



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

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From work developed by Judge R. Michael Key**

Reasonable Efforts Judicial Academy



**Capacity Building
Center for Courts**

WHAT THE PUBLIC USUALLY THINK ABOUT



80% of all foster children are in custody for neglect and not abuse . Only about 4 % for sexual abuse.



**ONE of the traumatic adverse
child experience is the
REMOVAL**

**Yet this child
probably has
experienced three
or more ACES
(Adverse Child
Experiences)
resulting in
crippling trauma in
his life!**

Science confirms

- **that children want to be in their own homes, no matter how abusive or neglectful it may have been.**
- **They perform better when they are safely with their family.**



**Thus we always talk of
Parents Constitutional
rights to parent their
children.**

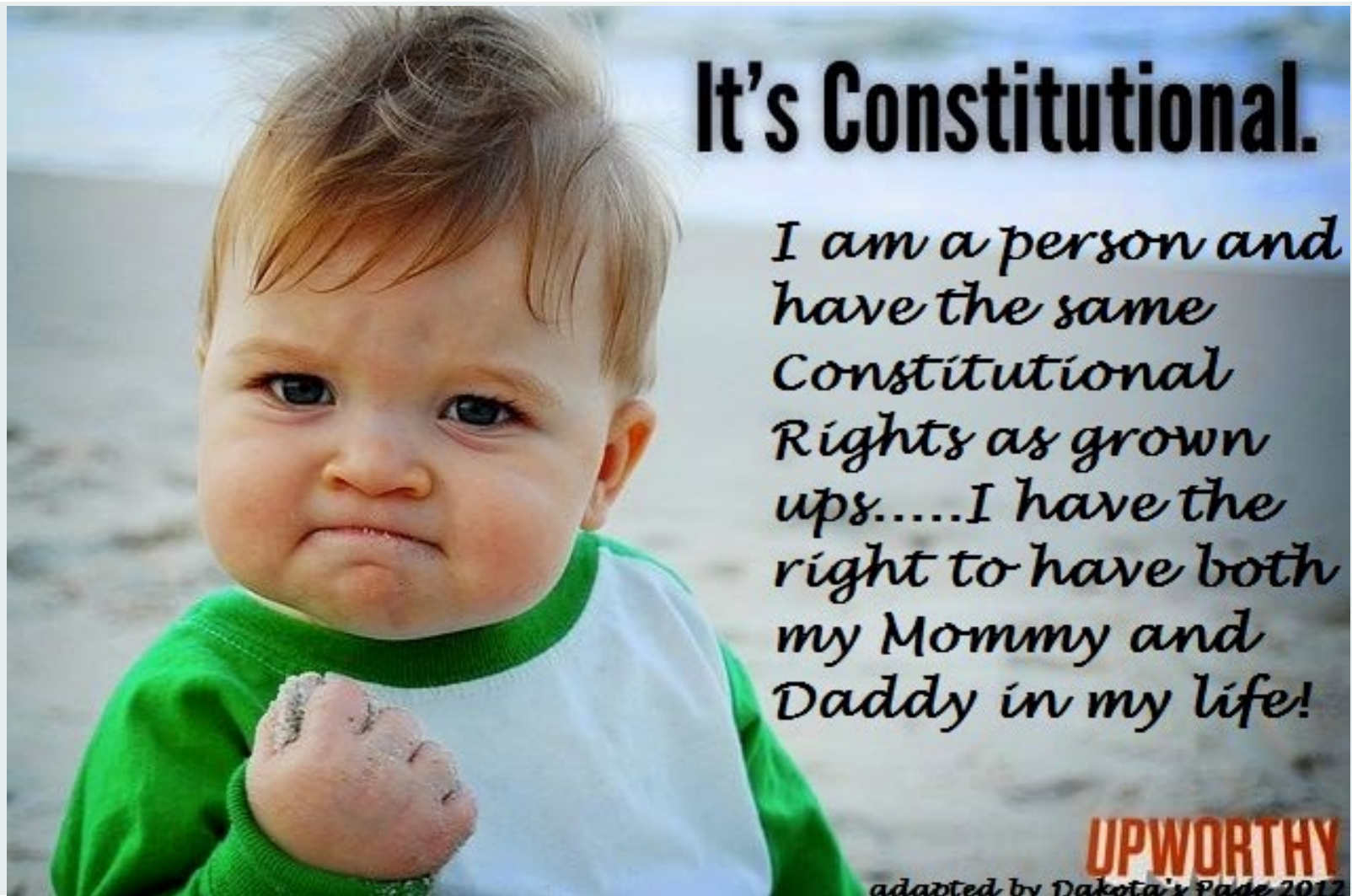


MAKING REASONABLE EFFORTS – THE CONSTITUTIONAL FRAMEWORK

- Parents have a constitutional right under the United States Constitution 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.



