

Permanency, Foster Parents and the Law



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With Support of
National Resource Center for Family-Centered Practice and Permanency Planning
Hunter College School of Social Work
A Service of the Children's Bureau/ACF/DHHS

Legal Resource Manual for Foster Parents

Seminar Module One:

Permanency, Foster Parents and the Law

*from Legal Resource Manual for Foster Parents
Permanency, Foster Parents and the Law*

OBJECTIVE:

The objective of this seminar is to provide the participants with information about:

- 1) Federal laws which govern child welfare, particularly the Adoption and Safe Families Act;
- 2) The legal process, enabling foster parents to be active participants in advocating for the children in their care;
- 3) The permanency planning process and the role of foster parents; and
- 4) Collaboration among foster parents, agencies and the courts to effect better outcomes for children and youth in care.

CAUTION TO THE TRAINER:

It is advised that this training be conducted by an attorney versed in child welfare issues. Participants may have legal questions about a personal situation. The answers to those questions may go beyond the scope of the included materials. The trainer is cautioned to not try to answer questions beyond material included here or in the *Legal Resource Manual for Foster Parents* unless she or he has researched the laws and regulations specific to the state or county, which is highly recommended.

LENGTH OF TRAINING:

3 hours

MATERIALS/EQUIPMENT:

- * PowerPoint Presentation or Overheads
- * LCD Projector or Overhead Projector
- * Screen
- * Computer for PowerPoint
- * Flip Chart and markers
- * Handouts (Appendix)
- * Evaluation Tool, if desired
- * *Legal Resource Manual for Foster Parents*

This curriculum, developed by the National Foster Parent Association, is based on the *Legal Resource Manual for Foster Parents*, authored by Cecilia Fiermonte, J.D., American Bar Association Center on Children and the Law and Regina Deihl, J.D., Legal Advocates for Permanent Parenting. The information in the manual and this curriculum is based on laws in effect in September, 2004. Participants should be advised that federal and state laws can change at any time. This information is not a substitute for legal advice or counsel. For questions related to specific cases, participants should contact an attorney in their state with experience in child abuse and neglect cases.

LEARNING OUTCOMES:

Participants will be able to:

- 1) Identify how federal law affects child welfare
- 2) Identify the key federal laws which govern child welfare
- 3) Discuss three key areas of ASFA most directly related to how cases are handled in court.
- 4) Identify the five options to be considered in a permanency plan and the role of the foster parent in each
- 5) Define the federal review process, how it is accomplished and how it affects foster parents

TRAINER PREPARATION:

- ___ 1. Read chapter one of the *Legal Resource Manual for Foster Parents*
- ___ 2. Review overheads or PowerPoint presentation
- ___ 3. Reproduce handouts
- ___ 4. Obtain equipment
- ___ 5. Review the **Reference Notes**. They are intended as material for the presenter to impart to the attendees. Please be sure to incorporate the information to amplify material on the slides. For your convenience in locating them, they appear on a shaded background.
- ___ 6. For your reference, the ASFA timeline is included in the appendix. This will be covered in detail in the second training module, “Dependency Court and Removal of Children” and is also covered in chapter two of the *Legal Resource Manual for Foster Parents*.

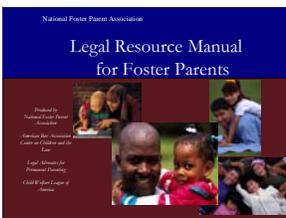


is used to call attention to information you will want to obtain prior to the training.

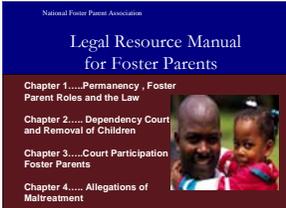
Slide #1



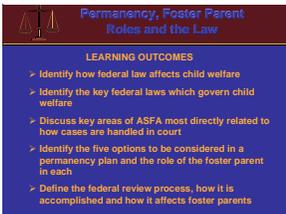
Slide #2



Slide #3



Slide #4



Slide #5



I. Introduction

- A. (Slide #1) Welcome
- B. (Slide #2) Explain that this training is module one of a four-part series of trainings based upon the *Legal Resource Manual for Foster Parents*. Explain that the purpose of the manual, and of the trainings, is to educate foster parents about the legal process, giving them the knowledge and confidence to become active participants in the system.
- C. (Slide #3) Display a copy of the manual and identify the four chapters of which it is composed.
 - 1. Permanency, Foster Parents and the Law
 - 2. Dependency Court and Removal of Children
 - 3. Court Participation By Foster Parents
 - 4. Allegations of Maltreatment
- D. (Slide #4) Learning Outcomes

Tell the participants that you expect that by the end of the session they will...

 - 1. Be more knowledgeable about the federal laws that govern child welfare
 - 2. Be able to identify key provisions of ASFA
 - 3. Have a working knowledge of permanency options
 - 4. Understand the role foster parents play in permanency planning
 - 5. Have a better understanding of the federal review process and how it affects foster parents.
- E. (Slide #5) Personal Background: Tell the group a little about yourself, your job, your training, what experiences you bring to the following discussion.
- F. Read, or paraphrase, paragraphs 1-3 in the **Reference Notes** pg 5.

REFERENCE NOTES

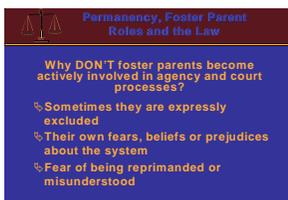
Introduction

1. When a child is removed from their home and placed in foster care, their world is thrown off balance. Even though they are leaving a home where they were neglected or abused, they are often scared, ashamed and nervous about the unknown.
2. Good foster parents help to restore the balance to the child's world. It is foster parents who comfort the child, determine his needs, provide support, and, often love. Foster parents are the players in the system who are often unseen, laboring behind the scenes to make a home for the child. That can mean getting the child enrolled in school, taking him to doctors, making sure he has contact with his family. Countless day-to-day needs get met by foster parents. Foster children often become part of the family, confiding in their foster families and turning to them for support.
3. While our legal system recognizes the rights of biological families, foster parents often have no formal rights granted to them by legislatures or courts. It is often up to the foster parent to take the initiative to learn the system, so they can advocate for themselves and the children in their care.
4. This seminar is intended to educate foster parents about the legal process, giving them the knowledge and confidence to become active participants in the system. Knowing how to collaborate with the agency and court benefits both foster parents and foster children.
5. There are many reasons that foster parents should actively participate in agency and court processes. They are often in the best position to give an account of the child's well being. Foster parents see the child every day and have an understanding of the child's developmental level, needs, routines, likes, dislikes, etc. That level of knowledge cannot be achieved by courts or agencies, who have limited contact with the child.
6. By becoming more regularly involved, foster parents can learn about the system, and gain a better understanding of how and when to speak up or take action when needed. If others in the system become used to hearing from foster parents on a regular basis, they will be more comfortable with foster parents participating in the courtroom or at case planning meetings. The court and agency will benefit from the information offered by foster parents and be better able to make sound decisions based on more complete information. Foster parents who are involved and understand the system can be strong advocates for the children in their care, because it is the foster parents who often have the greatest awareness of the child's needs.

Slide #6



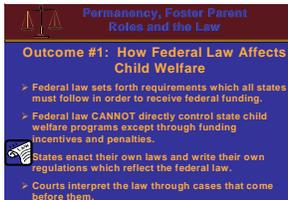
Slide #7



Slide #8



Slide #9



G. Ask, “Why should foster parents become actively involved in agency and court processes?” Brainstorm a few ideas. (Slide #6) Use slide to expand upon these ideas.

H. Ask, “If foster parents should be actively involved in agency and court processes, why is this not happening on a wide spread basis?” Brainstorm a few ideas. (Slide #7) Use slide to expand upon these ideas.

- I. (Slide #8) Tell the participants that this training will be narrowly focused on the following:
- Federal laws pertaining to permanency
 - Active role foster parents can, and should, play in the permanency process
 - Basics of the Adoption and Safe Families Act (ASFA)

**II. Outcome Number One:
How federal law affects child welfare**

A. Ask the group how federal legislation impacts/directs child welfare programs.

- Elicit responses and record on flip chart
- Summarize responses adding, if necessary, the following points (Slide #9):
 - Federal law sets forth requirements which all states must follow in order to receive federal funding.
 - Federal law cannot directly control state child welfare programs except through funding incentives and penalties.

B. Federal government sometimes seems far removed but federal legislation provides the basis for state legislation

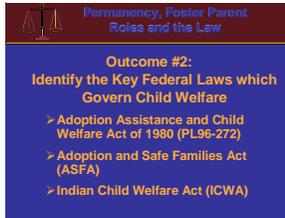
Transition Statement:

We know how federal law impacts child welfare. There are several laws that directly affect us.

