

Section 3: Court Hearings, Legal Documentation, and Legal Requirements

A. The Adoption and Safe Families Act

The Adoption and Safe Families Act stresses the need to include parents, other family members and community support people in safety planning, developing increased parental protective capacity and planning for reunification of the child with a parent. ASFA stresses the need for Family Decision Meetings as a tool to the caseworker in developing the Child Welfare Case Plan that meets the safety, permanency and attachment needs of the child. The caseworker schedules an Oregon Family Decision-making Meeting to be held when a child has been in out-of-home placement for more than 30 days. The meeting is scheduled to be held, when possible, between the child's 30th to 60th day in out-of-home care. However, a later OFDM may be held if necessary.

- In consultation with the parent, family members and others, the caseworker develops an alternate or concurrent permanent plan for the child should the parent be unable to overcome the safety threats and diminished parental protective capacities to safely parent the child.
- The caseworker considers exceptions to the mandate to file a petition for termination of the parent's rights if:
 1. The child is being cared for by a relative.
 2. There is a compelling reason that is in the best interests of the child not to file a termination of parental rights petition.
 3. Child Welfare has not provided the family with services Child Welfare has determined are necessary for the safe return of the child to the parent.
 4. Another permanent plan is better suited to meet the health and safety needs of the child.



References: DHS Policy

- DHS Child Welfare Policy I-B.3.1 Developing and Managing the Case Plan
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b31.pdf
- DHS Child Welfare Policy I-E.3.6 Achieving Permanency
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b36.pdf

B. Reasonable and Active Efforts

The federal Adoption and Safe Families Act (ASFA) and Oregon law require Child Welfare caseworkers to make efforts to prevent the need to remove a child from his or her home prior to placing the child in protective custody, to return the child to a parent, and to achieve permanency for a child who cannot be returned to his or her home. The efforts must be reasonable if the child is not an Indian child. If the Indian Child Welfare Act (ICWA) applies, efforts to provide rehabilitative or remedial services to the Indian family prior to removing an Indian child and efforts to return the child to his or her home must be active. This section describes the concept of reasonable and active efforts.

1. Reasonable Efforts

Reasonable efforts are not specifically defined by law. Reasonable efforts include providing appropriate services to assist the parents in adjusting their circumstances or conditions to allow the child to either remain in the home or to be returned to the home. What is reasonable depends on the circumstances of each individual case. The safety assessment and safety analysis can assist the caseworker in determining what efforts are reasonable in a particular case by:

- Identifying the specific safety threats to a child.
- Determining how the child is vulnerable to those safety threats.
- Determining what behavioral, emotional, and cognitive characteristics of the parent make the parent unable to protect the child from the safety threats.
- Determining what needs to change to enhance the parent's ability to keep the child safe and to minimize or eliminate the safety threat.
- Determining the assistance that Child Welfare can provide to minimize or eliminate the safety threat and to enhance the parent's ability to keep the child safe.

Reasonable efforts must be made to prevent or eliminate the need to remove a child from the home, to make it possible for the child to safely return home and, if the case plan is something other than to reunify the family, to place the child in a timely manner in accordance with the permanent plan and to take the steps necessary to finalize the permanent placement.

When a CPS worker is assessing a report of child abuse or neglect, during the investigation he or she may find that a safety threat exists, a child is vulnerable, but a parent can and will protect the child with referrals to community services. Reasonable efforts to prevent or eliminate the need to remove the child from the home might include:

- Making a referral to the program or service designed to enhance the parent's ability to protect the child and to eliminate or minimize the safety threat.

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- Asking the parent to sign a release of information for the program or service so the caseworker can communicate with the service provider.
- Contacting the service provider to assess the parent's participation in the program or service and whether the parent has made changes necessary to enhance the parent's ability to protect the child or to eliminate or minimize the safety threat. The caseworker must document the successful changes, and if appropriate, close the assessment.

If the child is removed from the home despite these efforts, the efforts must be documented in the Protective Custody Report (the requirements for the Protective Custody Report are discussed in Section 1.A.2. of this chapter).

