Using Reasonable Efforts Determinations to Improve Systems and Case Practice in Cases Involving Family Violence and Child Maltreatment

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ABSTRACT

The Adoption and Safe Families Act (ASFA) of 1997 reinforced that the safety, permanency, and well-being of the child should be the primary concerns when making decisions about child protection interventions, child placement, and efforts at reunification. The court's role in oversight of agency practice in individual cases through the requirement of specific judicial findings as a condition of receipt of certain funding was also maintained and strengthened by ASFA. Based on the recognition of the number of cases where there is a co-occurrence of domestic violence and child maltreatment, there is a need for communities and agencies to set reasonable expectations of good practice for responding to the issues raised. As the community sets the expectations of good practice through agency policy, training, and service delivery, the judiciary, through the findings regarding "continuation in the home" or "reasonable efforts" in each individual case, provides the oversight of practice required by ASFA. This article will explore the current applications of reasonable efforts, discuss ways that courts and communities are defining the concept, and examine the need for the development of a reasonable efforts protocol.

Increasingly, judges are presiding over cases involving families with multiple issues, professionals with diverse training and philosophical frameworks, and agencies and courts facing financial crises resulting in loss of staff and services. These issues add to the complexity of dealing with child abuse and neglect cases.

The child welfare system is mandated to respond to reports of child maltreatment that indicate a child's safety or health is endangered. The goal of state intervention is to take those steps necessary to prevent or eliminate the need for removal of the child from the home or to make it possible for the child to return safely home when removed. The child protection agency must show that it has made "reasonable efforts" in meeting the case plan before removing the child or permitting the child to return home.[1]

When domestic violence becomes apparent during the course of a child protection case, the stakes are even higher. In co-occurrence cases[2] there are two people at risk, the adult and child victims. These cases present heightened safety and confiden-

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tiality concerns for the non-offending parent and child, and the focus of accountability must be kept on the perpetrator of the violence. Professionals working with the family members need to be familiar with the dynamics of child abuse and domestic violence to ensure that the legal and child protective systems are not inadvertently part of the abuse in responding to reports of child maltreatment.

Courts make the final rulings in these complex cases, determining whether abused or neglected children can be safely reunited with their parent(s). Using their judicial authority to make thorough and detailed reasonable efforts findings, judges can assist families affected by domestic violence to be safely preserved or reunited in child protection cases. This article explores the legal notion of "reasonable efforts" and how judges can use this tool in abuse and neglect cases to examine and improve system and community responses to families experiencing domestic violence, so that ultimately children have every opportunity to remain or be reunited with non-offending parents.

Co-Occurrence of Domestic Violence and Child Maltreatment

During the past 15 years, there has been growing recognition of and attention to the prevalence of domestic violence and its link with child maltreatment. This recognition has led to legislative, service, and policy responses.[3] Many legal and social service systems are now screening for domestic violence, and policies and protocols are being developed to educate child protection workers about the issue.[4] Domestic violence advocates, child protection workers, and judges are united in their concern about the widespread nature of the problem and the number of children exposed to domestic violence.[5] Medical and psychological research is revealing that the impact of domestic violence on children varies greatly, and at times can have long-term detrimental physical and emotional effects.[6]

Given the systems' charge to protect children and prevent removal from the home, courts, child welfare agencies, and domestic violence advocacy groups are grappling with how to address the concerns and issues that arise when domestic violence is identified as a factor in child maltreatment cases. Some communities are examining the impact of domestic violence on children and its relationship to harm in the context of child protection. Others are exploring ways to create an environment that supports victims of domestic violence coming forward to seek assistance without fear of triggering an intervention by child protective services because domestic violence has occurred in the home, or being charged with failing to protect their children when domestic violence results in an allegation of child maltreatment.[7]

Community collaborative efforts involving domestic violence advocates, child protection agencies, courts, and other professionals have emerged to explore some of the complexities in co-occurrence cases and to develop responses that reduce the number of children entering into the child protection system when there is domestic violence. When families do become involved in the system, such collaborative efforts also strive to reduce re-victimization, promote safety of both the child and adult victims, maintain the focus on the perpetrator of the domestic violence, and whenever possible keep children with the non-offending parent.[8]

The growing number of families involved in the child welfare system experiencing domestic violence demands attention to both policy and practice reform. Judges are the overseers of not only the legal response, but also the social service response to families.[9] It is imperative that judges use their oversight authority and tools such as reasonable efforts determinations to enhance the safety and protection of the children and non-offending parents appearing before them.