REFERENCE NOTES

7. There are many reasons foster parents do not participate in the process. Sometimes they are expressly excluded. But often they do not participate because of their own fears and beliefs, or the beliefs and prejudices of others in the system. Foster parents often fear that if they speak up in court they will be reprimanded, misunderstood, or anger the judge and/or agency, either of whom may retaliate by removing the child. Learning about the adversarial process can help minimize some of those fears. In later chapters, we will discuss some techniques for presenting oneself effectively in the courtroom.
8. Improving foster parent presence in the courtroom will make the professionals involved more willing to hear the foster parent's point of view. Others in the system, such as caseworkers, lawyers, or judges, may be wary of hearing from foster parents. They may think foster parents are biased against the biological parents and cannot present an objective viewpoint or they may fear including foster parents would be too time consuming. Judicial resources are often strained. Many courts deal with high caseloads and lack time to devote to each case. Judges may believe that inviting other players in, especially foster parents, who are not as familiar with the system, may be a needless or ineffective use of time.
9. While it is true that others within the system must become more educated and aware of the important role of foster parents, there is a lot foster parents can do to improve their image. Foster parents can learn the system, advocate effectively and present themselves as a valuable part of a team that is working for the best interests of the child.

Slide #10

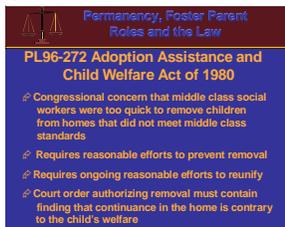


Permanency, Foster Parent Roles and the Law

Outcome #2:
Identify the Key Federal Laws which Govern Child Welfare

- Adoption Assistance and Child Welfare Act of 1980 (PL96-272)
- Adoption and Safe Families Act (ASFA)
- Indian Child Welfare Act (ICWA)

Slide #11



Permanency, Foster Parent Roles and the Law

PL96-272 Adoption Assistance and Child Welfare Act of 1980

- ⚡ Congressional concern that middle class social workers were too quick to remove children from homes that did not meet middle class standards
- ⚡ Requires reasonable efforts to prevent removal
- ⚡ Requires ongoing reasonable efforts to reunify
- ⚡ Court order authorizing removal must contain finding that continuance in the home is contrary to the child's welfare

III. Outcome Number Two: Identify the Key Federal Laws Which Govern Child Welfare

A. (Slide #10) There are three major federal laws which affect children in care, the Adoption Assistance and Child Welfare Act of 1980 (PL96-272), the Adoption and Safe Families Act (ASFA) and the Indian Child Welfare Act (ICWA)

1. (Slide #11) The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272)

- a. Display the first line of the slide and ask the group if they know the requirements of this act.
- b. Display the rest of the slide to summarize the key elements of the law one by one.
- c. Define “reasonable efforts.” (See Reference Notes pg. 9)

Impress upon the participants the following:

The above requirements reflect one of the main goals in child welfare: balancing the rights of parents to raise their children free from state intervention with the rights of children to grow up in a safe, stable environment. While it is sometimes difficult to understand why parents who have abused or neglected their children have rights, it is well-established law that parents have a fundamental constitutional right to raise their children, and that the state may only intervene in exceptional circumstances, such as when a child has been abused or neglected. Parents cannot be deprived of this fundamental right without due process of law, which basically includes the right to defend themselves and the right to legal representation. Protecting family rights benefits parents and children by keeping families together, as long as children are safe.

REFERENCE NOTES

Adoption Assistance and Child Welfare Act of 1980 (PL96-272)

PL 96-272 requires courts to make findings that the agency has made reasonable efforts to prevent a child from being removed from the home, and that remaining in the home is contrary to the child's welfare.

The findings that the agency made reasonable efforts to prevent removal must be made within 60 days of the child being removed from the home. Reasonable efforts fall into three categories: Reasonable efforts to reunify the family, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan. Reasonable efforts might include providing substance abuse and anger management counseling, removal of the perpetrator from the home and mental health assistance.

The law also requires the agency to make ongoing reasonable efforts to reunify children with their parents.

The very first court order that authorizes the child's removal from the home must contain a finding that it is contrary to the welfare of the child to remain in the home. The law also addressed concerns that children were lingering in foster care by providing for initial 6-month and 18-month case reviews and subsequent reviews every 12 months.

Congress enacted these laws out of a concern that middle class social workers might be quick to remove children from homes that did not conform to average middle class standards, and that they were too quick to give up on parents before offering them services and supports that could help them remedy the causes of abuse and/or neglect.

The reasonable efforts requirements are intended to make removal a last resort and to encourage social workers to work to reunify families. The reason for placing children in foster care is to keep them safe, not to give them greater advantages they may receive in a foster home. When risk of harm is eliminated, children should remain with their parents.

Slide #12

Permanency, Foster Parent Roles and the Law

Adoption and Safe Families Act (ASFA)

- Enacted in 1997
- A reaction to stories of children languishing in the foster care system without permanency in their lives
- States enacted their own statutes to conform to ASFA

2. (Slide #12) The Adoption and Safe Families Act (ASFA) was enacted in 1997.
 - a. Congressional reaction to stories of children in the system without permanency
 - b. Concern about children being returned to unsafe homes
 - c. State statutes amended to conform to federal requirements
 - d. State statutes can be more restrictive than federal law, but not less
 - e. Procedures to accomplish ASFA goals vary from state to state
 3. Indian Child Welfare Act (ICWA)
- B. Tell the participants that ASFA and ICWA will be covered in greater detail later in the seminar.

Transition Statement:

It is clear that the Adoption Assistance and Child Welfare Act of 1980 and ASFA impact foster care. ASFA is very comprehensive and recognizes the valuable role foster parents play. Let's take a good look at some of its components.

**IV. Outcome Number Three:
Identify Three Key Areas of ASFA
Directly Related to How Cases are
Handled in Court**

- A. The requirements of ASFA are incorporated into both the law and regulations of the U.S. Department of Health and Human Services. Regulations interpret and give guidance on implementation.
- B. (Slide #13) Say, "ASFA has three major components."
 1. **No** Reasonable Efforts (to reunify, in some cases)
 2. Mandatory Filing
 3. Permanency Hearing

Slide #13

Permanency, Foster Parent Roles and the Law

**Outcome #3:
Identify Three Key Areas of ASFA
Directly Related to How Cases are
Handled in Court**

1. No reasonable efforts to reunify, in some cases
2. Mandatory filing of TPR
3. Permanency hearings

REFERENCE NOTES

ASFA Enactment

Congress was reacting to stories about children languishing in foster care without permanent plans for their future. They were also concerned about children being returned to their parents' homes when those homes were unsafe.

Once ASFA was enacted, states had to amend their own statutes to conform to the federal requirements. Not all state statutes use the exact language contained in the federal law. As long as the state law accomplishes the federal goal, it meets the federal requirement. Therefore, if you try to locate "ASFA" in state laws, you will not find a section with that title. Each federal requirement is woven into existing state law.

States are also free to enact statutes that are more restrictive than federal laws. For example, in some states permanency hearings are held more frequently than every 12 months as required by ASFA.

Procedures to accomplish ASFA goals also vary among the states. For example, in some states, the agency may have to bring a motion to obtain certain types of relief, while in others, a formal motion may be unnecessary.

Another example of how procedures differ is that in some states the court must make certain findings, even where those judicial findings are not required by federal law.

Slide #14

Permanency, Foster Parent Roles and the Law

Activity: ASFA

- Form three small groups.
- Select a recorder.
- Read through the information on the handout given to you.
- As a group, select the major points about your topic to share with the other groups.
- Record your key points on chart paper to present.

Handouts: No reasonable efforts
Mandatory filing
Permanency hearing

Slides #15-26

Permanency, Foster Parent Roles and the Law

NO Reasonable Efforts

Agencies may be relieved, by a court order, of the duty to make reunification efforts under three circumstances, or grounds:

Permanency, Foster Parent Roles and the Law

NO Reasonable Efforts

3. When the parent's rights to another child have been previously terminated

- Does not apply to voluntary relinquishment of rights
- If the foster parent learns that another child of a parent has been freed for adoption through Termination of Parental Rights (TPR) the foster parent should communicate that to the agency.

Permanency, Foster Parent Roles and the Law

NO Reasonable Efforts

- When aggravated circumstances are present
 - Not defined, specifically, in ASFA. Definition is left up to each individual state
- When certain crimes have been committed
 - Conviction must be in a criminal court.

Permanency, Foster Parent Roles and the Law

NO Reasonable Efforts

Agency MAY seek to reunify, despite the above exceptions to reasonable efforts. The law does not mandate that NO reasonable efforts be made, if many identifies circumstances in which it is not necessary to do so.

The court makes the final decision about whether reasonable efforts to reunify need to be made...or not.

Permanency, Foster Parent Roles and the Law

Mandatory Filing of Termination of Parental Rights Petition (TPR)

The agency is required to file a petition to terminate parent rights when a child has been in foster care for 18 out of the most recent 22 months unless one of three exceptions apply. It is the choice of the agency whether to apply one of the exceptions.

*Some states require a TPR filing before 15 months. Filing day may occur before 15 months, if state law allows.

Permanency, Foster Parent Roles and the Law

Exceptions to Mandatory Filing of TPR

- The child is placed with a relative

The agency is not required to free a child for adoption when placed with a relative, but they may, if adoption is the best plan for the child.

Permanency, Foster Parent Roles and the Law

Exceptions to Mandatory Filing of TPR

- The agency cannot provide the services it has deemed necessary to reunify the child

This exception is applicable only when the agency, and not another party, has found it cannot provide the service it has deemed necessary for reunification to take place.

