



Capacity Building
CENTER FOR COURTS

Judicial Academy: Reasonable Efforts

Hosted by the Children's Bureau's
Capacity Building Center for Courts ,
Mississippi Judicial College, and
the Mississippi Court Improvement Program



**Have you ever made a
“no reasonable efforts finding”?**

Why or why not?



Capacity Building
CENTER FOR COURTS

Reasonable Efforts: Overview of Federal Law

Reasonable Efforts Academy

Jennifer Renne
Capacity Building Center for Courts
American Bar Association

Brief Legal History of Reasonable Efforts

Child Abuse Prevention and Treatment Act (CAPTA) 1974

Indian Child Welfare Act (ICWA) 1978

Adoption Assistance and Child Welfare Act 1980

Adoption and Safe Families Act (ASFA) 1997

ASFA Regulations 2000

Reasonable Efforts 45 C.F.R. §1356.21(b)

To Prevent Removal: (b)(1)

- Agency must make RE to maintain the family unit, and prevent ... unnecessary removal
- Timing: Finding must be made within 60 days of the child's removal (b)(1)(i)
- Impact: If the court does not make the finding, the agency will not receive IV-E dollars for duration of the child's stay in foster care (b)(1)(ii)

(Preamble language: It is impossible for the State to provide efforts to prevent the removal of a child from home after the fact. In terms of practice, there is a profound effect on the child and family once a child is removed from home, even for a short time, that cannot be undone. p.4052

Child's health and safety is paramount concern, but judicial finding that agency failed to make RE to prevent removal does NOT mean that child goes home.

- Court must find continuation of residence in the home would be contrary to the child's welfare, or that placement is in child's best interest **§1356.21(c)**

Reasonable Efforts 45 C.F.R. §1356.21(b)

To Finalize Permanence: (b)(2)

- Agency must make RE to ... reunify and make and finalize alternate permanency plans
(reunification, adoption, legal guardianship, relative placement, APPLA) (b)(2)(i)
- Timing: Finding must be made within 12 months of foster care entry and at least once every 12 months thereafter (b)(2)(i)
- Impact: If the court does not make the finding, the agency will not receive IV-E funding ... until such a determination is made (b)(2)(ii)

ASFA Regulations Preamble

Section 1356.21(d) Documentation of Judicial Determinations

Our purpose for proposing this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill characterized the required judicial determinations as “* * * important safeguard(s) against inappropriate agency action * * *” and made clear that such requirements were not to become “* * * a mere pro forma exercise in paper shuffling to obtain Federal funding * * *” (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of State’ documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.

Our primary concern is that judicial determinations be made on a case-by case basis and it was not our intent to create a policy that was overly prescriptive and burdensome. The suggestion that the court order reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by case basis ... would satisfy this requirement.

Miss. Ann. Code § 43-21-105(gg)

(definitions section)

'Reasonable efforts' means the exercise of **reasonable care and due diligence** by the Department of Human Services, the Department of Child Protection Services, or any other appropriate entity or person to use **appropriate and available services to prevent the unnecessary removal** of the child from the home or provide other services related to **meeting the needs of the child and the parents**.

Miss. Ann. Code § 43-21-609(g)

If the court makes a finding that custody is necessary ... the disposition order shall recite that the effect of the continuation ... in the home ... would be **contrary to the welfare of the child**, that the placement of the child in foster care is in the **best interests** of the child, and unless the reasonable efforts requirement is bypassed under § 43-21-603(7)(c), the order also must state:

- (i) That **reasonable efforts have been made** to maintain the child within his or her own home, but that the circumstances warrant his or her removal, and there is no reasonable alternative to custody; or
- (ii) The circumstances are of such an **emergency nature** that no reasonable efforts have been made to maintain the child within his or her own home, and there is no reasonable alternative to custody; or
- (iii) If the court makes a finding in accordance with (ii) of this paragraph, the court **shall order that reasonable efforts be made towards the reunification** of the child with his or her family

Miss. Ann. Code § 43-21-609(h)

If the court had, before the disposition hearing in the action pending before the court, taken the child into custody, the judge or referee shall determine, and the youth court order shall recite that reasonable efforts were made by the Department of Child Protection Services to **finalize the child's permanency plan** that was in effect on the date of the disposition hearing.