Historical Overview of Reasonable Efforts

The Adoption Assistance and Child Welfare Act of 1980

In 1980, Congress enacted landmark legislation to address the process and practice of decision-making in cases of child maltreatment in states receiving federal dollars to underwrite the costs of the child welfare system.[10] The problems that the legislation attempted to address were the unnecessary placement of children into the care of the state, foster care drift leading to a lack of permanency for children, the deficient amount of information about the children who were in out-of-home placements, and the lack of essential due process afforded to parents in state interventions. The Adoption

Assistance and Child Welfare Act of 1980 (Child Welfare Act) created a standard for due process when the state had cause to intervene into the fundamental areas of family life, requiring that it do so with fundamental fairness, in a planned and reasonable manner, and with goals of stable permanency.

By requiring judicial oversight and certain judicial findings as a condition precedent to receipt of federal funds, implementation of the Child Welfare Act created both tension and opportunity in court and child protection agency relations. The most important of the judicial findings related to whether the child protection agency provided reasonable efforts to prevent separating a child from his or her family. Additionally, the juvenile court was required to determine whether the state agency made reasonable efforts to provide reunification services if the child was placed in foster care.[11]

However, the Child Welfare Act contains no detailed information as to what is meant by "reasonable efforts." The federal government left states to decide how to define the rules and standards for making reasonable efforts.[12] Thus, the definition of the term "reasonable efforts" and the court's role in making such findings, has been "one of the most hotly debated and confusing issues in the field of child welfare over the past two decades."[13]

The Adoption and Safe Families Act of 1997

Dissatisfied with the implementation of the Child Welfare Act and the growing number of children being raised in foster care without permanency, Congress passed the Adoption and Safe Families Act of 1997 (ASFA).[14] ASFA promotes the safety and well-being of children, permanency options for children, enhanced capacity and services for families, and accountability of social service agencies for both safety and permanence.

ASFA continues the focus on the reasonableness of state action by restating the basic requirements of reasonable efforts, creating certain exceptions in cases of serious harm, and emphasizing that a child's safety is paramount. The threefold purpose of the reasonable efforts provision as amended by ASFA is: 1) to maintain the family unit and prevent the unnecessary removal of a child; 2) to effect the expeditious reunification of the child and family if temporary out-of-home placement is necessary to ensure the immediate safety of the child and reunification is the appropriate permanency goal; and 3) to effect an alternate permanency goal in a timely manner when reunification is not appropriate or possible.[15]

The constitutional basis for the propositions supporting limiting interventions into family autonomy and integrity are found in several U.S. Supreme Court cases.[16] Such cases stand for the proposition that one of the few justifications for a state constitutionally interfering with a family's autonomy is to remove children from the home in order to protect them, and only then when the state has met a high standard of proof and compelling reason.

One of the most significant aspects of ASFA is that it mandates that a state begin the termination of parental rights proceedings for children who have been placed outside of their home for at least 15 of the preceding 22 months.[17] These strict time limitations require that the state respond in a swift and effective manner. When it comes to co-occurrence cases, this timeframe can work against battered parents and their children, calling into question whether the state can truly make reasonable efforts.[18] Therefore, it is imperative that communities assess their capacity to respond to families, including establishing collaborations with other institutions to facilitate appropriate and effective service response.

When Are "Reasonable Efforts" Determinations Made?