Permanency, Foster Parent Roles and the Law

Exceptions to Mandatory Filing of TPR

- There are compelling reasons
 - "Compelling reasons" are not defined by ASFA, but must be case and child specific
 - May be subject to judicial review in some states
 - If no judicial review is required, the agency makes the final decision

Permanency, Foster Parent Roles and the Law

Mandatory Filing of Termination of Parental Rights Petition (TPR)

- There are deadlines for filing, but not for the court hearing

Foster parent role:

Provide reminders to the agency and the court of the importance of moving the case along because of the attachments being formed by the child, the problem of changing placements, etc. The child's attorney may be able to speed up a case on appeal by filing motions to oppose extensions or seeking other means to expedite it.

Permanency, Foster Parent Roles and the Law

Permanency Hearing

- New type of hearing required by ASFA
- Must be held within 12 months of child's entry into foster care and every 12 months thereafter, though some states may require more frequent reviews

Permanency, Foster Parent Roles and the Law

Permanency Hearings are NOT

- Paper reviews
- Out of court proceedings
- Mere stipulations

The intent is to provide a meaningful review by the court, with all parties present. ASFA does not require that formal testimony be taken.

The process varies from state to state and even within jurisdictions.

Permanency, Foster Parent Roles and the Law

Purpose of the Hearing: To Choose the Permanency Plan

Foster Parent Role:

No funding is allotted to the court by ASFA, so time is frequently short. Information that the foster parent will want to share with the court to help inform its opinion should be both pertinent and concise. Future training modules provide specifics on sharing information with the court.

C. (Slide # 14) Activity #1: ASFA Components

Say, "We're going to need an understanding of these components because they are very important to what we do. The best way to do this is to teach to learn, so we are going to divide into groups."

- Divide the large group into three small groups and assign each group to one of the above components of ASFA.
- Give each member of the group a copy of the information on their topic. (Appendix)
- Give each group a large piece of paper and markers and ask them to choose a recorder
- Give the groups about 15 minutes to go through the information and record on chart paper the most important facts to present to the group.
- Post the pieces of paper on the wall and ask the recorder to present the committee findings to the whole group.
- Be sure that the reporting covers the most important points **bolded** in the Reference Notes pages 13-15
- (Slides #15-26) After the committee reports, use the slides to summarize what they have learned, discussing thoroughly so participants know what each major component of ASFA means.

Transition Statement:

The permanency planning requirements of ASFA more directly impact foster parents than no reasonable efforts and mandatory filing deadlines. It is important for foster parents to understand the options and know how they can participate in the process of moving children in their care to permanency. That is what we are going to do now.

REFERENCE NOTES

ASFA Basics

No Reasonable Efforts

1. ASFA restricts somewhat the requirement that agencies must always work to reunify families (as required by PL 96-272). Under ASFA, the agency may seek a court order relieving them of the duty to make reunification efforts in some cases. The three circumstances, or grounds, under which the agency may choose to seek such an order include:
 - a. **When aggravated circumstances are present**

The federal law does not define “aggravated circumstances,” though the federal law suggests a definition of abandonment, torture, chronic abuse and sexual abuse. Various states have defined it in different ways. For example, some states include repeated failure to remedy substance abuse as an aggravated circumstance. Be aware that even though states may use the same term, e.g., “aggravated circumstances,” those terms are defined in state statute and case law, so states will vary in the interpretation of those terms.
 - b. **When certain crimes have been committed**

The conviction must be made in criminal court; a finding by the family or other court will not apply. When a criminal action is being appealed, the court must weigh the appropriateness of making reasonable efforts in light of the child’s developmental needs.
 - c. **When the parent’s rights to another child have been previously terminated**

This ground does not apply if the parent voluntarily gave up parental rights to a child. It is not necessary that the rights have been terminated in the same jurisdiction where the ongoing proceedings are taking place. Often, the agency will not know if the parent has had other children. If, through discussion with the child or family, the foster parent learns that another child of the parent has been freed for adoption through Termination of Parental Rights (TPR), the foster parent should communicate that to the agency.
2. It is important to understand that even where the above exceptions to the reasonable efforts requirement applies, the agency may still seek to reunify the family. For example, where rights to a previous child were terminated many years ago, the agency may decide that circumstances have changed enough to allow the parent, with services and support, to be able to parent the child. This could happen where the agency decides the parent has attained greater maturity, has remedied a substance abuse problem, or in other ways has demonstrated a better ability to parent.
3. When an agency applies to the court for an order absolving them of the duty to make reasonable efforts to reunify, they may only stop reunification efforts when ordered by a court. If the court disagrees with the agency, the agency must continue to make reasonable efforts, even if one of the exceptions specified in ASFA applies.

REFERENCE NOTES

Mandatory filing of Termination of Parental Rights Petition

- 1. ASFA also restricts the amount of time a child stays in foster care without being freed for adoption through a termination of parental rights (TPR) proceeding. *The agency is required to file a petition to terminate parental rights when a child has been in foster care for 15 out of the most recent 22 months unless one of the following exceptions apply:***

- a. The child is placed with a relative.**

The federal government has not defined who is a relative: State law and/or policy determine whether a relative placement is an exception to the TPR requirement. Though the agency is not required to free the child for adoption when placed with a relative, they may certainly choose to go ahead and terminate parental rights, where adoption is the best plan for the child.

- b. The agency cannot provide the services it (the agency) has deemed necessary to reunify the child with the birth family.**

This does not mean that the exception applies when the court or another party in the case argues that the agency has not done everything they can to reunify the family. Rather, it is for use by the agency in the event the agency cannot provide the service *the agency (and not another party)* has deemed necessary. For example, if a parent were on a waiting list to receive services and had not received all the necessary services at the 15-month mark, the agency might choose to document this exception in the case record.

- c. There are compelling reasons.**

This third exception is the hardest to apply. The federal law does not define “compelling reasons.” The ASFA regulations specify only that the compelling reasons must be case and child specific. The agency might decide that breaking the bond between the child and parent would be harmful to the child. If the agency documentation shows very specific facts, for example that a therapist has made this termination, then that would qualify as a compelling reason.

In some states, the compelling reasons are subject to judicial review, so that the judge would make the final determination of whether the child should be freed for adoption. Otherwise, the agency makes the final decision. Even though one of the exceptions exists, the agency could still choose to free the child for adoption. The exceptions contained in the federal law are options which the agency *may choose* to apply.

Also, the agency is always free to TPR before the child has been in foster care 15 months, if state law allows it. In some states, the agency is required to file a TPR petition sooner than 15 months.

- 2. While the deadlines center around the filing of a petition, there are generally no requirements that the petition be heard within a particular amount of time.**

- a. While there is a growing recognition that child welfare cases should be handled quickly, some courts still don't have the resources to make that happen.**

REFERENCE NOTES

- b. When cases are delayed in court, the foster parent can play a role in moving the case along by reminding the agency and court that the child is continuing to grow and form attachments while the court case is languishing. For example, letting the parties know how adoption might affect change of schools, may motivate the players to move the case more quickly. (How to bring up issues in court is discussed in subsequent modules.)
 - c. The TPR proceeding can also get held up during the appeal process. In some states appeals can take a long time, while other states have worked to improve their systems to be more reflective of ASFA timelines. If a case is held up on appeal, the court still has to conduct regular reviews in compliance with ASFA timelines.
- 3. The foster parent should take the opportunity to remind the court, the agency, and the attorneys in the case that the child is continuing to develop and form relationships while the case lingers.**

While there is little a foster parent can do about a case on appeal, there may be methods the attorneys can use to speed the appeal. Some of those methods might include filing motions to oppose extensions, or asking that the case otherwise be expedited.

Permanency Hearing

- 1. New type of hearing required by ASFA.**
 - a. Must be held within 12 months of the child's entry into foster care.
 - b. Some states may require court reviews more frequently than every 12 months.
 - c. Thereafter, a permanency hearing must be held every 12 months.
- 2. ASFA does not clearly define permanency hearings, but it does define what they are not:**
 - a. Not paper reviews
 - b. Not out of court proceedings
 - c. Not mere stipulations

The intent is that there be a meaningful review by the court, with all the parties present. But the procedure can vary widely from state to state, or even locality to locality. For example, ASFA does not require that formal testimony be taken, i.e., having witnesses take the stand and swear to an oath, though some courts may require it.

3. Purpose of the hearing

- a. To decide the permanency plan for the child.

Though it is technically not required at the permanency hearing, the court usually makes the finding of whether the agency is making reasonable efforts to finalize the permanency plan for the child.

- b. No extra funding provided by ASFA

Though ASFA added the new requirement to conduct permanency hearings, it did not allot any extra funding to courts or agencies. Some courts have had to strain to find the resources to conduct these additional hearings. There may be some temptation to cut them short and not give them full attention. If the foster parent has information necessary to the court, it may be up to the foster parent to bring it to the court's attention. (Training modules two and three give specific details on sharing information with the court.)