**THE ART OF MAKING
REASONABLE EFFORTS FINDINGS:
LAYING THE GROUNDWORK FOR A
STRUCTURED DECISION-MAKING MODEL**

Presented by Judge R. Michael Key

Reasonable Efforts Judicial Academy



**Capacity Building
Center for Courts**

LEARNING OBJECTIVES

- Lay the groundwork to move from law to practice
- Understand the Constitutional framework for reasonable efforts
- Understand the judge's responsibilities to set the standard
- Set the stage for you to develop your own method for making reasonable efforts findings



TURNED FORTY ON JUNE 17, 2020

Happy Birthday Reasonable Efforts





Things that are easy to get
are often not worth the
effort!

Be difficult!

It should be hard to take or
keep a six-day old baby girl
away from her mother!

WHAT'S THE OBJECTIVE?

- To ensure that every child that should be in care is in care, but ***not a single child more***; and
- To ensure that every child that is in care is in a safe, nurturing placement that is supportive of the permanency plan for the child, and ensures the child's wellbeing.

objective

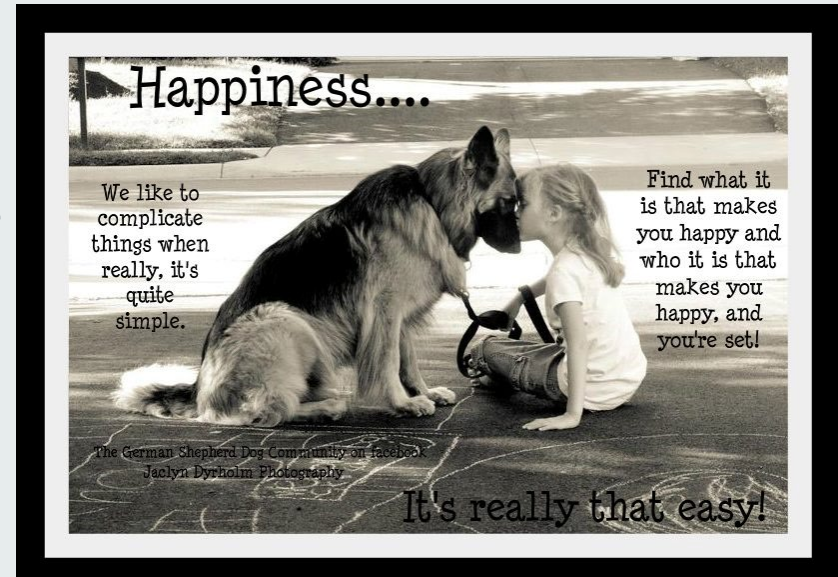
A specific result that a person or system aims to achieve within a time frame and with available resources. In ...



BusinessDictionary

REASONABLE EFFORTS - THREE OVERARCHING GOALS

- To keep families together;
- To reunite families when they have to be separated; and
- To achieve an alternative plan for permanency for children when they can't go back home.



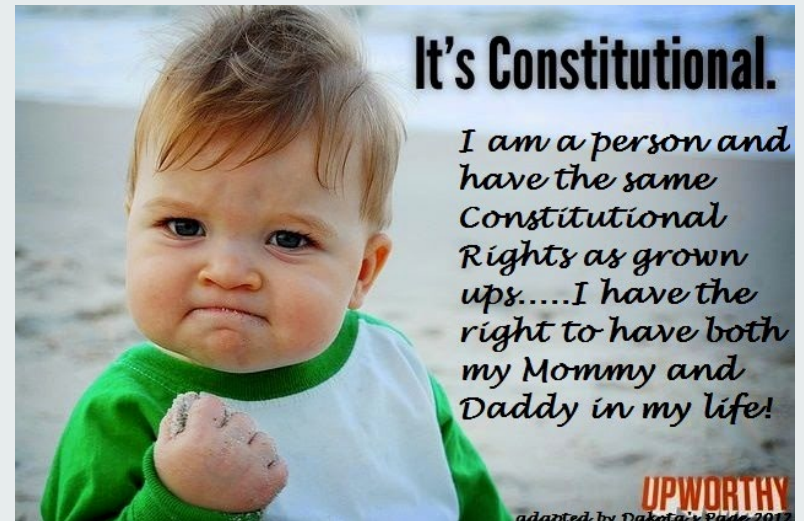


COMMON STATUTORY THRESHOLD FOR REMOVAL

- Imminent danger of abuse or neglect if he or she remains in the home
- Protective custody is necessary to prevent abuse or neglect
- Removal is in such child's best interest
- Contrary to the child's welfare