BUT IS NOT MORE APPROPRIATE TO
LOOK AT IT AS A RIGHT OF THE CHILD



It's Constitutional.

*I am a person and
have the same
Constitutional
Rights as grown
ups.....I have the
right to have both
my Mommy and
Daddy in my life!*

UPWORTHY

adapted by Dakota's Page 2012

LEARNING OBJECTIVES

- Understand the legal requirements placed on child welfare agencies
- Understand the oversight responsibilities placed on the Courts
- Understand the consequences of a failure to make reasonable efforts, or the failure by the Court to make a reasonable efforts finding
- Understand the difficulty created by failing to define reasonable efforts in federal law



TURNED FORTY ON JUNE 17, 2020

Happy Birthday Reasonable Efforts



August 26, 2020



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

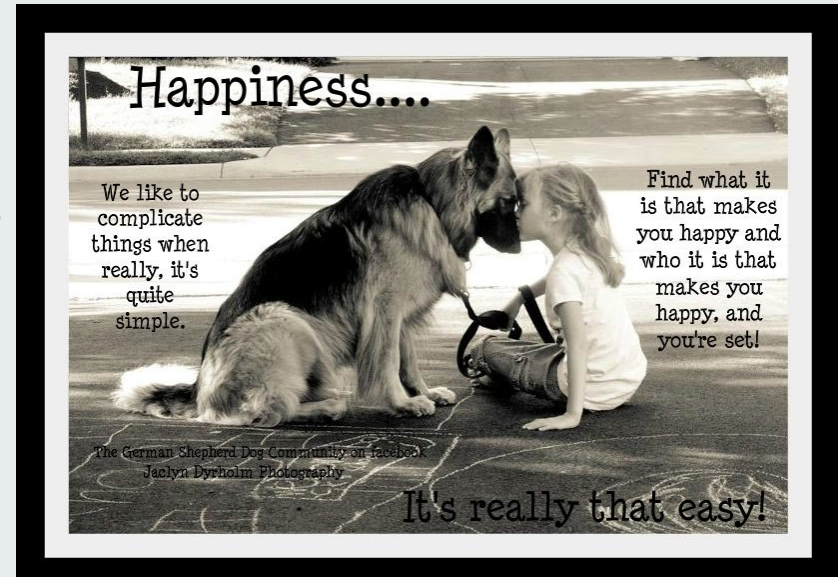
A specific result that a person or system aims to achieve within a time frame and with available resources. In ...



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.





MISSISSIPPI STATUTORY THRESHOLD FOR REMOVAL

- The child is in danger of significant risk of harm or another person is in danger of significant risk of harm by the child, or
- There is no parent, guardian or custodian who can provide the necessary care, custody and supervision of the child and
- There is no alternative to custody. (Protective custody is necessary to prevent abuse or neglect)
- Removal is in the child's best interest
- Contrary to the child's welfare

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
- Expectation of meaningful hearings where the court receives evidence of reasonable efforts that were made to prevent removal and later to reunify and accomplish permanency.