The affirmative duty of the court to determine whether the state has made reasonable efforts occurs throughout the pendency of the case, including the initial and all review hearings (see chart on page 100 for more information). Under ASFA, dispositional hearings were changed to permanency hearings and timeframes for such hearings were shortened (from 18 to 12 months after the child is considered to have entered foster care), again emphasizing that children be placed in a permanent situation as quickly as possible.[19] Moreover, the judicial finding that reasonable efforts have been made either to keep the child in the home and prevent removal or to return the child home safely is a condition precedent to the state's eligibility for Title IV-E funding.[20] Unless such findings are made at case reviews and the permanency hearing, the federally funded foster care

STAGES IN THE CASE AT WHICH JUDICIAL REASONABLE EFFORTS DETERMINATIONS MUST BE MADE[22]

Removal/Shelter/ Detention Hearings	Review Hearings	Permanency Hearings
■ A finding that continuance in the home of the parent or legal guardian would be contrary to the child's welfare, (42 U.S.C. § 672(a)(1)), must be made at the time of the first court ruling authorizing the removal, even temporarily, of the child from the home. 45 C.F.R. § 1356.21(c) ■ Placement and care are the responsibility of the State Agency. 42 U.S.C. § 672 (a)(2); 45 C.F.R. § 1356.71(d)(1)(iii) ■ A judicial determination whether reasonable efforts were or were not undertaken to prevent a child's removal from the home must be made no later than 60 days from the date the child was removed. 45 C.F.R. §1356.21(b)(l)	■ Judges must review the child's status and safety no less frequently than once every six months from the date that the child entered foster care, in order to determine: • whether the child's safety needs have been met and whether placement remains necessary and appropriate; • the extent of the agency compliance with the case plan in making reasonable efforts to return the child home safely or, if there is a court finding that reasonable efforts at reunification are not necessary, whether the agency has made reasonable efforts to complete steps necessary to finalize the permanency plan for the child; and • the likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another planned permanent living arrangement. 42 U.S.C. 671(a)(15)(B),(C); 42 USC 675(5)(B); 45 CFR 1355.34 (c)(2)(ii); 45 CFR 1355.20.	■ A permanency hearing must be held to select a permanent plan no later than 12 months from the date the child is considered to have entered foster care; and if the child remains in foster care, the state must obtain such a determination every 12 months thereafter. 45 C.F.R. § 1356.21(b)(2)(i); (42 U.S.C. § 675(5)(C) and (F); 45 C.F.R § 1355.20) ■ In those dependency cases where no reunification services are required or offered, the permanency hearing must be held within 30 days of the determination. 45 C.F.R. § 1356.21(h)(2) ■ At the permanency hearing, the state must obtain a judicial determination that it made reasonable efforts to finalize the permanency plan that is in effect.

maintenance payments under Title IV-E of the Social Security Act can be withdrawn.[21]

Reasonable Efforts and Domestic Violence

Communities continue to grapple with the increasing recognition of the impact of domestic violence in child protection caseloads.[23] Many communities are struggling to balance the speedy response needed for child protection and ASFA mandates with limited or disappearing community resources, and the understanding that the effects of domestic violence can remain long past the time when the violence occurs.

The community expects the state to respond when

a child has been maltreated. The publicity storm that often surrounds the death of a child, with blame and finger-pointing among the community to the court and child protection agency, has resulted in a policy in some jurisdictions of "remove now and investigate later." The harm of removing children from their families and placing them into inherently risky group homes and foster homes has not been adequately addressed. When a child is removed from the home, the ASFA clock starts ticking and the timelines are initiated for permanency placement of that child; often these timelines do not meet the realities of battered women.[24] In many cases involving family violence, some children who are removed could safely remain with their non-offending parents or extended families.

Moreover, the legal response to domestic violence and child maltreatment is fragmented—including the civil response for protective or restraining orders, the criminal justice response for crimes associated with the maltreatment, and the juvenile or dependency response for the service and treatment needs of the child and family. This fragmented response discourages states from examining how domestic violence impacts a battered parent's behavior regarding the abused child. By failing to address child abuse within the context of domestic violence, ASFA may prevent states from working toward the best interests of the child.[25]

For years, child protection agencies and courts have struggled with how to address appropriately the impact of domestic violence on children in the home. Unfortunately, a common response in the child protection field has been to commence protection proceedings based on the fact that the battered parent "failed to protect" the children from exposure to domestic violence.[26] In addition, battered parents can be brought into the child welfare system after filing for a protection order and admitting that their children were in the home when the domestic violence occurred. Or, a child protection agency can file an action based on the fact that the battered parent "engaged in domestic violence" in the home.[27] These victim-blaming responses are being challenged across the country as unconstitutional and bad public policy because they may deter battered parents from coming forward to seek assistance for themselves or their children.

