Some risk of disruption must be accepted. While disruption rates of 5% are considered by professionals to be "acceptable" for adoptions of children out of foster care, unnecessary disruptions should be prevented by appropriate recruiting and matching of families to children, full disclosure of information about the child and the process, behavior management training and information, and post-adoption services. Risks of disruption are still far less than risks of multiple placements in foster care. Further, adoption offers a far greater chance of continuity of the familial relationship after a child reaches the age of 18.

Endnotes

1. Berry, M., Adoption Disruption, Adoption Policy and Special Needs Children, 1997. Auburn House, Westport, CT.

2. Ibid.

Reports from Two NCJFCJ Model Courts

THE EXPEDITED ADOPTION PROJECT OF MULTNOMAH COUNTY, OREGON

Prepared by Connie L. Isgro, Juvenile Court Referee, Multnomah County Juvenile Court, Portland, Oregon.

In the spring 1997, the Multnomah County Juvenile Court in Portland, Oregon was selected to participate in the Expedited Adoption Project as a study site. In April 1997, a representative of the National Council of Juvenile and Family Court Judges (NCJFCJ) came to Multnomah County to assess the procedures utilized in this court to adjudicate dependency cases, to terminate parental rights, and to obtain permanency for children, including those awaiting adoptive placement. The NCJFCJ also met with representatives of the State Office for Services to Children and Families (SOSCF) to evaluate agency practices for permanency planning and adoptive placement. This assessment found that Multnomah County had many strengths in its process, but also had areas where further improvements could be made.

New legislation passed in 1997 by the Oregon Legislature substantially changed the child welfare system in this state. The new statute requires reunification of a child with the birth parents to occur within one year. If reunification does not occur in a year, there is a rebuttable presumption that it is in the best interest of the child to halt services to reunify a family and move to implementation of an alternate (concurrent) plan. These changes took effect in October 1997.

Legislation was passed in 1999 by the Oregon Legislature further changing the child welfare laws to bring them into compliance with the Adoption and Safe Families Act. The ASFA amendments to the Oregon statutes took effect October 1, 1999.

An area in which the NCJFCJ and the Multnomah County Juvenile Court determined that improvements could be made was in the Initial Shelter Hearing process. Currently ORS 419B.183 requires that a shelter hearing be held within 24 hours whenever a child is taken into protective custody. Usually the State Office for Services to Children and Families (SOSCF) caseworker has minimal information at that shelter hearing about the family and the issues that brought the child or children before the court. For example, information is often unavailable within those first 24 hours regarding paternity, the whereabouts of the parents or relatives, and the applicability of the Indian Child Welfare Act (ICWA), among other issues.

Beginning November 6, 1998, the Multnomah County Juvenile Court implemented a system of scheduling dependency (abuse/neglect) cases for a second Shelter Hearing within 7-14 days of the Initial Shelter Hearing. The Initial Shelter Hearing occurs as before with the court making as many findings as possible with respect to identifying the parents and the issues involved. A probable cause finding can usually be made and many times at least one parent is present. By the conclusion of the Initial Shelter Hearing, the court identifies a list of "tasks" needing resolution for the second Shelter Hearing (such as locating a parent in a correctional facility and obtaining service, clarifying paternity issues and ICWA issues or developing a safety plan for return of the children). The second Shelter Hearing is then scheduled in court and the date written on the Initial Shelter Order, a copy of which is given to the parents, the caseworker and all attorneys present.

At the second Shelter Hearing, the court reviews the outstanding issues and modifies the Initial Shelter Order in any manner necessary. Newly located parents are served and counsel appointed. This new process has reduced set overs caused during the adjudication process due to late service and late appointment of attorneys.

Discovery is provided to all parties earlier in the process, resulting in cases settling more quickly and faster adjudications. Prompt adjudication of cases will move children toward permanency in a more timely manner as now required by ASFA.

