

Child and Family Services Policy Manual: Legal Procedure
Determination that Preservation or Reunification Services Need Not Be Provided
Reasonable Efforts

Introduction

Under the Adoption and Safe Families Act, the "reasonable efforts" requirements imposed on the states assure that states are meeting the mandates of the Act regarding the temporary nature of foster care and the right of each child to have a safe, permanent home. The "reasonable efforts" requirements have a threefold purpose:

1. To maintain the family unit and prevent the unnecessary removal of a child from his/her home when it can be done without jeopardizing the child's safety;
2. If temporary out-of-home placement is necessary to ensure the immediate safety of the child, to effect the expeditious reunification of the child and family when reunification is the appropriate permanency goal or plan; and
3. When reunification is not appropriate or possible to effect an alternate permanency goal in a timely manner.

NOTE: Under ICWA, the child protection specialist must make **active efforts** to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal. Active efforts should involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers.

Definition

Reasonable efforts determinations must be made by the court on a case-by-case basis. Reasonable efforts include but are not limited to the following:

- provision of voluntary protective services pursuant to a written voluntary protective services agreement executed for the purpose of keeping the child safely in the home. A voluntary protective services agreement may include provisions for:
 - a family group decision making meeting and implementation of safety plans developed during the meeting;
 - a professional evaluation and treatment of a parent or child, or both;

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- a safety plan for the child;
- in-home services aimed at permitting the child to remain safely in the home;
- temporary relocation of a parent to permit the child to remain safely in the home; or
- a 30-day temporary out-of-home protective placement.
- development of individual written case plans specifying child protection specialist efforts to reunify the family;
- placement of the child in the least disruptive setting possible (e.g., placement with the child's noncustodial parent or with extended family);
- provision of services pursuant to a case plan; and
- periodic review of each case to ensure timely progress toward reunification or permanent placement.

A general standard to apply is:

Only the services and activities that affect prevention of removal or the reunification plan are the services/activities to be evaluated in determining the reasonable efforts findings. The adequacy of services will be judged by their appropriateness in addressing the needs that caused the child(ren) to be removed from the home. While some services may be a good idea and some very important, the finding is determined based on the offer to provide the services that affect the reunification.

NOTE: The child's health and safety are of paramount concern in determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services.

**Child Protection
Specialist Action**

During the hearing on the petition before the court, the child protection specialist will provide the court with information about the specific reasonable efforts required for the appropriate phase of the proceeding. The reasonable efforts must be documented, with specificity, in the case record of the child.

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Show Cause Hearing	The court will make the first reasonable efforts finding at the conclusion of the show cause hearing. The court order must contain explicit documentation regarding the specific efforts made by the of to prevent the placement and must state that the determination regarding reasonable efforts was based on the facts on a case-by-case basis.
Required Findings	In the order granting or denying relief issued after the show cause hearing, the court must make a written finding regarding the reasonableness of agency efforts to: <ul style="list-style-type: none"> a) avoid the protective placement of the child; or b) to make it possible to safely return the child to the child's home.
Petition for a Determination that Preservation or Reunification Services Need Not be Provided	The Department may petition the court for a determination that preservation or reunification services need not be provided. This request can be combined with petitions for other types of relief (e.g. immediate protection and emergency protective services, temporary legal custody, termination of the parent-child legal relationship.) This determination may be requested at any time during an abuse and neglect proceeding. <p style="margin-top: 12pt;">NOTE: When the Department petitions for a determination that preservation or reunifications services need not be provided, counsel for an indigent parent must be appointed by the court if an indigent parent is not already represented by counsel.</p> <p>If requested in the petition, the court may make a determination at the conclusion of the show cause hearing that reasonable efforts to provide reunification services are not required. A judicial finding that preservation or reunification services are not necessary must be supported by clear and convincing evidence. The court may make such a determination of the court finds, as established by clear and convincing evidence, that the parent has:</p> <ul style="list-style-type: none"> a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect;

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- b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- c) committed aggravated assault against a child;
- d) committed neglect of a child that resulted in serious bodily injury or death;
- e) had parental rights to the child's sibling or other child of the parent involuntarily terminated, and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue; or
- f) If the putative father has failed to do any of the following:
 - 1. contribute to the support of the child for an aggregate period of 1 year, although able to do so;
 - 2. establish a substantial relationship with the child. A substantial relationship is demonstrated by:
 - i) visiting the child at least monthly when physically and financially able to do so; or
 - ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and
 - iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.
 - 3. register with the putative father registry and the person has not been:

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- i. adjudicated in Montana to be the father of the child for the purposes of child support; and
- ii. recorded on the child's birth certificate as the child's father.