Therefore, it is important to determine at the agency level which families experiencing domestic violence can be offered services, and those in which the maltreatment is so severe or the risk of harm to the child so immediate and irreparable that removal and court intervention are the proper responses. In co-occurrence cases, many considerations affect whether the non-offending parent and child remain together safely. These considerations include:

- Source and severity of the maltreatment;
- Emotional and social support systems available to the non-offending parent;
- Availability of culturally appropriate and accessible services, including domestic violence shelters or programs, counseling, job training, or long-term housing;
- Parentage of the child, i.e., whether the perpetrator of the violence is the biological parent of the child involved in the case;
- Cultural and other considerations that impact the non-offending parent's ability to leave the abusive relationship;[28]
- Responses that are focused on holding the perpetrator of violence accountable;
- Complicating factors, such as substance abuse, immigration, cultural issues, poverty, health, or mental health concerns;
- Viable safety plans for all victims in the family; and
- Judges, attorneys, service providers, and child welfare workers who are adequately trained about the dynamics of domestic violence and are sensitive to the issue.

With co-occurrence cases, concerns also exist about confidentiality of information and safety precautions that need to be taken in the courtroom and other places where the parties must appear. Domestic violence advocates have learned that the concerns of battered parents are inextricably linked to the welfare of their children and that the safety decisions of battered parents are typically guided by the children's needs.[29] Therefore, it is imperative to acknowledge the protective behaviors of battered parents that may be overlooked or viewed in other circumstances as neglectful.

Furthermore, the fear on the part of many battered parents of being blamed for the violence, or having disclosure of the violence lead to further state intervention,

may cause domestic violence to be identified late in the progression of a dependency case. Case plans are frequently amended to reflect new issues, leading to either prolonged cases or terminations that are not based on the reasons filed with the initial petitions. As with all child maltreatment cases, co-occurrence cases should have ongoing assessments and flexible responses that are based upon the safety of the child, the needs of family members, and the community's capacity to respond to those needs.

Reasonable efforts determinations, therefore, are essential tools to prevent or eliminate the need for removing a child from the home prior to placement in foster care and to make it possible for a child to return safely home after risks to the child's health and safety have been addressed.

Judicial Leadership

Since 1980, the National Council of Juvenile and Family Court Judges (NCJFCJ) has promoted judicial leadership in implementing the federal oversight of children in placement provisions. Judges are in a key position to ensure not only that the law is being carried out but also that professionals working with families are properly trained. Judges can set expectations, rally the community and others around the creation of needed services, and bring collaborations together to examine the local response to co-occurrence cases.

However, courts first need to recognize that as social institutions the way they conduct business (i.e., how accessible the courts are to the public; how judges implement laws, courts rules, and procedures; and how judges and court personnel speak to victims of domestic violence) constitutes a social force that can have therapeutic or anti-therapeutic consequences for the participants.[30] It is not enough for courts to require child protection agency compliance with the federal provisions for planned and reasonable interventions, without making efforts in their own forums to comply with the basic value of due process as well as instituting structural reform and process to promote safety for families.[31] Courts should also devise a system of receiving feedback from all participants in dependency cases, including the parties, to assure that any unintended consequences of "improvement" efforts are recognized and addressed.

Judges generally have an internal checklist of questions they need answered at each stage of a dependency court proceeding. Many of the questions are set by statute or case law and follow in a logical sequence. For example, judges should ask:

- Are all the proper parties before the court?
- Has notice been given and service effected?
- Are there counsel for the parties? Who is entitled to appointed counsel?
- Do the parties understand the nature of the proceedings and the allegations being made?
- What proof does the state have regarding harm or risk of harm to the child?
- Does the petition articulate with particularity the actions of each party that led to the child being before the court?
- How did the case come before the court?
- What services are being provided? Do the service providers have safety controls for non-offending parents and children?
- What is the least restrictive intrusion into family autonomy that could provide safety and make the risk manageable?
- What are the safety and permanency needs of the child?
- Are there services or supports that could allow the child to remain at home safely? Have the services been offered? Are the services available, appropriate, accessible, and culturally competent?