With a long-term goal of developing a system for coordinating adult probation requirements and juvenile court dispositional requirements for parents, the Multnomah County Juvenile Court, in conjunction with the Multnomah County Department of Juvenile and Adult Community Justice, initiated the "Probation Communication Project." The initial goal has been to improve information available at the shelter hearing stage of a case and to initiate contact with a parent's probation or parole officer. Currently, when the daily shelter hearing docket is compiled in the morning, a Corrections Technician is provided with the parents' names for the children on the docket to determine if a parent is or has been on probation or parole or is incarcerated and in which correctional facility. This information may be obtained as soon as the Initial Shelter Hearing and is usually available by the second Shelter Hearing. After a year of successful implementation of this process as a pilot project, funding was obtained for a full-time, permanent Corrections Technician. This will provide the capacity to follow up on referrals to probation or parole officers, to assist probation or parole officers in connecting with SOSCF caseworkers and to develop further methods for information sharing and collaboration between systems.

An evaluation of this second Shelter Hearing process by the NCJFCJ Victims of Child Abuse Model Court Project is currently underway. This evaluation is focusing on both process and outcome measurements, using hearing observations, interviews with key participants in the process, and an archival case file review.

Lack of clarity and specificity in the service agreements being prepared by SOSCF and in court orders was another area requiring improvement in this court. This issue was of particular concern in light of the strict time lines regarding reunification under ASFA. To address this problem, the court's jurisdictional order was re-drafted to provide specificity for time lines for services to be completed by both the parents and SOSCF. SOSCF caseworkers are also encouraged to bring to court hearings service agreements that set out specific time lines for commencing and finishing services.

Another issue identified as a barrier to permanency for children was the delay in finalizing adoptions for children freed through termination of parental rights or voluntary relinquishments, recognizing that permanency is not achieved for these children until an adoption decree is signed. In 1997 a statute was passed to allow the adoption of a child freed by the state through termination of parental rights or relinquishment in the juvenile court to finalize in the juvenile court without the filing of a separate adoption petition. In cooperation with SOSCF, a protocol was developed to provide guidance for attorneys in utilizing this process. In addition, a judicial commitment has been made to set for review the case of every child freed for adoption within 90 days of the conclusion of a termination proceeding for the purpose of assessing progress towards adoptive placement and finalization.

A strength in Multnomah County, and indeed in the State of Oregon, is the large number of adoptions with contact that occur. Approximately one-third of all children freed for adoption in Oregon are freed through voluntary relinquishment. Many, if not most, of these relinquishments are the result of a mediated agreement allowing some post-adoption contact - from pictures sent once a year to regular face-to-face contact with the birth parent. Oregon has been mediating termination of parental rights cases since 1992. In September 1998, mediation became more widely available throughout the state.

The judges and referees in Multnomah County strongly encourage the use of mediation in the termination of parental rights process. Mediation

is discussed by the court in hearings as soon as it appears that the case is moving toward the termination process, even before a petition to terminate parental rights is filed. The use of mediation toward post-adoption communication agreements is addressed at every subsequent stage in the termination process. An important aspect of the success of mediation and voluntary relinquishments in Multnomah County is the dedicated and knowledgeable members of the defense bar who support their clients being informed of all their options, including mediation.

In order to further facilitate discussion toward voluntary relinquishment of parental rights or other settlement of a termination petition, since March 1998, hearings entitled "Best Interests Hearings" have been scheduled in every termination proceeding. These hearings, scheduled after the Initial Appearance on the termination petition but before the Pre-trial Conference, are set before the judge or referee who has been assigned to the case and who is very familiar with the parents and the issues and with whom the parents have developed a relationship. The objective of the Best Interest Hearing is to resolve the case without proceeding to an adversarial, lengthy termination trial. This provides the judge or referee with an opportunity to frankly discuss the parents' options with the parents. Parents may decide to relinquish their rights at this hearing. Because this is a mandatory court appearance, if the parent fails to appear for the hearing, the parent's parental rights are terminated. As a result of the implementation of the Best Interest Hearing and the support of the mediation process, few termination of parental rights petitions are actually litigated in the Multnomah County Juvenile Court. Accordingly, fewer termination cases are appealed and permanency is expedited for children.