Slide #27



Permanency, Foster Parent Roles and the Law

Outcome #4:
Identify the Five Options to be Considered in a Permanency Plan

1. Reunification
2. Adoption
3. Guardianship
4. Placement with a Fit and Willing Relative
5. Another Planned Permanent Living Arrangement (APPLA)

V. Outcome Number Four:

Identify the five options to be considered in a permanency plan

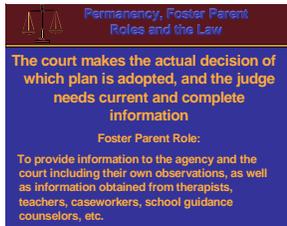
- A. (Slide #27) Tell the group that there are five acceptable permanency plans under ASFA
- B. Though terms may vary among the states, the categories are fixed, and listed in the order of most to least permanent:
1. Reunification
 2. Adoption
 3. Guardianship
 4. Placement with a Fit and Willing Relative
 5. APPLA
(Another Planned Permanent Living Arrangement)

- C. (Slide #28) Explain that the court makes the decision, based on input from case manager
1. Judge needs current and complete information.
 2. Explain that foster parents play a role in the decision by providing information from:
 - a. Their own observations
 - b. Information obtained from therapists, teachers, case managers, etc.

Note that foster parents should not attempt to provide the court with specific reports from others, but, rather give the judge enough information to allow her to decide whether to seek further facts from the agency or others in contact with the child.

- D. (Slide #29) Concurrent Planning
1. Exploring two or more permanency plans at the same time
 2. Not mandated by ASFA, but is allowed and is becoming accepted as a best practice because it can move a child more quickly to permanency

Slide #28



Permanency, Foster Parent Roles and the Law

The court makes the actual decision of which plan is adopted, and the judge needs current and complete information

Foster Parent Role:
To provide information to the agency and the court including their own observations, as well as information obtained from therapists, teachers, caseworkers, school guidance counselors, etc.

Slide #29



Permanency, Foster Parent Roles and the Law

Concurrent Planning
(Exploring more than one permanency plan at a time)

- Becoming accepted as a best practice
- Moves child more quickly to permanency
- Judge need approve only one plan
- Agency should make intentions known concerning other plans to the parties, including the child.

REFERENCE NOTES

Determining the Permanency Plan

The decisions should be made on an individual, case-by-case basis based on the child's specific needs and desires. It cannot be emphasized enough that each situation is different and there are no formulas for determining what is best for a child. That is why it is important to take a thorough look at the child's situation, in light of the most accurate, current information available.

Concurrent Planning

Concurrent planning is becoming accepted as a best practice because it can move a child more quickly to permanency. For example, if the agency has had concurrent plans of return to parent and placement with relative and at the permanency hearing it becomes clear that the parent cannot care for the child, the agency does not have to start from scratch to come up with a new plan. The child can be placed with the relative as soon as practicable. At the permanency hearing the judge need only approve *one* plan for the child, though the agency should make its intentions as to all plans known to the parties, including the child.

Permanency Plan Options

1. Reunification

- a. ASFA favors reunification above other plans.
- b. Most preferred permanency option is to reunify the child and parent, when appropriate.
 - Unless a previous determination had been made that reunification efforts should cease, the judge should rule out reunification before considering another plan.
 - The regulations state the judge can consider reunification so long as the parent is working diligently on the plan, and a time limit can be placed on the reunification period that is consistent with the child's developmental needs. The judge need not order the child home on that day, but can consider extending the reunification period for a defined period of time.
 - The foster parent is often in the best position to offer information on how an extended period of reunification will affect the child.

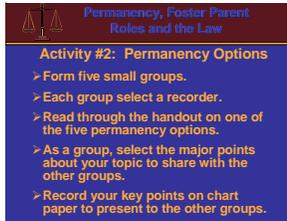
Helpful information includes:

- Degree of bonding with the parent
- Whether the child has formed attachments with the foster family or other care givers.
- The judge cannot determine these things from looking at a legal file, unless the case plan includes such information and was sent to the court. In some states, the case plan must go to the court, in others it may be sent as a matter of custom.

MATERIALS/NOTES

OUTLINE/INSTRUCTOR ACTIVITY

Slide #30



Permanency, Foster Parent Roles and the Law

Activity #2: Permanency Options

- Form five small groups.
- Each group select a recorder.
- Read through the handout on one of the five permanency options.
- As a group, select the major points about your topic to share with the other groups.
- Record your key points on chart paper to present to the other groups.

Handouts for activity two:

Reunification
Adoption
Guardianship
Placement with a
Fit and Willing
Relative
APPLA

Slide #31

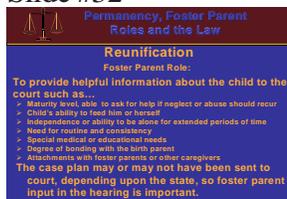


Permanency, Foster Parent Roles and the Law

Summary: Reunification

- Plan most favored by ASFA
- Judge should rule reunification out before considering another plan
- Extending the reunification period beyond 12 months can be considered if the parent is working diligently on the plan
- Safety is the most important consideration

Slide #32



Permanency, Foster Parent Roles and the Law

Reunification

Foster Parent Role:

To provide helpful information about the child to the court such as...

- Maturity level, able to ask for help if neglect or abuse should recur
- Child's ability to feed him or herself
- Independence or ability to be alone for extended periods of time
- Need for routine and consistency
- Special medical or educational needs
- Degree of bonding with the birth parent
- Attachments with foster parents or other caregivers

The case plan may or may not have been sent to court, depending upon the state, so foster parent input in the hearing is important.

3. As part of concurrent planning, foster parents interested in adoption should make their interest known to the agency
4. Responsibility of foster parents to support agency in permanency planning, including reunification
5. Later modules will explore in greater detail how foster parents can make their interest in adoption known in a non-threatening manner.

E. Activity #2 : Permanency Options (Slide #30)

1. Divide the participants into five small groups.
2. Assign each group to one of the above permanency plan options.
3. Give each member of the group a copy of the information on their topic. (Appendix)
4. Give each group a large piece of paper and markers.
5. Ask each group to choose a recorder.
6. Give the groups about 15 minutes to go through the handout, selecting the most important information to present to the group.
7. Post the pieces of paper on the wall and ask the recorder to present committee findings to the whole group.
8. Be sure that the reporting covers the most important points in the **Reference Notes pgs. 17, 19, 21- 23, 25** and on the slides.
9. **(Slides #31-42) After the committees have reported, use the slides** (slide thumbnails continued on page 20) **to summarize** what they have learned.
10. Ask if there are any other issues they think a judge might want to hear about.

REFERENCE NOTES

- Foster parents can be most helpful by giving the judge a “snapshot” of the child.
 - Is the child mature enough to ask for help if neglect or abuse should recur?
 - Can the child feed himself?
 - Be alone for extended periods of time?
 - Does the child have a need for routine?
 - Does he have any special medical or educational needs?
 - It is possible for the parent to have completed a treatment plan but not be able to care for a child’s special needs. The foster parent can ensure that the child’s unique developmental needs are considered, as required by the regulations.
- Safety is the most important consideration in whether to return a child to the parent. There may be disagreement on the standard—should it be that the parent has completed the service plan, that the child would be safe, that the cause of the initial abuse or neglect has been remedied? Ideally, all of these things should be considered.

2. Adoption

- a. Adoption is the second preferred option and can only proceed only after both parents’ rights have been terminated.
- b. Should be considered and implemented or ruled out in every case unless reunification is certain.
- c. Can give a sense of belonging and acceptance that less permanent plans cannot.
- d. Legal Risk

The agency should not wait until there is an adoptive family waiting in the wings before freeing the child for adoption. If children are not freed for adoption, they are often classified as “legal risk,” meaning that there is a chance the agency may not prevail at the TPR stage. Some adoptive parents may not want to consider children in the “legal risk” category.
- e. ASFA requires the agency to move swiftly after a TPR petition is filed to identify, recruit and retain an adoptive resource for the child.
- f. The court should make a full inquiry into whether there are any adoptive resources for the child.
- g. When the foster parent wishes to adopt, those intentions should be made known to the agency and the court.

Slide #33

Permanency, Foster Parent Roles and the Law

Adoption

- > Second preferred option
- > Considered unless reunification is certain
- > Identification of a perspective adoptive family should be done prior to TPR to avoid the "legal risk" category

Foster Parent Role:

- > Work with the agency on reunification
- > Make intentions known about willingness to provide a permanent home

Slide #34

Permanency, Foster Parent Roles and the Law

Open Adoption

- > Allows for some contact between the child and the birth parents.
- > Not allowed by all states
- > Open adoption agreements can be hard to enforce
- > Foster parents may want to consult with an attorney before entering into such an agreement

Slide #35

Permanency, Foster Parent Roles and the Law

Adoption Subsidy

- > Foster parents are advised to explore this with an attorney due to the complexity of subsidy rules.
- > Adoption subsidies CAN be negotiated. They include such things as counseling, special services and one-time court and legal fees.

Slide #36

Permanency, Foster Parent Roles and the Law

Guardianship

- > Desirable when there is someone to care for the child, but adoption has been ruled out
- > Definition: "A judicially created relationship between child and guardian which is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of certain parental rights with regard to the child."
- > Child cannot be returned to the child's birth parents without court consent.