NOTE: The presence of one of the above-listed circumstances is the only circumstance under which the Court can make the determination that preservation or reunification services need not be provided.

CAPS Entry of Order Determining Preservation or Reunification Services need not be provided	To ensure compliance of federal requirements mandating certain dispositional reviews and hearings within strict time frames after court determinations, after each court hearing (including continuances) the child protection specialist must enter court detail on CRTD as soon as possible. The child protection specialist will need to enter petition date, court hearing date, begin and end dates of the court order, type of hearing (court event), reliefs granted (court dispositions, including those dispositions issued from the bench prior to receiving a signed court order), parties to the hearing, and whether or not the court order has been received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The child protection specialist should also enter the court review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the child protection specialist thirty days after a court date, if the court order has not yet been recorded and when the 12 month permanency reviews are due. CAPS will alert the child protection specialist in advance of the expiration date of each court order, based on the entered end date of the court order.
Adjudicatory Hearing	The court must make findings about reasonable efforts at the conclusion of the adjudicatory hearing.
Required Findings	Before the court may adjudicate a child a youth in need of care, the court must make a written finding that the Department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.
Dispositional Hearing	If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be

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inconsistent with the permanency plan of the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child.

If the court finds that reasonable efforts are not necessary, a permanency hearing must be held within 30 days of that determination. Reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

Title IV-E eligible children

For Title IV-E eligible children, the reasonable efforts finding must be made and the explicit documentation on the efforts the Department made to prevent the placement contained in a court order issued **within 60 days** of the initial date of placement of the child. This means that the reasonable efforts finding and explicit documentation must be contained in the order issued after the Show Cause hearing.

Permanency Hearing

The court also must address reasonable efforts at the conclusion of the permanency hearing. The court must make findings on whether the Department has made reasonable efforts to finalize the permanent plan for the child. The court shall order the Department to take whatever additional steps are necessary to effectuate the plan.

If the permanent plan for the child is long-term custody the court must specifically find (established by a preponderance of the evidence) that the Department has made reasonable efforts to reunite the parent and child. The court must make additional findings that further efforts by the Department would likely be unproductive and that reunification of the child with the parent or guardian would be contrary to the best interests of the child.

The court must make a finding whether the Department has made reasonable efforts to finalize the permanency plan for the child within 12 months of the initial permanency hearing and every 12 months thereafter until the child is permanently placed.

Factors the Court may consider to

Reasonable efforts are determined on a case-by-case basis. Some factors the court may consider in determining whether

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determine whether or not reasonable efforts were made	<p>reasonable efforts were made include, but are not limited to:</p> <ul style="list-style-type: none">• Would the child's health or safety have been compromised had the agency attempted to maintain him/her at home;• Did the child protection specialist provide services to ameliorate factors present in the child or parent that would inhibit a parent's ability to maintain the child safely at home such as physical, emotional or psychological factors;• Was the treatment plan customized to the individual needs of the family or was it a standard package of services;• Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome the obstacles; and• Are the services provided associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the county attorney filed for termination of parental rights and has the child protection specialist registered the child on state and national adoption exchanges or implemented child-specific recruitment activities.
Synopsis of Required Judicial Determinations	<p>From the initial order for immediate protection and emergency protective services through the order terminating parental rights, the court must make the following reasonable efforts judicial determinations:</p> <ol style="list-style-type: none">1. reasonable efforts were made to prevent the child from being removed from the home or to avoid the protective placement;2. reasonable efforts were made to reunify the child with his/her family if the removal could not be prevented;3. if reasonable effort were not made to prevent the child's removal from home or to reunify the child with his/her family, reasonable efforts were not required or that it was

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reasonable to make no efforts to avoid protective placement or reunify the parent and child; and

4. if the permanent plan for the child is adoption, guardianship, or some other permanent living arrangement other than reunification, reasonable efforts were made to make and finalize that alternate permanent placement.

References

- Mont. Code Ann. § 41-3-302.
- Mont. Code Ann. § 41-3-423.
- Mont. Code Ann. §§ 41-3-432, 41-3-437, and 41-3-438.
- Mont. Code Ann. § 41-3-445.
- Adoption and Safe Families Act of 1997, 42 U.S.C. 671 (P.L. 105-89)
- 45 CFR 1356.21