MAKING REASONABLE EFFORTS – THE CONSTITUTIONAL FRAMEWORK

- Parents have a constitutional right under the United States and Georgia Constitutions to the care and custody of their children.
- The liberty interest parents have in familial relations with their children is a natural-law right that has been enshrined in our positive law.
- It is a right that preexists government and one that we retain as a people separate and apart from any statute or constitution.



THE COURT'S ROLE: JUDICIAL OVERSIGHT

The Court holding the child welfare agency accountable for making reasonable or active efforts is not just a best practice.

It's the law!



CONGRESSIONAL INTENT FOR JUDICIAL OVERSIGHT

- Prevent unnecessary removals
- Act as a safeguard against potential inappropriate agency action
- Not become a mere pro forma exercise in paper shuffling to obtain Federal funding
- Unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children

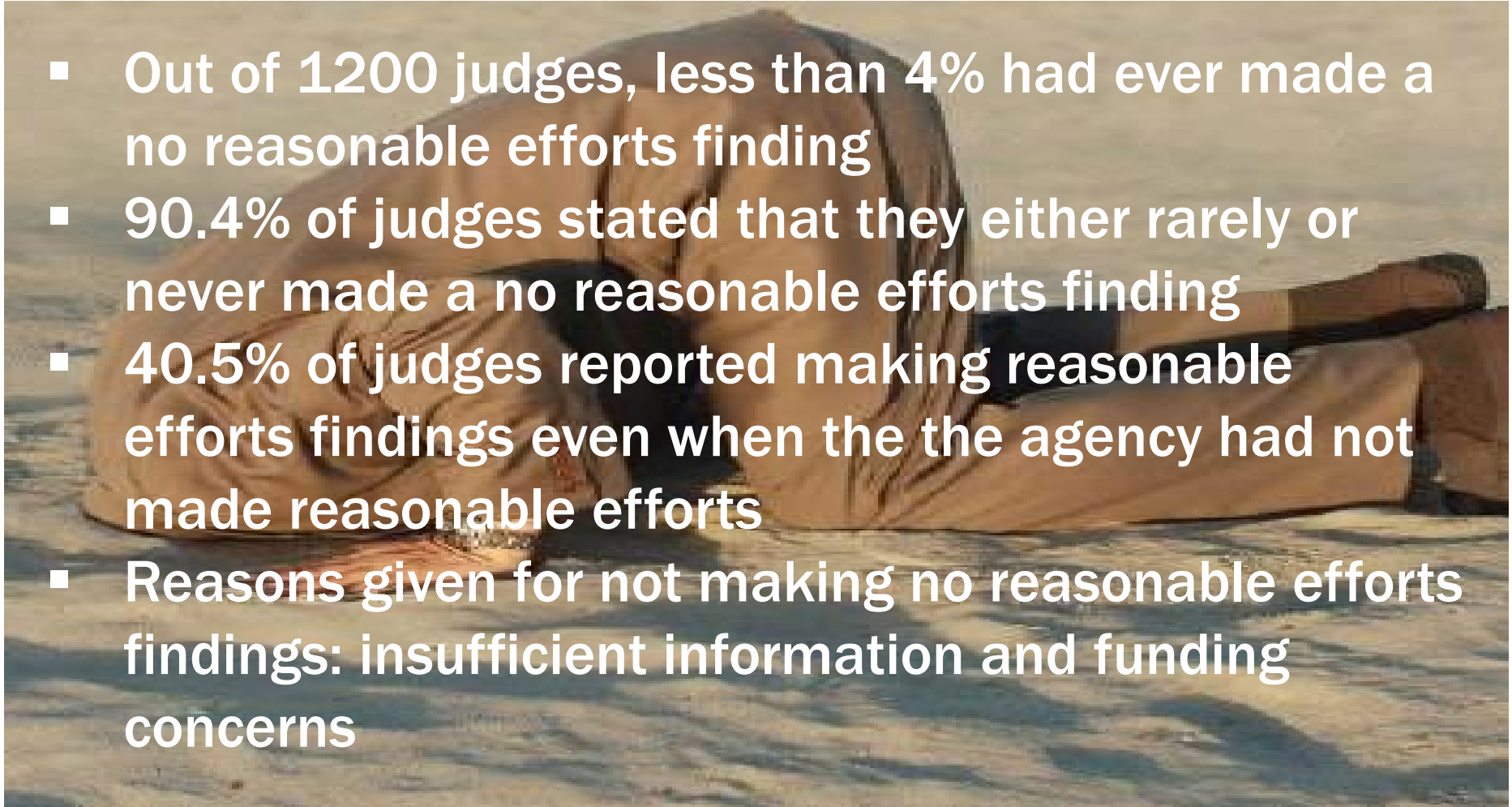




FROM JUDGE LEONARD EDWARDS OVER TWENTY-FIVE YEARS AGO

“By failing to take the Act seriously and exercise scrutiny over the social services agency delivery process, the judge abrogates judicial responsibility. The judge becomes part of the problem and becomes useless for purposes of the law...It can result in a lack of accountability by the social services system and wholesale government neglect of children.”

