

Best Interests for Abused and Neglected Children

Working Toward Reunification During the Opioid Crisis

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The pressures of the opioid crisis in Ohio have prompted questions about just how long the children of parents suffering from addiction should remain in the custody of county children services agencies—and when judges should terminate the rights of parents who relapse, giving these children a chance for a permanent home.

Child protection caseworkers are required by federal law to make “reasonable efforts” to keep children safely at home and to reunify them with their parents within prescribed timelines, but there are exceptions. States must follow these federal requirements at a minimum, and also have the option of including additional exceptions under state law. Ohio has done so, giving children services the ability to pursue termination of parental rights without making reasonable efforts in more situations than required by federal law and compared to some other states.¹ The purpose of this paper is to describe the reasonable efforts that must be taken in the child’s best interest and the exceptions to these requirements.

The children services system is intended to protect children from harm. The system is complex, involving many players beyond county child protective services (CPS), including:

- Juvenile and probate judges
- Other court professionals, including prosecutors and Guardians ad Litem
- Social workers and other service providers from the public and private sector
- Biological families
- Foster and kinship caregivers
- The abused, neglected, or dependent children

Notwithstanding the competing viewpoints of so many participants, authority in adoption, neglect, and

dependency cases ultimately resides with the judge. CPS makes recommendations to remove children from their homes, to reunify them with their families, or to terminate parental rights, but the judge makes the final decision. According to federal law, these judicial decisions must be made in the child’s best interest.

Who decides children’s best interest?

Federal and state laws and rules, along with applicable case law, outline the responsibilities and requirements of CPS. They also guide the decisions of the court, which is required to make decisions based on the children’s best interest. These requirements are supported by research that suggests what environment is best for kids and what circumstances are harmful. For example, research shows that stability is an important factor for healthy child development and positive outcomes later in life.² Research also supports the benefits of maintaining children with their parents.³ The practices and policies within CPS account for this by requiring children to remain in their parents’ care whenever possible.

How many children are involved?

When a report of child abuse, neglect, or dependency is screened in for investigation by CPS, the caseworker’s job is to determine whether the children can safely remain in their home using standard assessments. Agencies are required to make “reasonable efforts” to provide services and interventions to families while maintaining the children at home unless doing so places the children’s safety at substantial risk.⁴ In 2016, 9,527 Ohio children were maintained safely at home.⁵ If the caseworker determines that the children cannot remain safely in the home, a recommendation is made to the court that they be removed. A county judge then decides whether to maintain the children at home or place them in temporary custody,

i.e., foster care. In 2016, 24,255 children in Ohio were in foster care at some point in the year.⁶

For all children in temporary custody, CPS must strive for reunification, returning children safely to their parents' custody in accordance with federal requirements. Caseworkers provide or arrange for services specific to the families' circumstances such as parenting classes, family counseling, substance abuse treatment, and assistance finding housing or employment.⁷ The court continues to play a role by overseeing the parents' progress toward meeting the goals of the case plan, and the judge makes the decision, based on the children's best interest, when to return custody to the parents. In 2016, 4,877 children in Ohio were successfully reunified with their families.⁸

In cases when progress is not made, the judge may terminate the parents' rights, known as termination of parental rights (TPR). When parental rights are terminated, children are placed in the permanent custody of the agency, which must then identify another permanency option for the children. There were 2,421 such children in Ohio available for adoption in 2016.⁹ In addition to adoption, permanency for children also might include legal custody to relatives or guardianship.

What are reasonable efforts?

The term "reasonable efforts" refers to activities of children services agencies that provide assistance and services to prevent the removal of children from their homes and to make it possible for children who have been placed in foster care to be reunited with their families. Reasonable efforts have long been required by federal law, beginning with the Adoption Assistance and Child Welfare Act of 1980. Ohio Revised Code 2151.419 specifies that reasonable efforts be made for the following reasons: 1) to prevent removal of the child from the home; 2) to eliminate the continued removal of the child from home; and 3) to make it possible for the child to return safely home.

Under court oversight, CPS is required to make reasonable efforts at each step of this process.¹⁰ The agency must demonstrate what efforts it made to maintain the children at home, reunify them with their parents, and ensure they have a permanent home. These federal requirements are in place because they represent what is best for the children's well-being in order of importance, as supported by research.¹¹ Maintaining children in their home is the least disruptive circumstance for them—and the first step in reasonable efforts.