Slide #37

Permanency, Foster Parent Roles and the Law

Guardianship:

Grants Parental Rights & Responsibilities

- > Protection
- > Education
- > Care and control of the person
- > Custody of the person
- > Decision making

Slide #38

Permanency, Foster Parent Roles and the Law

Guardianship Disadvantages

- > More easily undone than adoption
- > Lack of financial help for guardian family
 - ✓ Agencies may have funds to continue services
 - ✓ Court may order agencies to provide services

Foster Parent Role:

Inform the agency and the court if you feel certain services need to be continued for a child going into guardianship

Slide #39

Permanency, Foster Parent Roles and the Law

Placement with a Fit and Willing Relative

- > May decrease child's anxiety
- > Decisions should not be based upon assumptions, either positive or negative
- > Motivations of relatives need to be known...to avoid a TPR, family pressure, attachment...
- > Court needs to clearly understand the child's bonds and attachments in the current placement

Slide #40

Permanency, Foster Parent Roles and the Law

Another Planned Permanent Living Arrangement (APPLA)

- > Least preferred living arrangement
- > Long term foster care not an option under ASFA
- > May be chosen only if agency has documented compelling reasons based on child's unique situation
- > Cannot be used as a "catch-all." Must be a deliberate, thoughtful plan to meet a child's unique needs and situation

Slide #41

Permanency, Foster Parent Roles and the Law

APPLA

Examples:

- > Older teen who requests emancipation
- > Child with significant bond to parents who are unable to care for him and whose foster parents have committed to raising the child to majority and facilitating communication with the birth parents
- > A Native American tribe has identified an APPLA

Examples give guidance only. APPLA is not to be applied to broad groups of children, only on a case by case basis.

Slide #42

Permanency, Foster Parent Roles and the Law

APPLA

- > Should include services and supports
- > Connections need to be sought with supportive adults in the community

Foster Parent Role:

- > Must commit to raising the child until adulthood
- > Notify the agency and court of any long-term needs required for extra support or services

REFERENCE NOTES

h. Open adoption

- Where a therapist has determined that the child should maintain a bond with the biological family, an open adoption may be considered. Most states recognize open adoption.
- Agreement is entered into at the time of adoption allowing some contact between the child and the biological parent. May be as minimal as greeting cards, or as comprehensive as regular visits.
- Generally hard to enforce. A foster parent considering entering into an open adoption should consult an attorney to clarify the obligations and any repercussions if the conditions are not met.

i. Adoption subsidy

- Another issue foster parents may wish to explore with an attorney, if denied by the agency, is whether they are eligible for an adoption subsidy. The rules are somewhat complex and help may be needed in deciphering them. It is also not well known that adoption subsidies can be negotiated and, depending on the state, include things such as counseling, special services and one-time court and legal fees.

j. Given the high degree of permanence and belonging adoption confers on a child, the inquiry into adoption as the plan should be as thorough as possible. Dismissing it without thorough consideration could result in the child being denied a stable, permanent family.

3. Guardianship

a. When there is someone in the child's life who wishes to care for the child, but adoption has been ruled out, after careful consideration, guardianship may be the best plan.

b. The federal **definition** of guardianship is "a judicially created relationship between child and guardian which is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of certain parental rights with respect to the child."

➤ Parental rights include:

- 1) Protection;
- 2) Education;
- 3) Care and control of the person;
- 4) Custody of the person; and
- 5) Decision making.

➤ Defining guardianship is complicated by the fact that a legal arrangement may meet the federal definition above, and thus be a valid permanency plan, but states may not refer to it as "guardianship." They may use another term such as "custody." To further

REFERENCE NOTES

complicate things, some states may have a statute that refers to “guardianship” but it is not permanent enough to meet the federal standard.

- c. In sum, the placement arrangement must not be one that is not so easily undone that the guardian can return physical custody of the child to the biological parent without the court’s consent. To do so could put the child in harm’s way, if the parent has not rectified the conditions that led to the original abuse/neglect.
- d. Disadvantages
 - More easily undone than an adoption.
 - Lack of financial help for families doing a guardianship.
 - Some states have experimented with providing guardianship subsidies. At this time, the main source of assistance for families is TANF, which is subject to income tests and work requirements. A “child only” TANF grant is not based on the family’s income, nor does it carry federal work requirements, but it is generally substantially lower than an adoption or guardianship subsidy.
 - Agencies may have funds to continue to provide services to a child placed under a guardianship. If foster parents believe the child should continue to receive services, they should inform the agency and then speak up in court.
 - The court has the authority to order the agency to provide services, as long as there is a means for the agency to provide the services requested. The agency and court may overlook services for the child, since they are not as aware of the everyday needs as the foster parent.

4. **Placement with a Fit and Willing Relative**

- a. Decrease the child’s anxiety and provide some continuity and stability.
- b. Decisions should not be made based on generalities and assumptions about families. **Negative assumptions** are made: For example, that the relative must be as unfit as the biological parent because they come from the same dysfunctional family dynamics. Courts should not rely on assumptions when making assessments about relative placements, but should make child-specific determinations. **Positive assumptions:** Just because there is a biological bond, an assumption should not be made that there is an emotional bond between the relative and the child.
- c. Courts should be careful to look closely at the proposed relative placement to decide whether it truly is best for the child.
- d. If the child is placed with a relative from the beginning of the case, it is easier to decide at the permanency hearing what the appropriate plan should be. The questions at that point

REFERENCE NOTES

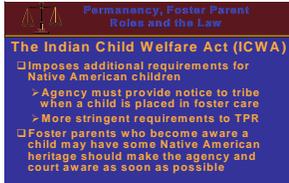
will most likely revolve around how to make the relative placement as permanent as possible.

- e. Relatives sometimes do not wish to adopt because they do not want to see a TPR occur. When a relative does not wish to adopt, the court should determine the reasons. Sometimes, the relative may not be aware of adoption subsidies, or may not be aware of available post-adoption services. If no one asks what the barriers to adoption are, the child may needlessly remain in a less permanent situation.
- f. It becomes more difficult to make a decision about relative placements when the child has been in a non-relative foster home and a relative expresses an interest in being a resource for the child.
- g. Court should have a clear understanding of the child's bonds and attachments. A child may not only have a strong bond to the foster family, but to the community where he lives, which includes things like his school, friends and extracurricular activities. Ideally, the court will want to consider the effects of breaking those bonds in order to place the child with a relative. The foster parent is in a uniquely situated position to offer that information to the court.
- h. Relatives sometimes offer to take children because of family pressure. Those working with the child should make an effort to uncover the relative's commitment level. A child should not be moved from a stable home unless the proposed placement is both stable and secure.

5. Another Planned Living Arrangement (APPLA)

- a. Under ASFA, long-term foster care is no longer a permanent option. However, when the more permanent options of reunification, adoption, guardianship or relative placement have been ruled out, another planned permanent living arrangement (called APPLA) may be an option for the child. An APPLA may be chosen only if the agency has documented compelling reasons based on the child's unique situation. As discussed in the above section on TPR exceptions, compelling reasons must be child and case specific. The requirement to document compelling reasons applies to both TPR exceptions and the choice of APPLA. They are distinct requirements, i.e., compelling reasons not to file TPR must be documented separately from the compelling reasons to choose APPLA.
- b. Federal regulations do not define APPLA, but offer some guidance on what constitutes an APPLA.

Slide #43

**VI. Indian Child Welfare Act (ICWA)****A. (Slide #43) Purpose of ICWA**

Tell the participants that ICWA was enacted to address concerns that Indian children were being taken off reservations and adopted without tribes being given adequate opportunity to plan for the children. Note that only the basic provisions as they relate to this subject are addressed.

B. Basic requirements of ICWA

1. Agency must give notice to the tribe when a child is placed in foster care.
2. Failure to provide notice may result in delays or disruption in a case.
3. More stringent requirements to TPR than state laws. The agency has a higher burden in a TPR involving Native American children.
4. Agency should act swiftly in cases where a child is felt to be covered under ICWA.
5. Foster parents who become aware that a child in their care has Native American blood should alert the agency immediately.

Transition Statement:

Federal laws, as interpreted by the states, have a profound effect on foster care programs. Laws without monitoring can be largely ineffective. It is for this reason that the federal government has a review process to attempt to ensure compliance. Foster parents can be part of that process.

REFERENCE NOTES

- ▶ The regulations state that “far too many children are given the permanency plan of long-term foster care, which is not a permanent living situation for the child.”
- ▶ Three examples of APPLAs
 1. An older teen who requests emancipation;
 2. A child with a significant bond to the parent, but whose parent cannot care for the child due to emotional or physical disability and the child’s foster parent has committed to raising the child to the age of majority and to facilitate visitation with the parent;
 3. Where the Indian tribe has identified an APPLA.
- ▶ Examples are meant to give guidance, not create strict guidelines. The regulations are clear that compelling reasons should not be created for broad categories of children. We cannot say that an APPLA will be chosen for all older teens, or all children whose parents have a disability. The child’s own unique circumstances must be considered in formulating a permanent plan.
- c. The permanent plan should include services and supports necessary to make the placement as permanent as possible. This is particularly important in an APPLA, where the child will not have an adoptive or biological family to turn to for support after being released from agency custody.
- d. Connections for the child should be sought through supportive adults. That could mean facilitating visitation with distant relatives, or fostering involvement in community or school groups.
- e. APPLA does not rule out a child living in foster care until adulthood, but it does require the foster parent to commit to raising the child until adulthood. It is unacceptable for the child to be placed in foster care and then moved from home to home. If the foster parents need extra supports or services to make a long-term commitment, they should notify the agency and court of their needs.
- f. While APPLA is the least preferred option, **it is an option where compelling reasons exist**, and where no more permanent plan is available. But because impermanent placements are generally recognized as being detrimental to children, APPLA should only be chosen after a close examination of what would be in the child’s best interests. It is important not to use the APPLA as a “catch-all” for situations that do not fit the other plans. Rather, it should be a deliberate, thoughtful plan, made in light of the child’s unique needs and wishes.