In July 1998, SOSCF initiated the "Oregon Adoption Reform Strategic Plan" with the goal of placing children into permanent homes in an expeditious manner. Since 1998, SOSCF has made much progress through this initiative. Resources were re-deployed early in cases to locate relative placements and to conduct more timely adoptive home studies of relatives. Efforts were made to strengthen working relationships with private adoption agencies and to provide incentives to those agencies to assist in placing hard to place children in adoptive placements. Additional funding was obtained to expand adoption mediation and to obtain legal assistance (from the district attorney or attorney general) for prosecution of termination of parental rights cases. Efforts were expanded to recruit for adoptive placements, including authorization for additional adoption workers, and to provide post-adoptive support for these families. Additional adoption committees were convened to choose and designate adoptive homes more quickly. (The Oregon adoption committee process requires that the decision for adoptive placement be made by a three-member committee after reviewing several families interested in a child.)

SOSCF developed a new information system, Adoption Recruitment Management System (ARMS) to better track cases through the adoption process and to assist in matching children with potential adoptive families. In Federal Fiscal Year (FFY) 1998, SCF finalized 666 adoptions statewide, an increase of 50% over the ASFA baseline. In FFY 1999, the number of finalizations rose to 765 and finalization of between 800 and 850 adoptions is predicted for FFY 2000.

In September 1998, the Multnomah County Juvenile Court became the 14th Victim's Act Model Court in the NCJFCJ's Victims of Child Abuse Model Court Project. As part of this project, this court has reviewed these past accomplishments, assessed areas of continuing concern and has developed a list of additional goals. Included in these future goals are ongoing efforts toward expediting the adoption process and providing timely permanence for our children.

Appendix K

HAMILTON COUNTY JUVENILE COURT EXPEDITED ADOPTION PROJECT IN CINCINNATI, OHIO

Prepared by Lisa Portune, former Dependency Supervisor, and Carla Guenthner, Dependency Magistrate, Hamilton County Juvenile Court, Cincinnati, Ohio.

The Hamilton County Juvenile Court has been serving as a Model Court for the NCJFCJ Victims of Child Abuse Project for 10 years. Following the overwhelming changes accomplished in the court system from the late 1980s to early 1990s, the court turned its attention to adoption. Large numbers of children lingered in foster care without hope of adoption into loving, stable families. Obstacles to adoption seemed insurmountable without a concerted effort to remove them.

During the early years of reform, the Hamilton County Juvenile Court, working hand in hand with the Hamilton County Department of Human Services, led the effort to remove or alleviate barriers to permanency for dependent children. Various legislative changes undergirded the modernization of the adoption system. The most important change was the shift of oversight responsibility from the child-serving agencies back to the court. The court took the lead in creating permanency for children, holding other agencies accountable. Other changes included timely hearings where adjudication and disposition were reached within 90 days of the complaint filing, increased review hearings, statutory time frames which supported reunification within one year, one judge for the life of the case, and an innovative case tracking system. Ohio Senate Bill 89 mandated timely hearings and specific statutory time frames for children in care and custody, but also ensured each child's interests were represented by a guardian *ad litem*.

The court has encouraged change in the other agencies that shared the same goal of permanency planning. Children's Services implemented a risk assessment in all cases. The agency created a case-staffing model to include all family members and the professionals associated with the family in order to create viable solutions to unstable family situations. Children's Services, working with the court and community to create a better system for administering alcohol and drug treatment, created the Impact Program with the Alcohol and Drug Addiction Services Board (ADAS). Alcohol and drug services, both in-patient and outpatient, are now available no longer than 72 hours from the original assessment, which occurs within 24 hours of the initial request.

Open communication is essential when many agencies work together for a common goal. To create open communication, the administrative judge, the court administrator, the administrative magistrate and the directors of each agency involved in the dependency system formed an executive committee that convenes quarterly to address policy issues. A management committee comprised of the administrative magistrate, the lead dependency magistrate and administrators of each agency meet monthly to resolve day-to-day systemic issues that directly impact the handling of child abuse and neglect cases. Regular, frequent communication sessions have eliminated blame and delay.