WHAT JUDICIAL OVERSIGHT IS **NOT!**

- 
- Out of 1200 judges, less than 4% had ever made a no reasonable efforts finding
 - 90.4% of judges stated that they either rarely or never made a no reasonable efforts finding
 - 40.5% of judges reported making reasonable efforts findings even when the the agency had not made reasonable efforts
 - Reasons given for not making no reasonable efforts findings: insufficient information and funding concerns



RECENT SURVEY - BETTER BUT NO CIGAR

- **27.27% have made found reasonable efforts when evidence did not support that finding**
- **89.7% reported having not made or seldom made a no reasonable efforts find in the last year**
- **Reasons given for not making no reasonable efforts findings: potential loss of funding and/or services (51.61%) and insufficient information (33.87%)**
- **Most common no reasonable findings made as to reunification (55.22%)**
- **A lot of work needs to be done around parent and child attorney advocacy around reasonable efforts**

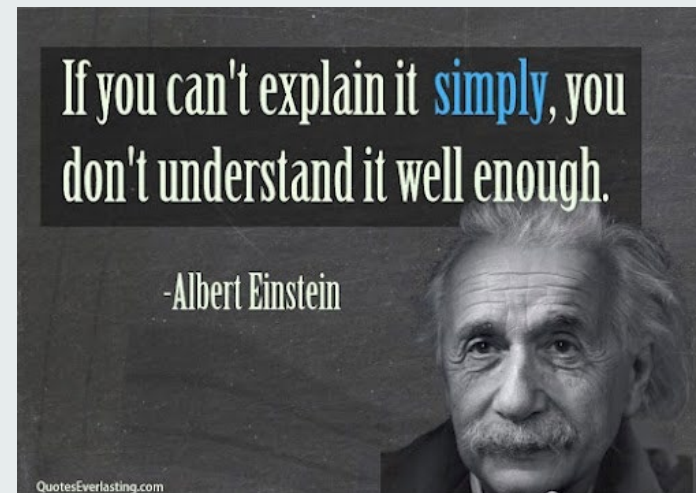
THE INVISIBLE LINE

Like the invisible line where the parent is unfit such that removal is necessary, the state has a similar invisible **reasonable efforts** line that must be met to show they tried to prevent the removal and later tried to make it possible for the child to return home.