**VII. Outcome Number Five:
Define the Federal Review Process, Why it is Done, How it is Accomplished and How it Affects Foster Parents**

Slide #44

Slide #45

A. (Slide #44) Tell the group that there are two major federal reviews, the IV-E Review and the Child and Family Service Review (CFSR)

1. Purpose--To ensure compliance with federal law and regulation
2. Effect--Shapes state policy, without dictating state policy

B. (Slide #45) Discuss the major points of the IV-E Review using the slide and **Reference Notes pg. 27**

1. Basically a paper review
2. Auditors examine files to be sure cases have met IV-E eligibility requirements, that all necessary information, including judicial findings are documented in the case record. For more information:

www.acf.hhs.gov/programs/cb/cwrp/index.htm

C. Tell the group that Child and Family Service Reviews (CFSR's) are outcome driven , comprehensive reviews.

1. (Slides #46-51) Using the slides and **Reference Notes pgs. 27**, discuss the following:
 - a. The process
 - b. Program improvement plans (PIP's)
 - c. How the reviews affect state policy
 - d. Foster parent association involvement in the process
2. First round of reviews to be completed in 2004

Slide #46

Slide #47

Slide #48

Slide #49

Slide #50

Slide #51

REFERENCE NOTES

Federal Reviews

1. **IV-E Review.** This is basically a paper review, where federal auditors examine files to be sure that cases have met the basic IV-E eligibility requirements, i.e., that all necessary information, including judicial findings are documented in the case record. Court orders must contain the reasonable efforts finding and the finding that it is contrary to the welfare of the child to remain in the home.
2. **Child and Family Service Reviews (CFSR)**

In an effort to conduct more meaningful, outcome driven reviews, the federal government has begun conducting child and family service reviews (CFSR's). The CFSR reviews are time intensive. They were begun in 2001 and all 50 states will be completed in 2004. The reviews are comprehensive, and this training cannot address all of the technical requirements, but it is important for foster parents to understand how the CFSR's are shaping child welfare, and to understand how they, as foster parents, may be able to participate in the CFSR process.

 - a. The CFSR process involves a number of discrete steps: **➤Data sharing;** **➤The state's own report;**
 - On -site reviews, including stakeholder interviews;
 - Federal rating of the state;
 - Program Improvement Plan
 - b. The steps involve collaborative efforts between the states and federal government.
 - **Data sharing** is done between the state and federal governments
 - The state prepares a **self report**. This is meant to give a picture of the state's child welfare system. With data from the federal government, the state produces its own report.
 - **On-site reviews**
 1. The federal government chooses three sites within the state in which to conduct onsite reviews. At least one of those sites must include the state's largest metropolitan area.
 2. On-site reviews are conducted by teams consisting of both state and federal reviewers.
 3. During on-site reviews , the teams review paper files, and also conduct interviews with the players in the case in order to get a clearer picture of how the case was handled. Interviews could include almost anyone who was involved, including agency workers, the child, the parent, the judge, and the foster parents.

Stakeholder interviews: Reviewers interview stakeholders in the child welfare system in order to learn more about the system itself and how it is operating in general. Stakeholders can include anyone who has contact with the child welfare system, including foster parents.

Many states have set up committees to make sure that the state is on track with each phase of the CFSR. **It may be advantageous for foster parent associations to become involved in the process as stakeholders. Each state has one or more designated persons responsible for CFSR implementation. Foster parent associations may wish to reach out to the state liaison in order to become part of the planning team, or to give input as a stakeholder.**



Instructions: Make a long scroll to roll out. You can use scribbles to simulate writing.

Transition Statement:

We have spent time reviewing how federal legislation and the monitoring of compliance involves foster parents as significant partners in moving children to permanency. ASFA clearly speaks to foster parents in a very significant way. States have program improvement plans to address areas where support, services and involvement need to be improved. The reason? To improve outcomes for children in care. Social workers and foster parents want the same thing for children. Therefore, it is important that the two work very closely together. In this next segment we are going to look at the changing role of foster parents.

Slide #52

Permanency, Foster Parent Roles and the Law

Changing Role of Foster Parents
1. Contractual Role
Past: To provide services in exchange for money
Present: Respected professionals who work together with other system professionals in the best interest of children

VIII. Changing Role of Foster Parents



- A. Roll out the “list” of foster parent responsibilities (See Instructions) to present in a humorous way all the tasks foster parents perform.
- B. Explain that the role of foster parents is changing from that of caregiver to that of a professional providing care while being very involved in planning and preparing for the futures of children in their care. ASFA provides foster parents with the right to be involved in ways they have not before.
- C. Explain that it will take time for change to become ingrained. In the meantime, there may be conflicting viewpoints of the foster parent’s role between agencies and foster parents.
- D. (Slides #52-55) Use the slides and see **Reference Notes pgs. 29 & 31** for talking points about the how the role of foster parents is changing.

Slide #53

Permanency, Foster Parent Roles and the Law

Changing Role of Foster Parents
2. Information Source
Past: Information gatherers
Present: Foster parents valued for their unique insights. Perspective sought out and integrated into decision making, as required by federal law and regulation.

Slide #54

Permanency, Foster Parent Roles and the Law

Changing Role of Foster Parents
3. Participant in Reunification Plan
Past: Unclear expectations
Present: Relationship with birth parents focused on working together for the child’s well-being. They should have a systematic way of reporting information and be valued as a potential permanent resource for the child.

Slide #55

Permanency, Foster Parent Roles and the Law

Changing Role of Foster Parents
4. Care Giving
Past: Caretaker of basic needs
Present: Provider of quality, comprehensive parenting, including advocating for needed services, supervising homework...

REFERENCE NOTES

Changing Role of Foster Parents

Professionals in the child welfare system may have diverse views of the foster parent's role. Foster parents may themselves become confused or overwhelmed by the number of hats they are expected to wear. It may be helpful to look at each part that a foster parent must play, in order to gain perspective on the unique, often challenging role of the foster parent.

Contractual Role

The foster parent is often seen as someone who merely has a contractual role with the child welfare agency to provide services in exchange for money. While technically that is correct, that definition fails to realize the important role foster parents play in the lives of children who are placed with them. Agencies who adhere to this strict definition of the foster parents' role may have rigid expectations of the foster parent, expecting them to follow every request of the agency without complaint, and to never question agency practice.

Information Gatherer

Sometimes agencies recognize the importance of using foster parents to gather information about the child or the family, but fail to act on information the foster parent has given, or may accept information haphazardly, or only when the case is being prepared for court. Foster parents may feel that they can only "speak when they are spoken to." Or they may be frustrated that they are allowed to "report" on the child's situation, yet are unable to make suggestions for positive change.

Participant in Reunification

Foster parents are often expected by the agency to participate in the reunification plan for the child and his biological family. That may include transporting the child to visitation, actually supervising visitation, or even mentoring the birth parents. If the agency expects the foster parent to actively participate in the reunification plan, there should be clear expectations for the foster parent. Foster parents often feel torn when they feel they have a duty to report unsafe behavior by the parents, yet don't want to appear to be opposing reunification. A regular, systematic way for foster parents to report information to the agency should be used, so foster parents don't report only "bad" behavior on the part of the birth parents.

Foster parents often feel conflicted when they become attached to the child and desire to adopt or be a permanent resource. They are expected to be part of the reunification team, yet are expected to show commitment to the child as soon as the agency decides reunification is not the plan. Playing this dual role can be confusing to foster parents, especially if not given any support from the agency.

The caretaking that foster parents do extends beyond meeting the basic day-to-day needs of the child. They often play the role of advocate. The foster parent, who interacts with the child on a daily basis, holds the much-needed information that courts and agencies need. Foster parents know about the child's medical needs, educational progress, social connections, emotional state and a host of other factors that

E.. Brainstorm ways in which foster parents and social workers could improve outcomes for kids. Areas may include, but not be limited to, the following:

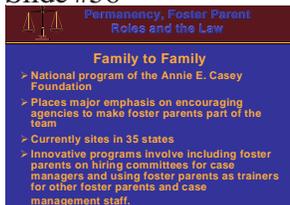
1. Communication
2. Services
3. Procedures

Record on chart paper.

Transition Statement:

There are both public and private programs that attempt to involve foster parents in the process of moving children to permanency. In so doing, recognition is given for the valuable insight they can provide for the children in their care. One of the most successful is the Annie E. Casey Foundation’s Family-to-Family program.

Slide #56



F. (Slide #56) Family-to-Family. Use the slide to briefly discuss this program

G. (Slide #57) Discuss the impact of government and private initiatives

Transition Statement:

A very important part of the CFSR process directly impacts foster parents.