The early innovations of the Juvenile Court dependency system lowered the number of children in care and custody, yet serious issues continued. Terminations of parental rights were being granted at significantly higher rate than children were being placed in adoptive homes.[1] There was an explosion of children in permanent custody status waiting for adopting families.

Confusion about agency procedures clouded issues of case transfer, recruitment of adopting families, and matching children with families. A recent decision to contract with a community provider for needed services has increased effectiveness for agency adoption units. The

court's role in the increased number of children entering a permanent commitment status and the length of time these children remain in permanent commitment is also being studied.

The Juvenile Court heads the following five projects resulting from the multi-system approach to expedited adoption:

1. The Tri-State Adoption Coalition (TSAC) was created through a partnership with Wendy's International in order to aid timely adoption. TSAC is a tri-state, multi-county adoption initiative, bringing together the efforts of agency personnel, court officials, and related professionals from 23 counties in Indiana, Ohio and Kentucky. Formed in early 1997, TSAC became incorporated in May 1998. TSAC focuses on recruitment of prospective adoptive families. Its mission is to identify and address local, state and regional barriers to adoption and to increase awareness of special needs adoption.

2. Hamilton County Juvenile Court led the effort to create a county adoption website at *http://www.hcadopt.org*. The site offers photographs and brief descriptions of special needs children awaiting adoption, listing their physical, mental, emotional, and learning difficulties. Visitors to the website can also obtain information on application and pre-adoptive home study procedures. Website visitors can easily enter the characteristics of the types of children they would be interested in adopting.

   Since October 1, 1997, when the site went online, it has accumulated an estimated 43,000 "hits," or visits. Prospective adoptive parents have submitted more than 1,000 messages in the guest book, and, on average, 60% have expressed interest in adopting sibling groups. More importantly for the children waiting for adoptive homes, an average 60% already have completed, approved home studies. Evenings, weekends, and holidays attract the most website visits.

   Data collected from the website reveals that the vast majority of visitors seek information about adopting children with special needs, not healthy infants. To date, six children have been placed with adoptive families as a result of the website.

3. A task force of CASAs, Children's Services supervisors, guardians *ad litem*, counsel for parents, prosecuting attorneys, and magistrates reviewed the process of termination of parental rights and permanent placement. After much discussion and debate, committee members agreed on six areas needing further examination: relative and foster care to adoption; mediation and openness in adoptions; agency case transfers and the matching selection process; recruitment and partnerships in the community; permanency decision-making; and expedited litigation and appeals.

   Subcommittees comprised of representatives from each dependency stakeholder agency were formed to develop recommendations for change or reform in each of the focus areas. The executive committee approved the task force recommendations, and the management committee is formulating strategies for implementation. Creative thinking has replaced blame since this diverse and interested group of people came together for positive change for children.

4. Early in the process, the need for specialized data emerged as an essential component in the court improvement program. Hamilton County was able to identify the

resources needed to implement an entirely new system of information services. Computerized data was gathered and stored in the following areas: demographic and case specific details on families and children; movement of cases through the court and related agencies; information on trends in court practice; performance statistics on parties involved in the court process; and generation of court orders consistent in appearance between courtrooms, which are available for immediate use and which instantly update the data base.

In the early 1990s Hamilton County Juvenile Court installed a state-of-the-art case tracking system allowing more effective analysis of dependency caseloads. Detailed information included allegations and findings for each child in the family. The status of each child and each petition in the system is immediately available to magistrates and case managers (clerks), when special review hearings must be heard or custody status time frames near expiration. The system is flexible enough to allow supplemental petitions to be filed and attached to the original petition for processing and time tracking. Appeals and objections are noted and documented.

Court hearings are tracked and it becomes easier to meet time guidelines for processing cases through the system. The system is now being upgraded with a graphical user interface developed with Microsoft products. Increased ability to interface with other Windows applications and an improved menu structure will create an even more user-friendly system. The new software allows the generation of entries in the courtroom, stores family histories, lists an index of interested parties, and offers a selection of multiple criteria to be used in creating reports on the data collected.