In addition, judges frequently inquire as to information not provided to the court.[32] The child protection agency has the burden of proving that the intervention was reasonable and that the services offered met the goals of the case plan. However, judges must make sure that reasonable efforts determinations address domestic violence as a factor in the case and can add questions to their inquiries that will focus on victim safety and offender accountability. For example, judges should ask:

- Have the safety and permanency needs of the child been identified in the case plan?
- Are there separate attorneys representing the parents? If not, could there be a potential conflict?
- Are separate case plans and services being offered?
- Has the adult victim been offered an opportunity to speak with a domestic violence advocate?

- Have the social workers, guardians *ad litem,* and other gatekeepers appearing in the courtroom been properly educated about domestic violence and its dynamics?
- Does the language in the petition identify the perpetrator of domestic violence or blame the victim for the violence occurring in the home?
- Has the adult victim been advised about obtaining a protection/restraining order? Has a safety plan been developed? Is this safety plan separate from the case file, and is it confidential?
- Was the domestic violence revealed at the beginning of the case or later? If later, is the case remaining open because of this new fact and not based on the original allegations?
- Are the professionals using a strength-based approach to examine protective and parenting skills of the victim parent, rather than a deficit-based approach?

This examination must consist of more than just checking the boxes of a court form. It must constitute a thorough evaluation of the best interests of the child. The process must include a weighing of the relative risks of placing the child with the non-offending parent, with preventive services in place, versus the harm caused by removal of the child from the home. In addition, systems should identify whether there are relatives who could provide a safe haven for the child, rather than placing the child in an inherently risky stranger placement or group home.

In Jefferson County, Ky., the courts require at each stage of the proceedings that the child protection agency submit an "affidavit of efforts" outlining the stated risks of harm and services proposed in the case plan to address those risks in order to demonstrate that reasonable efforts were undertaken.[33] The expectations of what constitutes good practice for the services to be provided to children and families were developed through training of the judges, attorneys, child protection workers, and domestic violence advocates.

Even with the affidavit of efforts, the court has the responsibility to make clear findings regarding the agency's efforts. When the court determines that reasonable efforts have been made, the findings are indicated on a form designed to facilitate claiming and meeting the federal requirements of Title IV-E reviews.

Where there are negative findings (i.e., the agency has not made reasonable efforts) regarding removal, reunification, or permanency services, copies of the orders are sent to the regional social service administration and to the local court advisory committee for discussion. Negative findings are an important management tool for social service agencies and communities in developing their training and array of service delivery in order to do a better job of meeting the service needs of the families.[34]

The above practice in Kentucky resulted in judges integrating domestic violence protective order forms into dependency proceedings and setting clear expectations that there would be separate service plans for the non-offending parent and the perpetrator.

One consideration for a reasonable system is to assure access to court for the purpose of adjusting protective orders or case plans to meet the needs of the parent. This increased access, coupled with improved safety planning, addresses what is often a disconnect between the needs of the victim parent and the service plan offered by the agency worker. Moreover, easy access and frequent review increase the likelihood of compliance with judicial expectations.

In 1992, NCJFCJ published *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases,*[35] which sets out the role and responsibility of decision makers, a court proceeding checklist, and recommended service delivery systems for strengthening families. The template of the protocol can be used as an important tool for collaboratives seeking to improve both systems and case practice in cases with the co-occurrence of child maltreatment and domestic violence. In order to develop a child welfare system with expectations of good practice that will provide accountability for the delivery of services to families, several things must happen. First, the community's capacity to respond to issues of safety must be enhanced, co-training around roles and expectations must be implemented, and an understandable and clear process for documentation of efforts made and a clear record of the findings generated at the court hearings must be established.

Community Capacity, Child Welfare Agencies, and Collaborations

Judges define what constitutes "reasonable efforts" in child protection cases for their community. However, judges can explore with other institutions in the community how to improve responses to victims of domes-

tic violence and their children in such cases. Critical partners in this effort include the child welfare agency, community members, domestic violence advocates, the legal community, batterer intervention providers, law enforcement, and other gatekeepers.

A shared vision and framework are imperative for communities to examine these issues.[36] Most communities lack adequate services. For example, a common dilemma facing child protection workers and judges is the lack of programs and treatment providers knowledgeable about the complex issues of family violence. It is difficult to find programming that is culturally appropriate, focused on offender accountability and victim safety, and available to all family members (child, adult victim, and offender).