Slide #57



REFERENCE NOTES

are often not seen as “strictly legal.” Because of their knowledge about the child’s situation, the foster parent is in the best position to advocate for services. Courts and agencies should welcome information from the foster parents in order to meet the child’s health, safety and well-being needs.

Public and Private Initiatives

Fortunately, there is a growing recognition that foster parents have a significant part to play in child welfare cases. The federal Child and Family Service Reviews measure permanency and well-being, which reflect the stability and security of the child’s placement. The permanency and well being outcomes measure whether the child is thriving, not just being kept out of immediate harm’s way. A National Program, Annie E. Casey Foundation’s Family-to-Family, encourages agencies to make foster parents part of a team. And state statutes and policies are beginning to recognize the need to include foster parents in the process.

Slide #58



H. (Slide #58) Impact of CFRS process. Use the slide to discuss the following:

1. Outcomes related to foster parents
 - a. Foster parent recruitment and retention
 - b. Foster parent training
 - c. Foster parent input and involvement
 - d. Addressing the unmet needs of foster parents
 - e. Notice and opportunity to be heard
2. Most of the states have had to address foster parent issues in their Program Improvement Plans (PIP's)

Slide #59



VIII. Conclusion

Slide #60



- A. Using slides #59-66, recap the main points of the training
- B. Thank the participants for their contribution to the outcome of the seminar
- C. The next training module is “Dependency Court and Removal of Children”
- D. The *Legal Resource Manual for Foster Parents* can be downloaded at no cost from the NFPA website at www.NFPAinc.org or a hard copy can be purchased from the national office of NFPA. Training on the next three modules can be obtained by contacting the NFPA office.
- E. Evaluation

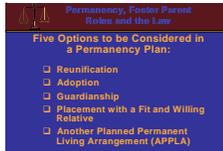
Slide #61



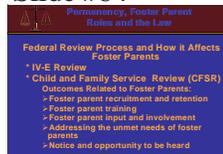
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Slide #63



Slide #64



Slide #65



Slide #66

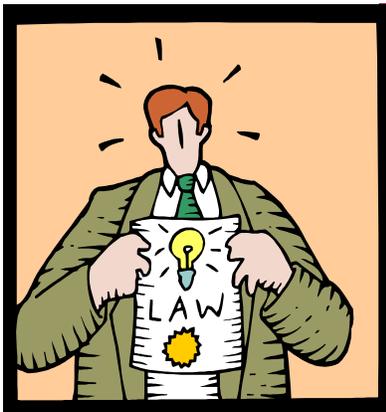


REFERENCE NOTES

CFSR's

The Child and Family Service Reviews measure several outcomes directly related to foster parents: foster parent recruitment and retention; foster parent training; foster parent input and involvement; addressing the unmet needs of foster parents, and notice and opportunity to be heard. Additionally, other measures, for example, stability of placement, are related to functioning in the foster home. Almost all of the states reviewed so far have had to address foster parent issues in their program improvement plans. With the federal government signaling the importance of foster parents as a resource, state policies and practice will begin to reflect that consideration as well. A number of state PIPS say that foster parents will receive additional support in the form of respite care, peer support groups or additional assessment of foster parent needs. Other states are making more concerted efforts to include foster parents in family planning.

APPENDIX



ACTIVITY: ASFA BASICS

No Reasonable Efforts

1. ASFA restricts somewhat the requirement that agencies must always work to reunify families (as required by PL 96-272). Under ASFA, the agency may seek a court order relieving them of the duty to make reunification efforts in some cases. The three circumstances, or grounds, under which the agency may choose to seek such an order include:

a. When aggravated circumstances are present

The federal law does not define “aggravated circumstances,” though the federal law suggests a definition of abandonment, torture, chronic abuse and sexual abuse. Various states have defined it in different ways. For example, some states include repeated failure to remedy substance abuse as an aggravated circumstance. Be aware that even though states may use the same term, e.g., “aggravated circumstances,” those terms are defined in state statute and case law, so states will vary in the interpretation of those terms.

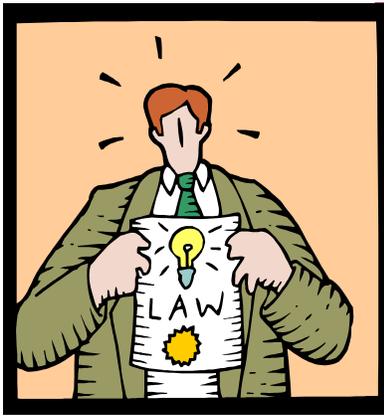
b. When certain crimes have been committed

The conviction must be made in criminal court; a finding by the family or other court will not apply. When a criminal action is being appealed, the court must weigh the appropriateness of making reasonable efforts in light of the child’s developmental needs.

c. When the parent’s rights to another child have been previously terminated

This ground does not apply if the parent voluntarily gave up parental rights to a child. It is not necessary that the rights have been terminated in the same jurisdiction where the ongoing proceedings are taking place. Often, the agency will not know if the parent has had other children. If, through discussion with the child or family, the foster parent learns that another child of the parent has been freed for adoption through Termination of Parental Rights (TPR), the foster parent should communicate that to the agency.

2. It is important to understand that even where the above exceptions to the reasonable efforts requirement applies, the agency may still seek to reunify the family. For example, where rights to a previous child were terminated many years ago, the agency may decide that circumstances have changed enough to allow the parent, with services and support, to be able to parent the child. This could happen where the agency decides the parent has attained greater maturity, has remedied a substance abuse problem, or in other ways has demonstrated a better ability to parent.
3. When an agency applies to the court for an order absolving them of the duty to make reasonable efforts to reunify, they may only stop reunification efforts when ordered by a court. If the court disagrees with the agency, the agency must continue to make reasonable efforts, even if one of the exceptions specified in ASFA applies.



ACTIVITY: ASFA BASICS

Mandatory filing of Termination of Parental Rights Petition

1. ASFA also restricts the amount of time a child stays in foster care without being freed for adoption through a termination of parental rights (TPR) proceeding. *The agency is required to file a petition to terminate parental rights when a child has been in foster care for 15 out of the most recent 22 months unless one of the following exceptions apply:*
 - a. **The child is placed with a relative.**

The federal government has not defined who is a relative: State law and/or policy determine whether a relative placement is an exception to the TPR requirement. Though the agency is not required to free the child for adoption when placed with a relative, they may certainly choose to go ahead and terminate parental rights, where adoption is the best plan for the child.
 - b. **The agency cannot provide the services it (the agency) has deemed necessary to reunify the child with the birth family.**

This does not mean that the exception applies when the court or another party in the case argues that the agency has not done everything they can to reunify the family. Rather, it is for use by the agency in the event the agency cannot provide the service *the agency (and not another party)* has deemed necessary. For example, if a parent were on a waiting list to receive services and had not received all the necessary services at the 15 month mark, the agency might choose to document this exception in the case record.
 - c. **There are compelling reasons.**

This third exception is the hardest to apply. The federal law does not define “compelling reasons.” The ASFA regulations specify only that the compelling reasons must be case and child specific. The agency might decide that breaking the bond between the child and parent would be harmful to the child. If the agency documentation shows very specific facts, for example that a therapist has made this termination, then that would qualify as a compelling reason.

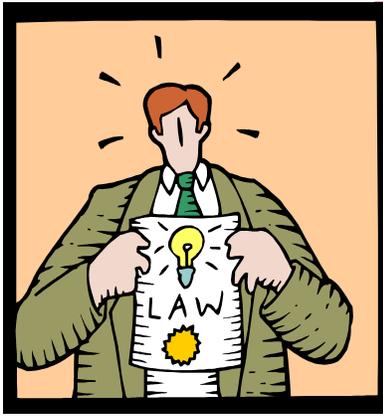
In some states, the compelling reasons are subject to judicial review, so that the judge would make the final determination of whether the child should be freed for adoption. Otherwise, the agency makes the final decision. Even though one of the exceptions exists, the agency could still choose to free the child for adoption. The exceptions contained in the federal law are options which the agency *may choose* to apply. Also, the agency is always free to TPR before the child has been in foster care 15 months, if state law allows it. In some states, the agency is required to file a TPR petition sooner than 15 months.

2. While the deadlines center around the filing of a petition , there are generally no requirements that the petition be heard within a particular amount of time.

- a. While there is a growing recognition that child welfare cases should be handled quickly, some courts still don't have the resources to make that happen.
- b. When cases are delayed in court, the foster parent can play a role in moving the case along by reminding the agency and court that the child is continuing to grow and form attachments while the court case is languishing. For example, letting the parties know how adoption might affect change of schools, may motivate the players to move the case more quickly. (How to bring up issues in court is discussed in subsequent modules.)
- c. The TPR proceeding can also get held up during the appeal process. In some states appeals can take a long time, while other states have worked to improve their systems to be more reflective of ASFA timelines. If a case is held up on appeal, the court still has to conduct regular reviews in compliance with ASFA timelines.

3. The foster parent should take the opportunity to remind the court, the agency, and the attorneys in the case that the child is continuing to develop and form relationships while the case lingers.

While there is little a foster parent can do about a case on appeal, there may be methods the attorneys can use to speed the appeal. Some of those methods might include filing motions to oppose extensions, or asking that the case otherwise be expedited.



