

REASONABLE EFFORTS

Are You Unreasonable in Making
Reasonable/Active Efforts Findings?

Reasonable Efforts were first required in 1980

Adoption Assistance and Child Welfare Act
(AACWA) Pub. Law 96-272 *See 42 U.S.C. § 671 et seq.*
and ASFA Regulations 2000 42 C.F.R. Part 1355.

Preceded by Indian Child Welfare Act of 1978 –
“Active Efforts”.

Most of the money went to adoptions and
foster care – very little to families or
prevention.

Reasonable efforts findings
directly affect the federal
funding to DHS for children
in foster care.

Federal law requires Reasonable efforts findings at different times during the pendency of a child protection case.

1. Reasonable efforts to prevent removal:

Must be made within 60 days of removal

No finding or negative finding means no federal (Title IV-E) funding for the child's entire stay in foster care.

2. Reasonable efforts to facilitate reunification and to make and finalize alternate permanency plans:

Must be made within 12 months of placement and at least once every 12 months thereafter;

No finding or negative finding means no federal funding (Title IV-E) until positive finding is made. Ineligibility starts at the end of the month in which the judicial finding was required or made and continues until the beginning of the month a “yes” finding is made.

Oregon Law requires Reasonable Efforts findings:

1. At the Shelter Hearing (ORS 419B.185)
2. At Disposition if custody awarded to DHS (ORS 419B.340)
3. Every six months, by the CRB or the court. ORS 419A.106(1)(a) & (b).
4. At the Permanency Hearing which must be held within 14 months of the child's placement in substitute care or 12 months of jurisdiction, **whichever comes first.** (ORS 419B.470)
5. After jurisdiction, whenever the court enters an order removing the ward from the ward's home or continuing the ward in care (ORS 419B.337)

Other Required Findings:

1. Contrary to the Welfare/Best Interests of the Child:
 - Must be made in the first court order/judgment about the removal or the child is not eligible for IV-E payments for the entire foster care episode.
 - Finding may be made at scheduled Review or Permanency hearing if the child was removed from in-home custody or returned to care during a trial reunification that has exceeded 180 days.

IF REASONABLE EFFORTS WERE NOT
PROVIDED, THE REMEDY IS NOT TO
RETURN THE CHILD TO THE PARENTS.

ONE REMEDY FOR A FINDING OF NO
REASONABLE EFFORTS IS TO PROVIDE AN
ADDITIONAL PERIOD OF REUNIFICATION
SERVICES TO A PARENT

ARE REASONABLE EFFORTS ALWAYS REQUIRED?

- No - Reasonable Efforts are not required in some very serious cases (ORS 419B.340(5) - Aggravated circumstances)
- Also – DHS will be considered to have made Reasonable Efforts if the first contact with the family occurred during an emergency where Reasonable Efforts could not have permitted the child to remain in the home without jeopardy (ORS 419B.340(3))

INDIAN CHILD WELFARE ACT (ICWA – 25 U.S.C. 1901-1963)

Requires “Active Efforts” - more than Reasonable Efforts

“Affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family. If an agency is involved in an Indian child-custody proceeding, active efforts shall involve assisting the parent, parents, or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.”

ROLE OF JUDGES

- Make the finding and make it timely - it's the law!
- Be specific. Make detailed and child specific findings on the record and in your judgment.
 - “Must be explicitly documented. . .on a case by case basis and so stated in the court order” *45 C.F.R. 1356.21(d)*
 - If RE are not documented in the court order, a transcript of the proceedings is the only other documentation that will be accepted to verify *45 C.F.R. 1356.21(d)(1)*
 - Affidavits and nunc pro tunc orders are not acceptable
45 C.F.R. 1356.21(d)(3)

ROLE OF JUDGES

- Resist the temptation to check a box or cut and paste from the Court Report.
- Learn and understand DHS policies and practices.
- Learn about community services.
- Raise the issue, even if the attorneys don't.
- Utilize interim court and CRB reviews or progress reports to ensure that services are in place.

“THE REASONABLE EFFORTS/NO REASONABLE EFFORTS FINDINGS ARE THE MOST POWERFUL TOOLS JUVENILE COURT JUDGES HAVE AT THEIR DISPOSAL IN DEPENDENCY CASES, AND ATTORNEYS AND JUDGES SHOULD PAY SPECIAL ATTENTION TO THEM TO ENSURE THAT THE AGENCY IS DOING ITS JOB, TO MAKE POSITIVE CHANGES IN THE CHILD PROTECTION SYSTEM, AND, MOST IMPORTANTLY TO IMPROVE OUTCOMES FOR CHILDREN AND FAMILIES. “

JUDGE LEONARD EDWARDS