5. In August of 1998, Hamilton County was awarded a three-year federal grant to fund an Adoption Mediation Pilot Project. This project is a collaborative effort with the Hamilton County Juvenile Court and the Hamilton County Department of Human Services. The project is designed to make the choice to free a child for adoption an easier choice for families. Birth families may also now participate in the creation of the terms of an adoption, thereby avoiding an adversarial and expensive trial. Increased cooperation between parents, the court, various agencies, and prospective adopting parents is the overall goal of Adoption Mediation. Adoption Mediation quickly reduced docket time for permanent custody trials.

   Hamilton County Juvenile Court will continue to participate in the NCJFCJ Victims Act Model Court Project and the Expedited Adoption Project. In doing so, the court will strive to maintain a leadership role in the effort to bring permanency to the many children depending on us.

Endnote

1. In 1995, parental rights were terminated in 153 cases while only 93 cases of children whose parental rights had been terminated were closed.

Post-Adoptive Services in Ohio and Illinois

From the Preliminary Survey of Post-Adoptive Services in Ohio, Illinois, Indiana & Michigan, prepared by Barbara Seibel for the National Council of Juvenile and Family Court Judges, June 1999.

During the 1990s, juvenile and family courts and child welfare agencies made significant gains in reducing the time children spend in temporary care. One outcome of this progress is an increase in the number of children whose parental rights have been terminated and who are available for adoption. As courts and child welfare agencies work to improve the availability of adoptive homes for these children, we must also recognize that many of these adopting families will require supportive services throughout childhood and adolescence. The availability of supportive services can be the determining factor in whether many adoptions of children with special needs succeed.

Maintenance subsidies and reimbursement for adoption expenses are available for all children with special needs who are adopted through public and private child caring agencies. However, there is significant variation in the degree to which states and counties fund post-adoptive services. The range includes no funding at all to funding a complete range of service needs. Joe Kroll, Director of the North American Council on Adoptable Children, identified Ohio and Illinois as two successful models of post-adoptive services. They are helpful as two diverse examples particularly because Ohio has county operated child protective systems, whereas Illinois is a state operated system.

A. POST-ADOPTIVE SERVICES IN OHIO[1]

Ohio offers two programs that assist in funding post-adoptive services – *the Ohio Adoption Services Subsidy (OASS)* and the *Ohio Post-Adoption Special Services Subsidy (PASSS)*. Because of the state's county controlled/state monitored structure, these funds are passed through to each county for distribution. The county determines to whom and in what amount these funds are distributed.

As of 1999, OASS was funded at $44 million annually. These funds are available for children with special needs who are adopted through a public or private child welfare agency[2] for needs identified prior to adoption finalization. The funds are generally directly provided to the adoptive parent through an increase in the monthly subsidy payment. The funds received by the adoptive family always require county match dollars in addition to the state and federal dollars.

This model of providing funds directly to the adoptive parent to purchase services was selected for three reasons. First, by increasing the monthly subsidy payment to cover the cost of needed services, the IV-E funding stream can be tapped for 60% of the costs for IV-E eligible children.[3] Second, if the family moves out of state, the dollars can easily follow the family. Finally, this system gives the family the freedom to select the service provider of their choice.

It is important to note that before the maintenance payments are increased to cover services, the adoptive family must document the need and identify the service provider. The family must also provide documentation that the service was actually delivered.

The second program, PASSS, was created in 1992 as a result of a governor's task force on adoption. PASSS funds are state funds available on a first come, first served basis as a payment of last resort for post-adoptive services. PASSS is available to parents who adopted children with special needs in Ohio, regardless of whether they still reside in Ohio, and regardless of income level. This subsidy is available to children who may not have been identified with special needs at the time of the adoption, but whose

special needs later became apparent. In addition to children adopted through public and private child welfare agencies, these funds are also available for children adopted privately, including international adoptions.