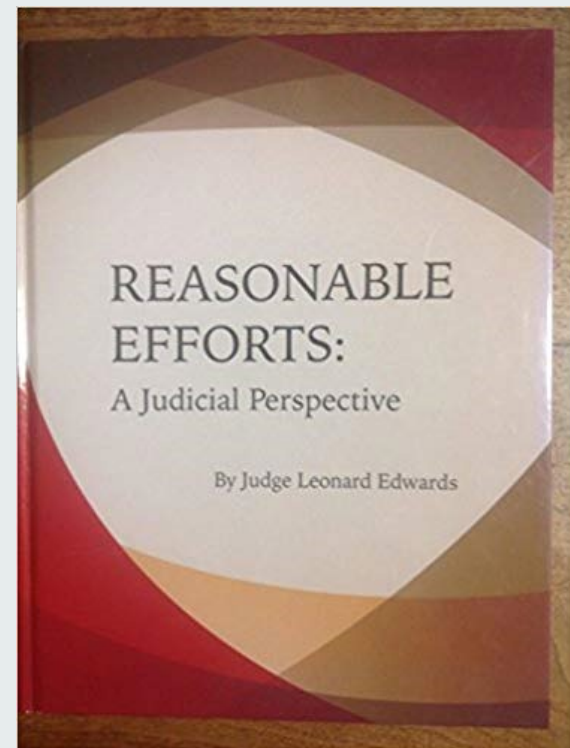
JUDGES NEED TO SET CLEAR EXPECTATIONS/DRAW THE LINE

- It is important for judges to have a structured decision-making process around reasonable efforts findings that is sufficiently developed so that they can articulate that process. And they should consistently maintain fidelity to that process while still making individualized decisions.
- Judges must set a clear standard for reasonable efforts and not be a moving target.
- Document findings.



WHAT ARE REASONABLE EFFORTS?

- No definition under federal law or regulation
- Intent was to make case-by-case determination
- “...the exercise of ordinary diligence and care”
- “...due diligence and the provision of appropriate services”



RMK'S ASPIRATIONAL DEFINITION

Doing for children and families we serve that which we would want others to do for us and our families if we found ourselves in like circumstance.





FACTORS TO CONSIDER IN MAKING REASONABLE EFFORTS FINDING

Common factors:

- Danger/safety
- Services relevant to risk
- Diligence
- Adequate, appropriate, available, timely
- Realistic under circumstances

Bottom line: Not much direction or guidance

TWO TIERS OF REASONABLE EFFORTS

- Tier One Reasonable Efforts
 - Reasonable efforts made in each individual case
- Tier Two Reasonable Efforts
 - Reasonable efforts to track needs and to develop services to meet the needs





TIER ONE REASONABLE EFFORTS

- Assess the family situation
- Determine if any available services will work
- Consider alternative ways other than removal
- Inform family about available services
- Offer services most likely to work
- Give family an opportunity to request other services
- Provide a means for review of agency's failure to provide the services the family believes will work
- Develop an appropriate case plan
- Visitation
- Permanency hearings



TIER TWO REASONABLE EFFORTS

- Assess need
- Comprehensive plan for prevention and reunification
- Provide all services
- Structure service delivery to keep families together
- Conduct training
- Establish appropriate criteria for services
- Develop written guidelines, procedures and protocols

Making Reasonable Efforts: A Permanent Home for Every Child

MOVING FROM LAW TO PRACTICE

- Conduct a thorough investigation
- Assess and articulate safety threat as immediate, significant and clearly observable
- Consider and articulate vulnerability
- Look for and articulate controlling interventions
- Identify and be able to articulate the specific harm that might come to a child if the child remains in the home

MOVING FROM LAW TO PRACTICE

- Consider all risk mitigation services
- Seek short term safety and ask for expedited hearing
- It is more than just knowing the questions to ask – it is the persistent pursuit of the answers to the questions
- Can the child go home safely today?
- Would you remove the child today?
- Family time is critical

MOVING FROM LAW TO PRACTICE

- Make the equivalent of active efforts
- Hold the agency accountable for meeting its burden of proof
- Demonstrate a true sense of urgency

QUESTIONS



Break



6

Small Group Discussion

What have you noticed so far about this workshop?

What questions do you still have?

How might you use this information after the workshop?



7

Q & A with the Presenters



8

Evaluating Reasonable Efforts Findings







11

Evaluating Reasonable Efforts



12

What new behaviors, habits, or ways of being might you want to adopt?

We will soon begin simulations that will allow you the opportunity to try out new things you would like to bring to your practice.



13

Simulation I



14

Closing



Capacity Building
CENTER FOR COURTS

Judicial Academy: Reasonable Efforts

Hosted by the Children's Bureau's
Capacity Building Center for Courts



**Monsters: What gets in the way of
Quality Reasonable Efforts Findings**

15



Open space



17

Simulation II



18

Simulation III

Break





20

Simulation IV



21

Q & A with the Faculty

JudicialAcademy.org