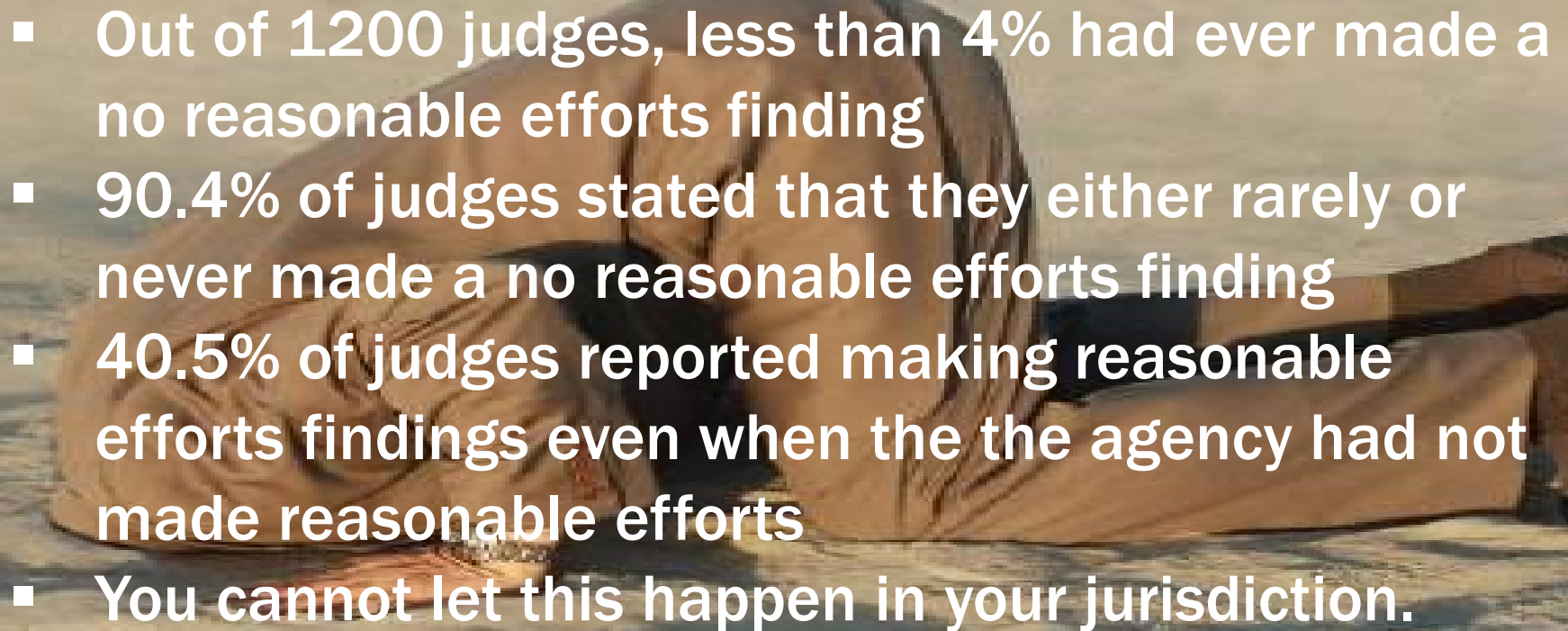


FROM JUDGE LEONARD EDWARDS TWENTY-FIVE YEARS AGO

“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
 - You cannot let this happen in your jurisdiction.



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**

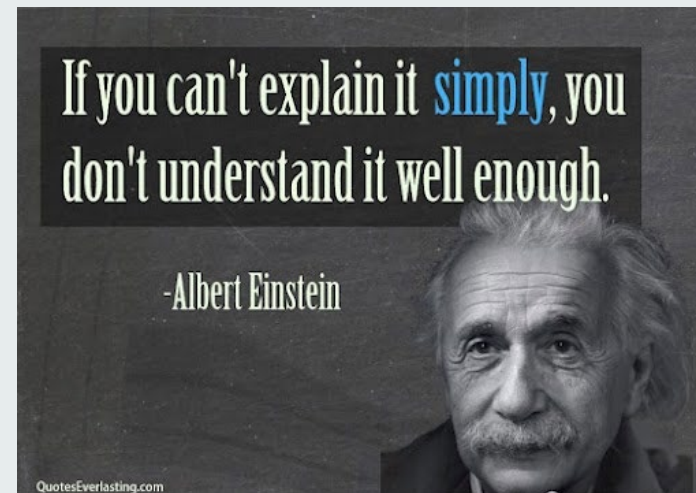
THE INVISIBLE LINE

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.



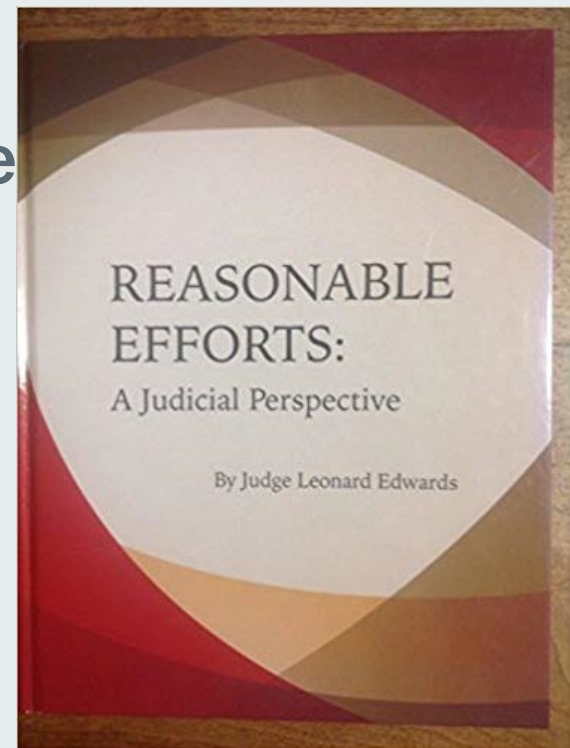
JUDGES NEED TO SET CLEAR EXPECTATIONS/DRAW THE LINE

- 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
- Mississippi definition:
 - “...the exercise of reasonable care and due diligence”
 - “...use appropriate and available services. . . ”



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.