Yet, in times of fiscal constraint, there is an opportunity for communities to become more aware of the problem and come together to provide a broader range of services and support. Child protection agencies can direct to the court only those most difficult cases with high risk to and safety concerns for the child. With most states facing deficit budgets, the question being posed in many jurisdictions is, "What if services suffer severe cutbacks?" Communities must be able to come together to address their concerns and the issues facing families in the child welfare system in a way that yields respectful dialogue and solution-seeking responses, with an eye toward better outcomes for battered women and their children.

This type of collaboration has been used in communities seeking to implement the recommendations contained in the *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice (Greenbook).*[37] These communities are working on developing a community response that seeks to keep children affected by maltreatment and domestic violence in the care of their non-offending parents whenever possible, enhance safety and well-being for child and adult victims, and hold batterers accountable.[38] The pillars of the effort are support for the children and their battered parents within the context of the community's responsibility for providing resources for safety and stability and the accountability of the offender.

The common ground for establishment of community collaborations is the conviction that enhancing the battered parent's safety and self-sufficiency enhances children's safety.[39] While the findings of reasonable efforts assume a decision has been made to file a petition on behalf of the child, that decision is made in a context of available differential responses.[40] The initial inquiry by counsel and the court as to what actions the agency took in response to a report should include a determination as to whether, given the case, there is a reasonable alternative pathway to safety and accountability.

The development of a community protocol begins with understanding the roles and responsibilities of decision makers and then examining the community's array of services to determine whether they are available, accessible, appropriate, and culturally competent. The community must also examine its procedure to hold batterers accountable and ways to stop, control, or change their behaviors. These examinations present opportunities for accountability and reform that parallel the court's decision making in each case. In addition, model protocols and practice guidelines can be utilized to help guide the exploration.[41]

The child welfare system also has a role. In addition to the basic expectation of service array set out in *Making Reasonable Efforts,*[42] child protection agencies should be able to address the articulated best practices as devised and disseminated by the community collaboration. The agency should meet with the judges to review what information should be contained in reports to the court, inform the judges of the investigation and assessment policy at intake regarding family violence, periodically review the performance of the court and of the agency in meeting the service expectations, and address the impact of court procedures that may be a barrier to the implementation of best practices.

The integration of domestic violence and child protection services is itself a reasonable effort of the agency met by articulating policy and practice expectations that address and satisfy federal requirements. Models from various jurisdictions are involved in delivery of direct services or providing agency workers with consultation and support. The availability of consultation models helps the line worker focus first on the safety and needs of the children and battered parent and then on the accountability and services designed to change the batterer's behavior. Issues such as safe shelter and housing, financial supports, client-driven service needs, and physical dangers in implementing case planning are given closer scrutiny to enhance the likelihood of preserving

or reunifying the family. The inquiry and dialogue in the court can be developed by use of checklists from the integrated units in order to assure that in each case the court will determine what efforts were made in compliance with the expected social work practices.

Conclusion

Prior to 1990, the tendency of both courts and child protection agencies was to formalize compliance with federal expectations of permanency planning, rather than actualize the vision of planned and reasonable service delivery afforded families in a due process proceeding that balanced family autonomy with the state's interest in child protection. As systems develop curricula for handling cases involving co-occurrence of child maltreatment and domestic violence[43] and adopt policy and practice expectations for victim safety and perpetrator accountability, the agency's burden of providing proof to the court to make findings of reasonable efforts requires the agency to document its actions to implement the policy and practice goals in individual cases. The basic questions to be addressed at each stage of the proceeding can be reflected in reports to the court and established by an affidavit of efforts. A secondary benefit associated with an articulation of service delivery is the legal system's improved understanding of what encompasses good casework.

Judges can use "reasonable efforts" determinations to set court expectations as to appropriate responses by the child welfare system to families experiencing both domestic violence and child abuse or neglect. Courts should also be a primary collaborator with the community to conduct readiness assessments and think through responses that will prevent families from entering systems unnecessarily, and if involved in the systems, provide responses that will minimize the amount of time families spend in the system. Legal and social systems should also remain focused on safety for the child and adult victims and accountability for the perpetrator of the violence. Reasonable efforts determinations can be an effective tool for judges in child maltreatment and domestic violence cases to ensure that children have every opportunity to remain, or be reunited safely, with the non-offending parent.