The Role of Trauma in Child Protection

Children in foster care are a particularly vulnerable population. Many of them suffer from trauma-related mental health diagnoses such as Post Traumatic Stress Disorder or anxiety disorders.¹² Research shows that in addition to children in the children services system, their biological parents also frequently have histories of trauma. The pervasive nature of trauma within the children services system has led to a push toward addressing the trauma of both parents and children using "trauma-informed care"; this means CPS workers and other professionals working with these families are properly trained regarding the effects of trauma and how to effectively work with individuals who have experienced trauma.¹³

Prevention services are needed to address the needs of children and families prior to entry into custody; this is important because researchers have found that children who enter foster care often suffer additional trauma due to the separation from their parents.¹⁴ Children who faced adverse circumstances similar to those in foster care generally fared better when they remained in their home of origin.^{15,16} These findings highlight the importance of family preservation when possible.

Children’s long-term stability and security depend on finding a permanent home in a timely manner.¹⁷ To ensure that children do not get “stuck” in temporary foster care, federal and state laws mandate specific timelines within which children must be reunified or made available for adoption. The federal timeline requires states to reunify or file for termination of parental rights (TPR) before children have been in custody for 15 months out of the previous 22 months.¹⁸ Ohio law is more strict than federal, requiring reunification or filing for TPR when children have been in custody in 12 months out of the previous 22 months.¹⁹

Thus, caseworkers and children services agencies can struggle to maintain the right balance between reunification efforts and timely permanency. This is challenging as well for foster and kinship caregivers who are expected to ensure the children’s safety and provide a loving home while supporting reunification efforts.

When are reasonable efforts not required?

There are exceptions to reasonable efforts requirements. Federal requirements allow for some circumstances in which reasonable efforts are not required.

Reasonable Efforts Not Required	Federal	Ohio
1. The parent has been convicted of a violent crime against the child or the child’s sibling. ^{20,21}	Yes	Yes
2. The parent has been convicted of a sexual crime against the child or the child’s sibling. ²²	No	Yes*
3. The parent has been convicted of endangering the child or any child living in the parents’ home. ²³	No	Yes*
4. Parental rights have been terminated involuntarily with the child’s sibling. ^{24,25}	Yes	Yes
5. The parent abandoned the child. ^{26,27}	Yes	Yes*
6. The child has been in temporary custody for a certain length of time. ^{28,29}	Yes	Yes*
7. The parent repeatedly withheld medical treatment or food from the child. ³⁰	No	Yes*
8. The parent placed the child at risk of harm due to substance abuse and has refused treatment two or more times. ³¹	No	Yes*
9. The parent was required to register as a sex offender. ³²	No	Yes*

*Ohio exceeds federal regulations

Ohio’s allotted timeframe for reunification and even the federal timeframe can be challenging to meet in the case of parents who have substance abuse disorders, due to the nature of treating substance abuse disorders, availability of treatment, and relapses. Additionally, parents who struggle with substance abuse frequently have co-occurring issues such as domestic violence, mental health disorders, and a history of trauma.³³

Many states, including Ohio, have included additional circumstances in state law under which reasonable efforts are not required.

As illustrated in the chart, Ohio matches all federal guidelines and exceeds many of them. As a result, caseworkers can “skip” reasonable efforts in a number of extreme circumstances, allowing CPS to focus on finding a permanent home for these children more quickly.

The Role of Kinship Caregivers

The opioid epidemic has led to an increase in children coming into CPS custody and remaining in custody longer. Many children are unable to be reunified safely with their parents in the allotted timeframe. As discussed earlier, spending a significant amount of time in the foster care system can negatively impact children, which is the reason these timeframes exist.³⁴ When children are unable to be reunited with their parents, the next best option, when available, is permanency with an appropriate kinship caregiver including relatives, family friends, or godparents who can provide a familiar environment for the children.^{35,36}

Federal and state laws support the importance of kinship placements for children. In Ohio, within 30 days of removal, agencies are required to notify all adult relatives that the children have been removed from the home and how kin might go about taking temporary custody of them. Interested kin must be assessed and approved as an appropriate placement by CPS. Research shows the benefits of placing children with kinship caregivers, including that children placed with relatives are less likely to be abused after exiting custody and less likely to reenter custody due to caregiver abuse.³⁷ In addition, children placed with relatives often reach permanency more quickly and have more stable placements.³⁸

Conclusion

Federal and state requirements for reasonable efforts are supported by research that finds the best place for children is with their parents whenever possible. Decisions regarding removing children from their homes, reunifying them with their families, and terminating parental rights must be made in the child's best interest, balancing the importance of maintaining children with their parents, safety, and timely permanency. This balance often can be difficult to maintain for professionals involved as well as for foster and kinship caregivers.