PASSS funds are extremely flexible. If there is a special service need related to the adoptive child for which there is no other payment source and which, if unmet, could cause the breakup of the family, then an application can be made to PASSS. There are currently $3.7 million state dollars available for PASSS. A county match is required. A family can receive up to $20,000[4] annually through this funding source. Occasional exceptions (6 to 10 a year, statewide) are made to this limit.

Since Ohio is a state where child welfare agencies are county controlled, and since the determination of whether a subsidy is appropriate and in what amount is a mutual negotiation between the county child welfare agency and the adopting parent, and since a county dollar match is always required, there is significant variation among Ohio counties regarding the extent of post-adoptive services that are provided.

According to Ohio's state operated *Adopt Ohio Initiative,* urban areas with larger numbers of children needing adoptive homes tend to apply a broad interpretation of regulations to expand eligibility to the maximum appropriate degree. They believe that finding adoptive homes for children whose families cannot care for them is good for children; and they also recognize that in the vast majority of situations, the cost of temporary care or disrupted adoptive placements far exceeds the cost of adoption maintenance and service subsidies. Consequently, urban agencies tend to view such an inclusive strategy as a win for the child and a win for the taxpayer. There are, on the other hand, Ohio counties that believe that families who adopt should be financially self-sufficient and able to handle all future needs of their adopted child. These counties approve minimal, if any, expenditures for post-adoptive services.

Post-Adoptive Services in Hamilton County, Ohio (Cincinnati)

The *Adopt Ohio Initiative* identifies Hamilton County as one of the Ohio counties that broadly interprets the regulations to expand eligibility to the maximum appropriate degree. The state of Ohio has expanded upon the federal definition of special needs and the Hamilton County Department of Human Services (HCDHS) broadly interprets the Ohio definitions of special needs. In addition to the standard federal definitions, these two components have been added:[5]

1. Identified or reasonably identifiable risk of developing a physical or developmental disability, mental disability or disorder, emotional disturbance or behavior problem related to the child's history of abuse/neglect, genetic factors or other environmental traumas; and

2. Psychological attachment to the foster care giver due to placement of at least one year, such that placement with another family would not be in the child's best interests.

These additions allow broad interpretation. Because every child in the custody of HCDHS has a history of abuse, neglect or dependency, HCDHS considers all of the children whose parental rights have been terminated to be at risk as described in item 1 above and therefore to be special needs children. HCDHS is very pro-active with adopting parents with regard to completing applications for all subsidies at the time they enter into an adoptive placement agreement, regardless of current need. They provide information to adopting parents regarding the various assistance options. Information is available on state and county internet sites.

Hamilton County's goal is to maximize options for appropriate post-adoptive assistance, first using federal funds, then state funds, and lastly county funds. Approximately 90% of applications for federal or state maintenance

are approved. Each family's subsidy is reviewed each year. Consumer satisfaction surveys are sent with annual recertification forms.

HCDHS provides services to the adopting family any time the family requests assistance post finalization. Examples of services that qualify for subsidy are:

- mental health services from non-Medicaid providers when no Medicaid provider exists;
- in-home supportive services;
- educational expenses such as tutors, summer school and private school tuition;
- respite care;
- therapeutic recreation;
- day treatment/partial hospitalization
- non-covered dental services such as orthodonture; and
- residential services as a last resort.[6]

At present, approximately 1,300 Hamilton County adopted children are being supported through federal or state maintenance assistance.[7] Of these children, approximately 75% reside in Hamilton County. There is a net increase of approximately 5 children on maintenance subsidies per month. Of the 1,300 children, approximately 100 children are on state maintenance and the remainder are IV-E eligible. Of all children receiving assistance, approximately 60% are receiving maintenance plus subsidy for services and 40% are receiving maintenance payments only. Of the 1,300 children, approximately 25 are in out-of-home care.

B. POST-ADOPTIVE SERVICES IN ILLINOIS[8]

In contrast to Ohio, Illinois has a state operated child welfare system which is divided into regions and which contracts approximately 70% of its child welfare services to private agencies. Consequently, services are relatively consistent throughout the state.