If a child is removed from the home and a juvenile court case is initiated, Child Welfare must document the reasonable efforts made to make it possible for the child to safely return home, unless certain circumstances are present and the court has found that Child Welfare is not required to make efforts to reunify the family. (See "Disposition Hearing," Section 1.A.4.e. of this chapter for more information on circumstances that might relieve Child Welfare of the requirement to make reasonable efforts to reunify.) The efforts that should be provided in a specific case depend on the circumstances of the case. The efforts must include appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct, or conditions to make it possible for the child to safely return home within a reasonable time and must bear a rational relationship to the jurisdictional findings that brought the child within the court's jurisdiction. DHS must describe the efforts made to make it possible for the child to safely return home at the shelter hearing, disposition hearing, Citizen Review Board review of the case, permanency hearing, and in any court reports that must be filed under ORS 419B.440. (Information on the requirements for particular hearings is located in Section 1.A.4. of this chapter. Information about required court reports can be found in Section 1.A.5 of this chapter.)

Efforts that Child Welfare might have made in a particular case include, but are not limited to the following:

- Safety threats to the child were identified.
- A Protective Capacity Assessment was conducted that identified the specific behavioral, cognitive and emotional characteristics that make the parent unable to protect the child.
- Conditions for return home were identified, which are the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home.
- A Child Safety Meeting was held with parents, family members, and safety service providers to develop the ongoing safety plan for the child.

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- All persons with a legal relationship to the child were identified.
- If applicable, a blood test to determine paternity of an alleged biological father was arranged.
- A search for an absent parent was conducted and the parent was contacted.
- Inquiry was made regarding possible Indian heritage of the child.
- A search for the child's relatives was conducted.
- The child's relatives and, if applicable, persons with a caregiver relationship with the child were identified and contacted to determine their willingness to be a placement resource for the child.
- An Oregon Family Decision Meeting was held with parents, family members, and community support people to develop the Child Welfare Case Plan.
- Action Agreements were developed with each parent.
- A visitation plan was developed between the child and the parents and visits were facilitated and supervised by Child Welfare (describe dates of visits and any additional support, training, or advice provided during the visit).
- A visitation plan was developed between the child and his or her siblings.
- The parent was referred to appropriate services to assist the parent in adjusting the circumstances that endangered the child, to enhance the parent's ability to protect the child, and to eliminate or minimize the safety threats to the child, which may include:
 1. A drug and alcohol assessment and treatment.
 2. Domestic violence treatment.
 3. A mental health assessment and treatment.
 4. Parenting classes.
 5. Individual counseling.
 6. Family counseling.
 7. A psychosexual evaluation and treatment.
 8. A psychological evaluation.
 9. Any other services recommended by service providers.

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- Evaluations were reviewed and follow-up contacts were made with evaluators to determine treatment and services necessary to assist the parent in enhancing the parent's ability to protect the child, minimizing or eliminating safety threats to the child, and adjusting the parent's circumstances to make it possible for the child to safely return home.
- Contacts were made with service providers to determine the parent's progress in enhancing the parent's ability to protect the child, minimizing or eliminating the safety threats to the child, and meeting the conditions for return home.
- Face-to-face contact with the child, the parent and the foster care provider was made at least every 30 days (list dates of contact).
- The child's safety in his or her current placement was assessed at each face-to-face contact with the child.
- Health and school information was obtained regarding the child.
- Services were provided to the child (describe the services).
- Health information was obtained regarding a parent.

A description of the efforts made should include dates of contacts and meetings. Depending on local court procedure, the caseworker may want to include documentation of the efforts made by Child Welfare, such as: Action Agreements, any evaluations, case notes detailing contact with the parent and service providers, visit notes, and inquiries made to tribes to determine if the ICWA applies to the child and responses received from tribes.

Once the case plan for a child is changed from reunification, the caseworker must make reasonable efforts to place the child in accordance with the permanency plan and to take the steps necessary to finalize the permanency plan. Possible plans include:

- Adoption.
- Guardianship.
- Another Planned Permanent Living Arrangement, which might include Permanent Foster/Kinship Care.