Recognizing that some parental actions render parents unfit to provide a safe home for their children, federal and state statutes define when reasonable efforts should not be used, allowing CPS to skip reasonable efforts and move forward with permanency in a timely manner.

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About PCSAO

Public Children Services Association of Ohio is a membership-driven association of Ohio's county child protection agencies that advocates for and promotes child protection program excellence and sound public policy for safe children, stable families and supportive communities.



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Endnotes

- 1 Child Welfare Information Gateway. (2016). Reasonable efforts to preserve or reunify families and achieve permanency for children. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau.
- 2 Lawrence, C. R., Carlson, E. A., & Egeland, B. (2006). The impact of foster care on development. *Development and Psychopathology*, 18(1), 57-76. doi:10.1017/S0954579406060044
- 3 Doyle, J. (2007). Child Protection and Child Outcomes: Measuring the Effects of Foster Care. *The American Economic Review*, 97(5), 1583-1610.
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- 5 Ohio Department of Job and Family Services. (2016) [Statewide Automated Child Welfare Information System, special data run. Additional calculations by PCSAO]. Available at: <http://www.pcsao.org/pdf/factbook/2017/PCSAOFactbook.pdf>
- 6 Ibid.
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- 12 Cooper, J. L., Masi, R., Dababnah, S., Aratani, Y., & Knitzer, J. (2007). Strengthening policies to support children, youth, and families who experience trauma. New York, NY: National Center for Children in Poverty.
- 13 Ibid.
- 14 Racusin, R., Maerlender, A. C., Sengupta, A., Isquith, P. K., & Straus, M. B. (2005). Psychosocial Treatment of Children in Foster Care: A Review. *Community Mental Health Journal*, 41(2), 199-221. doi:10.1007/S10597-005-2656-7
- 15 Doyle, J. (2007). Child Protection and Child Outcomes: Measuring the Effects of Foster Care. *The American Economic Review*, 97(5), 1583-1610.
- 16 Lawrence, C. R., Carlson, E. A., & Egeland, B. (2006). The impact of foster care on development. *Development and Psychopathology*, 18(1), 57-76. doi:10.1017/S0954579406060044
- 17 Freundlich, M., Avery, R. J., Munson, S., & Gerstenzang, S. (2006). The meaning of permanency in child welfare: Multiple stakeholder perspectives. *Children and Youth Services Review*, 28(7), 741-760. doi:10.1016/J.CHILDYOUTH.2005.08.008
- 18 Adoption and Safe Families Act of 1997
- 19 OAC 5101:2-42-95(A)(3)
- 20 Federal: includes the following crimes when the victim is the child or another child of the parent, murder, voluntary manslaughter, attempted murder or voluntary manslaughter, or felony assault. Adoption and Safe Families Act of 1997.
- 21 OAC 5101:2-42-95(A)(1)(a)(i), (ii) & (v)
- 22 Sexual crimes include rape, sexual battery, sexual corruption of a minor, gross sexual imposition, sexual imposition, trafficking in persons, compelling prostitution, and promoting prostitution OAC 5101:2-42-95(A)(1)(a)(iv) & ORC 2151.419(A)(2)(a)(v)
- 23 ORC 2151.419(2)(a)(iii)
- 24 Adoption and Safe Families Act of 1997
- 25 OAC 5101:2-42-95(1)(e)
- 26 Federal only includes child abandonment. Adoption and Safe Families Act of 1997
- 27 Ohio also includes child abandonment and a deserted child OAC 5101:2-42-95(1)(d) & (2). "Abandoned child", pursuant to section 2151.011 of the Revised Code, means a child who is presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days. "Deserted child" means a child whose parent has voluntarily delivered the child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child and who, pursuant to sections 2151.3516 and 2151.3517 of the Revised Code, is thirty days old or younger and has no apparent signs of abuse or neglect. OAC 5101:2-1-01(A)(1) & (90) (definitions)
- 28 Federal: 15 out of 22 months. Adoption and Safe Families Act of 1997.
- 29 Ohio: 12 out of 22 months. OAC 5101:2-42-95(A)(3)
- 30 OAC 5101:2-42-95(1)(b)
- 31 OAC 5101:2-42-95(1)(c)
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- 36 Hayduk, I. (2017). The Effect of Kinship Placement Laws on Foster Children's Well-Being. *B.E. Journal Of Economic Analysis & Policy*, 17(1), 120-142. doi:10.1515/bejeap-2016-0196
- 37 Ibid.
- 38 Wheeler, C., Newton-Curtis, L., Schisler, A., & Vollet, J. (2016). Final evaluation report: ProtectOhio third waiver period.