

THE ADOPTION AND SAFE FAMILIES ACT (ASFA) AND THE COURTS:

SOME SUGGESTIONS FOR COURTS, GOVERNMENT ATTORNEYS, AND CHILD WELFARE AGENCIES

SPECIFIC ASFA ISSUES:

A. Findings that Placement of a Child into Foster Care is in the Child's Best Interests

- Top five suggestion to carry out the requirement *and* fulfill the principles:
 - Enact laws or adopt court rules explicitly requiring these findings as part of the very first court order authorizing placement.
 - Adopt *mandatory* court order forms with spaces for individualized information.
 - Assign a specific court employee to make sure these findings are correctly included in court orders.
 - Design agency report forms that provide the necessary, individualized information in writing to the judge *before* the judge must sign the order.
 - Think carefully about why removal from home of a delinquent or status offender may or may not be in the child's best interests.

B. Reasonable Efforts Findings

- Top five ideas:
 - Define basic *elements* of RE in agency policy or law, including basic services and basic casework steps.
 - In each case, the agency should give the court a written description of its RE in electronic form, so the court can amend this information and paste it into court orders.
 - Assign specific *agency* employees to spot check agency forms and court orders to ensure that judges are completing these findings.
 - Think carefully and creatively about what can be reasonable efforts in juvenile justice cases – including RE to prevent removal, reunify the family, and finalize a new permanent placement.

- Calculate how long it takes judges to make these findings properly, including time on and off the bench. Use this information (and time for fulfilling other similar ASFA requirements) when considering judicial workloads.

C. Decisions Whether to Require Reasonable Efforts

- Top five ideas:
 - In serious cases (including cases with long histories), routinely *consider* the possibility that, with more evidence about the case, it wouldn't make sense to try to reunify the family. Then dig for more information.
 - Get attorneys who are willing to seek no reasonable efforts orders.
 - Establish court procedures for extreme cases that are not excessively time consuming or duplicative.
 - Rethink and revise your grounds to best reflect the circumstances when it doesn't make sense to try to preserve the family unit.
 - Harmonize your grounds with grounds for TPR – at least those that don't require reasonable efforts to work with the family.

D. Annual Permanency Hearings

- Top five ideas:
 - Think about and be able to articulate the difference between a review and a permanency hearing.
 - Set aside enough time for a real permanency hearing, in which the judge can consider carefully the permanency plan and can outline the next steps.
 - Carefully coordinate the format and content of court reports and court orders, to make court reports as helpful as possible to judges.
 - Establish an order of priority among the types of permanency plans – reunification, adoption, guardianship, permanent placement with a relative (other than adoption and guardianship), and then another planned permanent living arrangement – and require good reasons for not choosing all higher priority permanency options.
 - In court reports and court orders, specify a timetable and next steps to achieving the permanency plan, including, if applicable, a deadline for filing a petition for TPR.

E. Notice and Opportunity to be Heard for Foster Parents, Relative Caretakers, and Preadoptive Parents

- Top five ideas:
 - Figure out how give caseworkers an incentive to actually have foster parents (and relatives and preadoptive parents) present in court.
 - Arrange to greet foster parents and explain their role when they arrive in court. Hand them a flyer explaining their role in more detail.

- Give someone other than caseworkers the responsibility for providing notice to foster parents.
- Require that copies of written notice to foster parents be submitted to the court and appear in the court file.
- Figure out how to elicit information from foster parents – who will question them and typical questions.

F. Mandatory Filing of Termination of Parental Rights Petitions

- Top five ideas:
 - Arrange to recruit attorneys who will file and skillfully advocate for termination of parental rights. Use Title IV-E funds to help accomplish this.
 - When the agency does not file for termination of parental rights within the deadline, provide written reasons to the court before the deadline.
 - Assign a court employee to maintain a tickler file on this and other ASFA deadlines, and inform the court when the deadline is not met.
 - Well in advance of termination of parental rights filing deadlines, routinely hold agency case staffing meetings (with the responsible government attorney present) to discuss the possibility of seeking termination of parental rights.
 - Prepare a defensible and carefully reasoned plan to “staff up” to meet this requirement. Include realistic estimates of the added workload.

KEY ELEMENTS OF SUCCESSFULLY WORKING TOGETHER – TO FULFILL BOTH THE REQUIREMENTS AND PRINCIPLES OF ASFA

A. Interdisciplinary Projects (State and Local)

- Plan, conduct or oversee evaluations of progress in the full implementation of ASFA – include agency spot audits of compliance. Include agencies, courts, and government attorneys as full participants.
- Form goals from evaluation results.
- Set tasks and timetables.
- Hold regular meetings.
- Set time for evaluation of further progress.

B. Top Notch Legal Representation for Agency (and also others)

- Very actively recruit lawyers who will commit to long-term work in the field. Clearly articulate the preferred qualifications for government lawyers.
- Take steps to retain and encourage good attorneys for the government. For example, have performance review and performance measurement (partly based on lawyers success in moving cases to permanency, not win-loss ratio); make salaries and working conditions attractive to skilled attorneys; have low enough workloads that allow lawyers to do a good job.

- Use Title IV-E funds as leverage to improve the agency’s legal representation. Consider offering the entity that now provides legal representation a quid pro quo such as funds for specific enhancements in legal services. (Title IV-E funds are available to help pay for the cost of legal representation of the agency.)
 - Understand what really good attorneys can do to accomplish agency goals and then make it top priority to get such attorneys. Make a long-term investment of time and commitment to this goal.
- C. Conduct Thoughtful, Persuasive, and Scientific Workload Analysis, Especially for Judges, Lawyers, and Court Staff
- Take into account the added time and tasks to comply with Title IV-E and ASFA as well as to achieve safety and permanency for children.
 - Be scientific – basing estimates on a combination of times to prepare for and competently participate in different types of court hearings, numbers of cases and hearings, and times for needed tasks outside of court.
 - Identify and articulate the costs and disadvantages of *not* fulfilling ASFA requirements.
 - Set standards time periods for the length of different types of court hearings.
- D. Enhance and Clarify Duties of Judicial Support Staff
- Articulate a full set of staff tasks needed for successful judicial implementation of ASFA and Title IV-E. For example:
 - Staff should monitor ASFA compliance.
 - Staff should help prepare and distribute complete and detailed court orders.
 - Staff should plan and operate an information system not only to generate forms and track cases, but also to generate performance data.
 - Staff should help set up meetings and projects involving other organizations and groups, including the agency, key service providers, and mandatory reporters.
 - Redesign job descriptions and duties accordingly.
- E. Make Compliance Mandatory – And Not Just Compliance with Minimal Technical Requirements
- Adopt new laws, policies, and rules. This should be a cooperative and interdisciplinary enterprise involving the agency, attorneys, courts, and others.
 - Adopt new forms governing court reports, court orders, and judicial findings, among other things. Again, make this a cooperative interdisciplinary task.
- F. Involve Attorneys and Courts in CFSRs (federal Child and Family Service Reviews) from the Beginning