Prior to 1991, Illinois had been trying to create funding for post-adoptive services without success. In 1991, family preservation legislation passed and apparently through an oversight, adoptive parents were included. From that point forward, funding has annually increased for post-adoptive services. The current state budget for both maintenance and service subsidies is $103 million. Approximately 19,000 children are under maintenance and service subsidy agreements in Illinois.

Because the legislative definition is simply "adoptive parents" post-adoptive services are available to any adopting parent residing in Illinois, regardless of whether the adoption occurred through Illinois, regardless of whether the child has special needs, and regardless of whether the child was adopted through a public or private child welfare agency, privately, or internationally.

In contrast to Ohio, Illinois uses its funding to contract with state selected private agencies to provide specific services at no charge to adopting families. With the exception of cash assistance, available up to $500 for emergencies, families do not receive funds directly. Illinois decided to structure its system this way because feedback from adopting parents indicated that service providers did not exist with the expertise to adequately deal with the dynamics created by adoption. Because of this service approach, families who adopt in Illinois but move to other states do not have access to Illinois funding for post-adoptive services.

The following post-adoptive services are available regionally in Illinois through contracts with several state selected private providers:

- information and referral;
- crisis intervention;
- assessment;
- individual, family and group counseling;
- parent support groups;
- school advocacy; and
- adopting family preservation specialists.

The time limit for services is 1.5 years. The average length of service

involvement is six to eight months. Respite and residential services are not part of the funded post-adoptive service array.

At the time of adoption, parents are provided with a handbook that describes the post-adoptive service options available. The state funds an information and referral service which has a widely advertised "800" number, an internet site and a computerized provider data base to assist in referrals. Adopting parents can access services not only through this service but also through their adoption agency or by directly contacting the service provider. At this time, consumer satisfaction surveys are not administered regarding post-adoptive services.

Endnotes

1. Information provided by Greg Oswald, Paul Cohen and Jackie Poignard, Hamilton County Department of Human Services; and Cheryl Reber, Ohio Department of Human Services.

2. In 2000, the Hamilton County Court of Common Pleas determined that eligibility for Title IV-E adoption assistance should not be limited to children placed by public and private child welfare agencies.

3. Generally, Ohio provides the 40% match to federal funds up to $250 per month or, if the child is adopted by foster parents, up to the rate the foster parents were receiving in subsidies. Should a county increase the maintenance payments beyond these amounts, the 40% match for the additional amount comes from county funds.

4. In January 2000, the maximum was reduced from $20,000 to $15,000.

5. The federal definitions include sibling groups, ethnic background, age and documented physical, mental or developmental disabilities, emotional disturbance or behavior problems.

6. In January 2000, funding was eliminated for residential treatment.

7. Hamilton County's population is approximately 850,000.

8. Information provided by Nancy Katz, Adoption Information Center, and Judy Spence, Illinois Department of Children and Family Services.

National Organizations and Resources

American Humane Association
Children's Division
63 Inverness Drive East
Englewood, CO 80112-5117
(303) 792-9900
FAX: (303) 792-5333
http://www.amerhumane.org

Association of Administrators
of the ICPC
American Public Human Services
Association
810 First Street, N.E., Suite 500
Washington, DC 20002-4267
(202) 682-0100
FAX: (202) 289-6555
http://www.aphsa.org

National Adoption Center
1500 Walnut Street, Suite 701
Philadelphia, PA 19102
(215) 735-9988, ext. 308
FAX: (215) 735-9410

Center for the Future of Children
The David and Lucile Packard
Foundation
300 Second Street, Suite 102
Los Altos, CA 94022
(415) 948-3696
FAX: (415) 948-6498
http://www.futureofchildren.org

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Appendix M

National Adoption Information Clearinghouse
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naic@calib.com
http://www.calib.com.naic

National Clearinghouse on Child Abuse and Neglect Information
300 C Street, S.W.
Washington, DC 20447
(703) 385-7565
FAX: (703) 385-3206
nccanch@calib.com
http://www.calib.com/nccanch

National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, CO 80202
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FAX: (303) 863-8003
http://www.ncsl.org

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