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END NOTES

1 Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation,* 12 B.U. BUV. INT. L.J. 259, 260 (2003).

2 For the purposes of this article, co-occurrence cases refer to child protection cases where there is domestic violence and child abuse or neglect.

3 *See, e.g.,* JEFFREY L. EDLESON & SUSAN SCHECHTER, NCJFCJ, EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE, (1999); Stephanie Walton, *When Violence Hits Home: Domestic Abuse and Families,* (Report of the National Conference of State Legislatures Children and Families Program) (July 2003); Lois A. Weithorn, *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment,* 53 HASTINGS L.J. 1 (2001).

4 Wis. Dep't of Health & Fam. Services, *Mutual Respect & Common Understanding: The State Role in Promoting Durable Collaborative Relationships* (Jan. 2002)*;* Mass. Dep't of Soc. Services, *Domestic Violence Initiative for Child Protective Services;* Minn. Dep't of Hum. Services, *Guidelines for Responding to the Co-occurrence of Child Maltreatment and Domestic Violence* (2002).

5 Studies estimate that the co-occurrence of domestic violence and child abuse and neglect is occurring in 30% to 60% of homes where there is domestic violence. *See, e.g.,* Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Woman Abuse (1999).*

6 *See,* Jud. Council of Cal. Admin. Off. of the Cts., Center for Fam., Child., & the Cts., *Parenting in the Context of Domestic Violence* (March 2003); BETSY MCALISTER GROVES, CHILDREN WHO WITNESS TOO MUCH: LESSONS FROM THE CHILD WITNESS TO VIOLENCE PROJECT 50, 56-59 (2002).

7 *See,* Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. March 18, 2002) (finding New York City's Administration for Children Services' practice of removing children from battered mothers because the mothers "engaged in" domestic violence unconstitutional).

8 Two such federally funded efforts are the *Greenbook* Initiative and Safe Start Initiative, both of which are demonstration initiatives that examine system and community response to families. These initiatives are funded by the U.S. Department of Justice and U.S. Department of Health and Human Services.

9 *See,* NCJFCJ, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES 14-15, (1995) [hereinafter NCJFCJ, RESOURCE GUIDELINES]; Cecilia Fiermonte, *Reasonable Efforts Under ASFA: The Judge's Role in Determining the Permanency Plan,* 20 ABA CHILD LAW PRACTICE 21 (2001).

10 The Adoption Assistance and Child Welfare Act of 1980, P.L. No. 96-272 (codified as amended in scattered sections of 42 U.S.C.).

11 42 U.S.C. § 670(a)(15).

12 Crossley, *supra* note 1.

13 Youth Law Center, *Making Reasonable Efforts: A Permanent Home for Every Child,* (2000); Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later,* 26 CAL. WEST. L. REV. 223 (1989-1990); Leonard P. Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980,* RESOURCE GUIDELINES, *supra* note 9, at Appendix C.

14 Adoption and Safe Families Act of 1997. P.L. 105-89 (1997) (amended and clarified some provisions of P.L. 96-272). [hereinafter ASFA].

15 45 C.F.R. § 1356.21(b).

16 *See,* Prince v. Massachusetts, 321 U.S. 168 (1944); Stanly v. Illinois, 405 U.S. 645 (1972); and Santosky v. Kramer, 455 U.S. 745 (1982). For a complete historical review of the development of child protection law and legal underpinning, see Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation,* 12 B. U. PUB. INT. L.J. 259 (2003).

17 ASFA, *supra* note 14, §103(a).

18 Rachel Venier, *Parental Rights and the Best Interests of the Child: Implications of the Adoption and Safe Families Act of 1997 on Domestic Violence Victims' Rights,* 8 AM. U.J. GENDER SOC. POL'Y & L. 517 (2000).

19 ASFA, *supra* note 14, § 302.

20 45 C.F.R. § 1356.21(c) and 45 C.F.R. § 1356.21(b) (1).

21 42 U.S.C. § 671(a)(15).