Reasonable efforts to achieve the alternate or concurrent permanency plan are clearly outlined in each plan's administrative rule. In addition to the rule, a useful guide is found in Appendix 3.1 titled "Reasonable Efforts Principles and Expectations." This guide was developed between DHS and the Oregon Citizen Review Board and assists caseworkers and CRB members in considering reasonable efforts to finalize the permanent plan when the plan is other than reunification.

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2. Active Efforts

Active efforts are not specifically defined by law. Active efforts include providing appropriate remedial services and rehabilitative programs designed to assist the parents or Indian custodians in adjusting their circumstances or conditions to prevent the break-up of the Indian family. Whether efforts are active will depend on the circumstances of each case. Active efforts are efforts above and beyond what is reasonable in a particular case and should be culturally appropriate. The caseworker should involve extended family members, tribal social service programs, other tribal organizations, and tribal community therapy practices in determining the appropriate case plan for an Indian family.

Both ICWA and Oregon law require Child Welfare to make active efforts to provide remedial or rehabilitative services to the Indian family prior to removal of an Indian child. These services must be tried before the removal of an Indian child. As part of making active efforts to provide remedial or rehabilitative services, when the CPS caseworker knows or has reason to know that a child is or may be an Indian child, the CPS caseworker:

- Immediately contacts the child's tribe to give verbal notification of Child Welfare involvement with the family.
- Discusses the family situation with the tribal social worker or tribal representative of the family's tribe and documents the conversation in case notes.
- Verifies the child's tribal membership.
- Asks the tribe for assistance in identifying culturally appropriate resources to assist the parent or Indian custodian in adjusting his or her behavior, conditions or circumstances to enhance the parent or Indian custodian's ability to keep the child safe and to minimize or eliminate safety threats to the child.
- Helps arrange for the parent or Indian custodian to access culturally appropriate services identified by the caseworker and the tribe.
- Contacts family members and other tribal resources for assistance in planning for the child's safety needs and providing assistance to the family.
- Provides culturally appropriate services to all household members who have a caretaker role with the child.
- Arranges child safety meetings and family decision meetings to involve the parents, Indian custodians, and extended family members in case planning.

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If the Indian Child Welfare Act (ICWA) applies to the child and the child is removed through a protective action, the caseworker will need to describe the active efforts made to provide remedial or rehabilitative services to the Indian family and why those services were unsuccessful in preventing the need to remove the child in the Protective Custody Report and at the shelter hearing. See Section 1.A.4.a of this chapter for more information about the shelter hearing.

Child Welfare must make active efforts to eliminate the need for continued out-of-home placement for the child. The efforts made by Child Welfare will be reviewed at the shelter hearing, the disposition hearing, the Citizen Review Board review of the case, the permanency hearing, and any review hearings conducted by the juvenile court. Reports to the court must include a description of the active efforts made by Child Welfare. For more information about the specific hearings, see Section 1.A.4. of this chapter. For more information about court reports, see Section 1.A.5. of this chapter.

A description of active efforts to make it possible for the child to safely return home might include, but is not limited to information showing:

- The placement preferences of the ICWA were followed.
- Safety threats to the child were identified, taking into account the prevailing societal and cultural conditions and way of life of the child's tribe.
- A Protective Capacity Assessment was conducted that identified the specific behavioral, cognitive and emotional characteristics that make the parent unable to protect the child, taking into account the prevailing societal and cultural conditions and way of life of the child's tribe.
- Conditions for return home were identified, which are the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home.
- A Child Safety Meeting was held with the parents, family members, tribal social worker, and safety service providers to develop the ongoing safety plan for the child.
- All persons with a legal relationship to the child were identified.
- If applicable, a blood test to determine paternity of an alleged biological father was arranged.
- A search for an absent parent was conducted and the parent was contacted.
- A search for the child's relatives was conducted.