August 26, 2020

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FACTORS TO CONSIDER IN MAKING REASONABLE EFFORTS FINDING

Common factors:

- Danger/safety/mitigation
- Services relevant to risk
 - Substance Abuse
 - Address Poverty Issues, housing, food, Clothing etc.
 - Visitation
- 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

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



MYCIDS DOCUMENTS

- **A reasonable efforts to prevent removal should be made at the shelter hearing. Have 60 days. The administrator will find the finding in “Court Actions”.**
- **Each Permanency or Permanency Review reasonable efforts to complete permanent plan must be made.**
- **MYCIDS requires a child-specific fact finding of the approved reasonable effort before the order can be completed.**

“CONTRARY TO WELFARE” DETERMINATION IN FIRST COURT RULING

If “contrary to the welfare” determination is not made in the first court ruling, the child is not eligible for Title IV-E foster care payments for the duration of that stay in foster care.



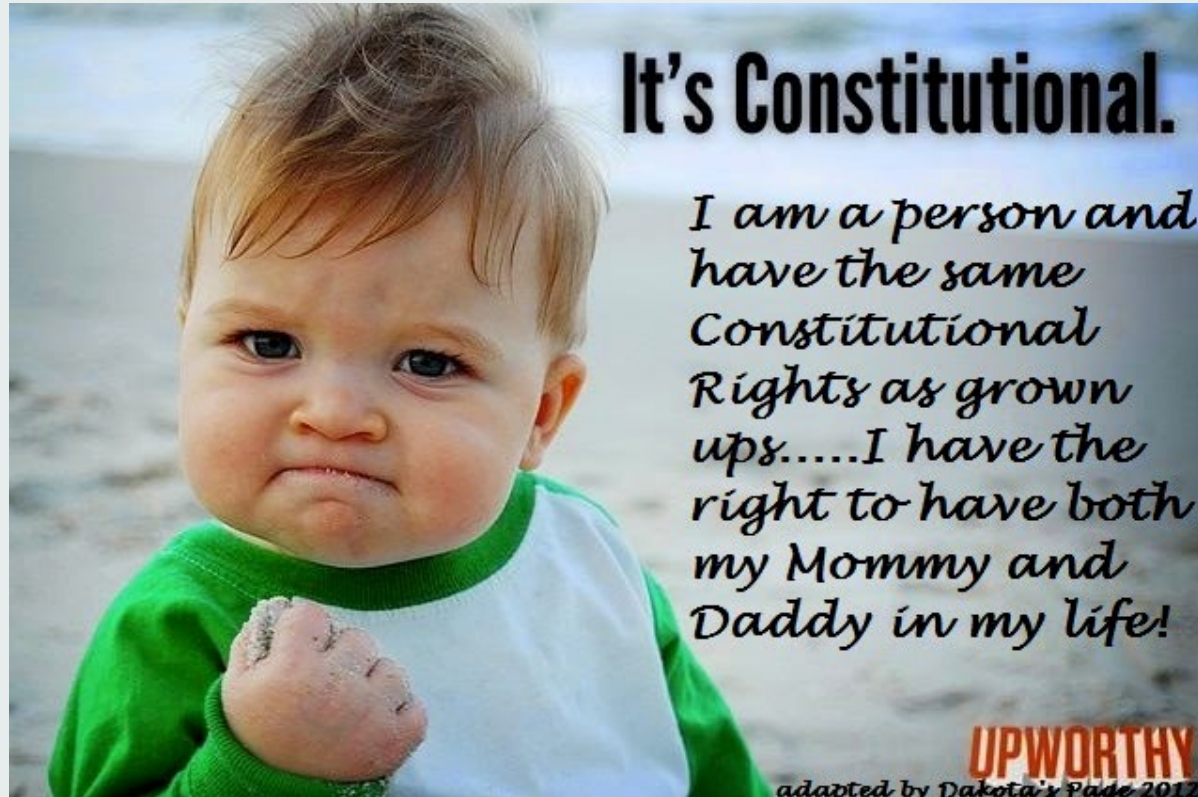
45 C.F.R. §1356.21(c)



MYCIDS ISSUES-CONTRARY TO THE WELFARE

- MYCIDS will require you to make a Contrary to the Welfare finding in your first custody order (usually the emergency custody order).
- You will never be in violation if you use this order and follow the instructions for its completion.

ALWAYS REMEMBER THIS GUY AND OUR RESPONSIBILITY TO HIM!



QUESTIONS



THANK YOU FOR ALL YOU DO FOR THE CHILDREN AND YOUTH OF MISSISSIPPI!



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