22 The names of hearings differ from jurisdiction to jurisdiction.

23 *See,* Ramona Foley et al., Am. Pub. Hum. Services Ass'n, *Guidelines for Public Child Welfare Agencies Serving Children and Families Experiencing Domestic Violence,* (2001).The *Guidelines* summarize data reported by various child welfare agencies that indicate domestic violence was present in 41% to 55.6% of the families experiencing child abuse and neglect resulting in critical injuries or death.

END NOTES

24 *See* Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay,* 28 COLO. LAW. 19 (1999).

25 Venier, *supra* note 18, at 521-22.

26 Jeffrey L. Edleson, *Should Childhood Exposure to Adult Domestic Violence Be Defined as Child Maltreatment Under the Law?,* JUV. & FAM. JUST. TODAY, NCJFCJ (Spring 2003); Weithorn, s*upra* note 3.

27 Nicholson, s*upra* note 7.

28 Buel, *supra* note 24.

29 Linda S. Spears, *Building Bridges Between Domestic Violence Organizations and Child Protective Services,* 1, (1999).

30 David B. Wexler, *Applying the Law Therapeutically,* APPLIED AND PREVENTATIVE PSYCHOLOGY 5; 179-186 (1996); JAMES PTACEK, BATTERED WOMEN IN THE COURTROOM, THE POWER OF JUDICIAL RESPONSE 1999).

31 For example, in Jefferson County, Ky., when the Unified Family Court was being developed, a series of advisory committee meetings were held, as well as forums for the community to help inform best practices. The strategic planning and drafting of rules for reform of both abuse and neglect and domestic violence proceedings used the work of national domestic violence experts to guide how we could improve our institution and address barriers to safety and accountability.

32 Judges should also engage the legal community in these discussions because attorneys for parents and children are in key positions to raise questions around responses to a family's needs and provide information to the judge to inform the reasonable efforts determination process.

33 The affidavit is presented to the parties before coming into court. In most cases, it was stipulated that the efforts had been made.

34 NCJFCJ, RESOURCE GUIDELINES, *supra* note 9.

35 NCJFCJ, PROTOCOL FOR MAKING REASONABLE EFFORTS TO PRESERVE FAMILIES IN DRUG-RELATED DEPENDENCY CASES, (1992).

36 Adequate resources for the court hearing abuse and neglect cases as well as "sufficient supporting services for families" include mental health services, counseling, education or parenting programs, and domestic violence and substance abuse services. *See,* NCJFCJ, *Technical Assistance Brief, Key Principles for Permanency Planning,* Principle 5, (October 1999).

37 The federal *Greenbook* Initiative funds six demonstration sites: San Francisco County, Calif.; Santa Clara County, Calif.; El Paso County, Colo.; St. Louis County, Mo.; Grafton County, N.H.; and Lane County, Ore. For more information about the initiative, see www.thegreenbook.info.

38 There are 67 recommendations contained in the *Greenbook* targeting domestic violence agencies, the courts, and child welfare agencies in pursuing these goals.

39 Janet E. Findlater & Susan Kelly, *Reframing Child Safety in Michigan: Building Collaboration Among Domestic Violence, Family Preservation and Child Protective Services,* 4 CHILD MALTREATMENT 2, 167-174 (1999).

40 Differential response facilitates making responses that meet the needs of each individual family. It also assumes that systems and services are in place to accommodate those needs.

41 NAPCWA, *Guidelines for a Model System of Protective Services for Abused and Neglected Children and Their Families,* (1999); Am. Humane Ass'n, *Linking a Response: Protocols for a Collaborative Approach to Child Abuse and Domestic Violence,* (1997); ANNE L. GANLEY & SUSAN SCHECHTER, DOMESTIC VIOLENCE: A NATIONAL CURRICULUM FOR CHILD PROTECTIVE SERVICES, (1996); Katherine Conroy & Randy H. Magen, *Training Child Welfare Workers on Domestic Violence: Trainers Manual,* (1997).

42 Youth Law Center, *supra* note 13.

43 Colo. Dep't of Hum. Services, *Crossing the Bridge: A Cross-Training Curriculum for Domestic Violence/Child Protection Workers,* (1995); Spears, *supra* note 29.