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- The child's relatives and, if applicable, persons with a caregiver relationship with the child were identified and contacted to determine their willingness to be a placement resource for the child.
- An Oregon Family Decision Meeting was held with parents, family members, the tribal social worker and community support people to develop the Child Welfare Case Plan.
- Action agreements were developed with each parent.
- A visitation plan was developed between the child and the parents and visits were facilitated and supervised by Child Welfare (describe dates of visits and any additional support, training or assistance provided during the visit).
- A visitation plan was developed between the child and his or her siblings.
- Parents were assisted in accessing culturally appropriate services, identified by the tribal social worker and the caseworker, including:
 1. A drug and alcohol assessment and treatment.
 2. Domestic violence treatment.
 3. A mental health assessment and treatment.
 4. Parenting classes.
 5. Individual counseling.
 6. Family counseling.
 7. A psychosexual evaluation and treatment.
 8. A psychological evaluation.
 9. Other services as recommended by the tribe and community resources.
- Evaluations were reviewed and follow-up contacts were made with evaluators to determine treatment and services necessary to assist the parent in enhancing the parent's ability to protect the child, minimizing safety threats to the child, and adjusting the parent's circumstances to make it possible for the child to safely return home.
- Contacts were made with service providers to determine the parent's progress in enhancing the parent's ability to protect the child, minimizing or eliminating the safety threats to the child, and meeting the conditions for return home.
- Regular contact was made with the tribal social worker regarding the case plan.
- Face-to-face contact with the child, the parent and the foster care provider was made at least every 30 days (list dates of contact).

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- The child's safety in his or her current placement was assessed at each face-to-face contact with the child.
- Health and school information was obtained regarding the child.
- Services were provided to the child (describe the services).
- Health information was obtained regarding a parent.

A description of the efforts made should include dates of contacts and meetings. The caseworker should describe in detail the efforts made to assist the parents with appropriate services. While making a referral to a service might be reasonable, additional efforts to engage the parent might be necessary to demonstrate an active effort. Depending on local court procedure, the caseworker may want to include documentation of the efforts made by Child Welfare, such as: Action Agreements; any evaluations; case notes detailing contact with the tribal social worker, the parent, and service providers; and visit notes.

Once the case plan for a child is changed from reunification, the caseworker makes active efforts to achieve another permanency plan. Possible plans include:

- Adoption, although many tribes do not agree with termination of parental rights.
- Guardianship.
- Another Planned Permanent Living Arrangement, which may include Permanent Foster/Kinship Care.

A useful guide is found at Appendix 3.2 titled Active Efforts Principles and Expectations. This guide was developed by the nine Oregon tribes, DHS, and the Oregon Citizen Review Board, and assists caseworkers, tribal social workers, and CRB members in considering active efforts.

Role of the Supervisor

- Consults with the caseworker to ensure the worker is providing reasonable efforts in working with families and appropriately describes those efforts in court reports.
- In consultation with the ICWA liaison in the district, ensures the caseworker carrying an ICWA case is actively communicating with the tribal social worker or tribal representative and complying with the ICWA.
- Reviews the Child Welfare Case Plan of the worker paying particular attention to services being provided to the family.

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Legal References

- 25 USC §§ 1901 to 1963: Indian Child Welfare Act
- ORS 419B.185
- ORS 419B.337
- ORS 419B.340
- ORS 419B.343
- ORS 419B.387
- ORS 419B.443
- ORS 419B.476
- DHS Child Welfare Policy I-F.2 Achieve Adoption
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-f2.pdf
- DHS Child Welfare Policy I-E.3.6.2 Achieve Guardianship
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e362.pdf
- DHS Child Welfare Policy I-E.3.6.1 Permanent Foster Care
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e361.pdf
- DHS Child Welfare Policy I-B.2.3.5 Independent Living
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-b235.pdf
- DHS Child Welfare Policy I-E.3.6.3 Another Planned Permanent Living Arrangement
http://www.dhs.state.or.us/policy/childwelfare/manual_1/I-e363.pdf
- DHS Child Welfare Policy I-E.2.1. Placement of Indian Children
http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-e21.pdf



Forms

- CF 333a
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0333a.doc
- CF 0464 Protective Custody Report
http://dhsresources.hr.state.or.us/WORD_DOCS/CE0464.doc