ACTIVITY: ASFA BASICS

Permanency Hearing

- 1. New type of hearing required by ASFA.**
 - a. Must be held within 12 months of the child's entry into foster care.
 - b. Some states may require court reviews more frequently than every 12 months.
 - c. Thereafter, a permanency hearing must be held every 12 months.
- 2. ASFA does not clearly define permanency hearings, but it does define what they are not:**
 - a. Not paper reviews
 - b. Not out of court proceedings
 - c. Not mere stipulations

The intent is that there be a meaningful review by the court, with all the parties present. But the procedure can vary widely from state to state, or even locality to locality. For example, ASFA does not require that formal testimony be taken, i.e., having witnesses take the stand and swear to an oath, though some courts may require it.

- 3. Purpose of the hearing**
 - a. To decide the permanency plan for the child.

Though it is technically not required at the permanency hearing, the court usually makes the finding of whether the agency is making reasonable efforts to finalize the permanency plan for the child.
 - b. No extra funding provided by ASFA

Though ASFA added the new requirement to conduct permanency hearings, it did not allot any extra funding to courts or agencies. Some courts have had to strain to find the resources to conduct these additional hearings. There may be some temptation to cut them short and not give them full attention. If the foster parent has information necessary to the court, it may be up to the foster parent to bring it to the court's attention. (Training modules two and three give specific details on sharing information with the court.)

Activity: Permanency Plan Options

1. Reunification

- a. ASFA favors reunification above other plans.
- b. Most preferred permanency option is to reunify the child and parent, when appropriate.
 - Unless a previous determination had been made that reunification efforts should cease, the judge should rule out reunification before considering another plan.
 - The regulations state the judge can consider reunification so long as the parent is working diligently on the plan, and a time limit can be placed on the reunification period that is consistent with the child's developmental needs. The judge need not order the child home on that day, but can consider extending the reunification period for a defined period of time.
 - The foster parent is often in the best position to offer information on how an extended period of reunification will affect the child.

Helpful information includes:

 - Degree of bonding with the parent
 - Whether the child has formed attachments with the foster family or other care givers.
 - The judge cannot determine these things from looking at a legal file, unless the case plan includes such information and was sent to the court (in some states, the case plan must go to the court, in others it may be sent as a matter of custom).
 - Foster parents can be most helpful by giving the judge a "snapshot" of the child.
 - Is the child mature enough to ask for help if neglect or abuse should reoccur?
 - Can the child feed himself?
 - Can the child be alone for extended periods of time?
 - Does the child have a need for routine?
 - Does the child have any special medical or educational needs?
 - It is possible for the parent to have completed a treatment plan but not be able to care for a child's special needs. The foster parent can ensure that the child's unique developmental needs are considered, as required by the regulations.
 - Safety is the most important consideration in whether to return a child to the parent. There may be disagreement on the standard—should it be that the parent has completed the service plan, that the child would be safe, that the cause of the initial abuse or neglect has been remedied? Ideally, all of these things should be considered.

Activity: Permanency Plan Options

2. Adoption

- a. Adoption is the second preferred option and can only proceed only after both parents' rights have been terminated.
- b. Should be considered and implemented or ruled out in every case unless reunification is certain.
- c. Can give a sense of belonging and acceptance that less permanent plans cannot.
- d. **Legal Risk**
The agency should not wait until there is an adoptive family waiting in the wings before freeing the child for adoption. If children are not freed for adoption, they are often classified as "legal risk," meaning that there is a chance the agency may not prevail at the TPR stage. Some adoptive parents may not want to consider children in the "legal risk" category.
- e. ASFA requires the agency to move swiftly after a TPR petition is filed to identify, recruit and retain an adoptive resource for the child.
- f. The court should make a full inquiry into whether there are any adoptive resources for the child.
- g. When the foster parent wishes to adopt, those intentions should be made known to the agency and the court.
- h. **Open adoption**
 - Where a therapist has determined that the child should maintain a bond with the biological family, an open adoption may be considered. Most states recognize open adoption. An open adoption is one in which an agreement is entered at the time of adoption, allowing some contact between the child and the biological parent. The contact may be as minimal as holiday and birthday cards, or as comprehensive as regular visits.
 - Allows the child to maintain some contact with the birth family while still allowing the child to have the benefits of a safe and stable adoptive family.
 - Open adoption agreements are generally hard to enforce, however. If the case is returned to court for a failure to meet the conditions of the agreement, the standard usually applied is "the best interests of the child," i.e., the court need not enforce the terms of the agreement, but will look at what is best for the child at that point. A foster parent considering entering into an open adoption should consult an attorney to clarify the obligations, and any repercussions if the conditions are not met.

i. Adoption subsidy

➤ Another issue foster parents may wish to explore with an attorney, if denied by the agency, is whether they are eligible for an adoption subsidy. The adoption subsidy rules are somewhat complex and help may be needed in deciphering them. It is also not well known that adoption subsidies can be negotiated and include things such as counseling, special services and one-time court and legal fees.

j. Given the high degree of permanence and belonging adoption confers on a child, the inquiry into adoption as the plan should be as thorough as possible. Dismissing it without thorough consideration could result in the child being denied the benefit of a stable, permanent family.

Activity: Permanency Plan Options

3. Guardianship

- a. When there is someone in the child's life who wishes to care for the child, but adoption has been ruled out, after careful consideration, guardianship may be the best plan.
- b. The federal **definition** of guardianship is "a judicially created relationship between child and guardian which is intended to be permanent and self-sustaining as evidenced by the transfer to the guardian of certain parental rights with respect to the child."
 - Parental rights include:
 - 1) Protection;
 - 2) Education;
 - 3) Care and control of the person;
 - 4) Custody of the person; and
 - 5) Decision making.
 - Defining guardianship is complicated by the fact that a legal arrangement may meet the federal definition above, and thus be a valid permanency plan, but states may not refer to it as "guardianship." They may use another term such as "custody." To further complicate things, some states may have a statute that refers to "guardianship" but it is not permanent enough to meet the federal standard.
- c. In sum, the placement arrangement must not be one that is not so easily undone that the guardian can return physical custody of the child to the biological parent without the court's consent. To do so could put the child in harm's way, if the parent has not rectified the conditions that led to the original abuse/neglect.
- d. Disadvantages
 - More easily undone than an adoption.
 - Lack of financial help for families doing a guardianship.

Some states have experimented with providing guardianship subsidies, but at this time the main source of assistance is TANF (Temporary Assistance to Needy Families), for which most families at the middle class and above range do not qualify.

 - Agencies may have funds to continue to provide services to a child placed under a guardianship. If foster parents believe the child should continue to receive services, they should inform the agency and then speak up in court.
 - The court has the authority to order the agency to provide services, as long as there is a means for the agency to provide the services requested. The agency and court may overlook services for the child, since they are not as aware of the everyday needs as the foster parent.

Activity: Permanency Plan Options



4. Placement with a Fit and Willing Relative

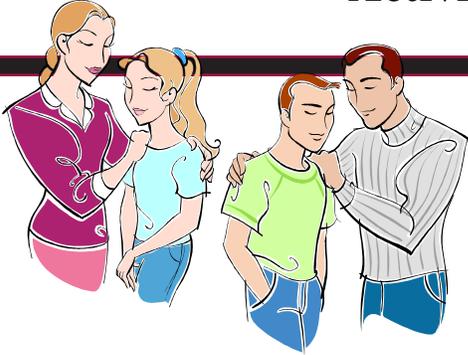
- a. Decrease the child's anxiety and provide some continuity and stability.
- b. Decisions should not be made based on generalities and assumptions about families.

Negative assumptions are made: For example, that the relative must be as unfit as the biological parent because they come from the same dysfunctional family dynamics. Courts should not rely on assumptions when making assessments about relative placements, but should make child-specific determinations.

Positive assumptions: Just because there is a biological bond, an assumption should not be made that there is an emotional bond between the relative and the child.

- c. Courts should be careful to look closely at the proposed relative placement to decide whether it truly is best for the child.
- d. If the child is placed with a relative from the beginning of the case, it is easier to decide at the permanency hearing what the appropriate plan should be. The questions at that point will most likely revolve around how to make the relative placement as permanent as possible.
- e. Relatives sometimes do not wish to adopt because they do not want to see a TPR occur. When a relative does not wish to adopt, the court should determine the reasons. Sometimes, the relative may not be aware of adoption subsidies, or may not be aware of available post-adoption services. If no one asks what the barriers to adoption are, the child may needlessly remain in a less permanent situation.
- f. It becomes more difficult to make a decision about relative placements when the child has been in a non-relative foster home and a relative expresses an interest in being a resource for the child.
- g. Court should have a clear understanding of the child's bonds and attachments. A child may not only have a strong bond to the foster family, but to the community where he lives, which includes things like his school, friends and extracurricular activities. Ideally, the court will want to consider the effects of breaking those bonds in order to place the child with a relative. The foster parent is in a uniquely situated position to offer that information to the court.
- h. Relatives sometimes offer to take children because of family pressure. Those working with the child should make an effort to uncover the relative's commitment level. A child should not be moved from a stable home unless the proposed placement is both stable and secure.

Activity: Permanency Plan Options

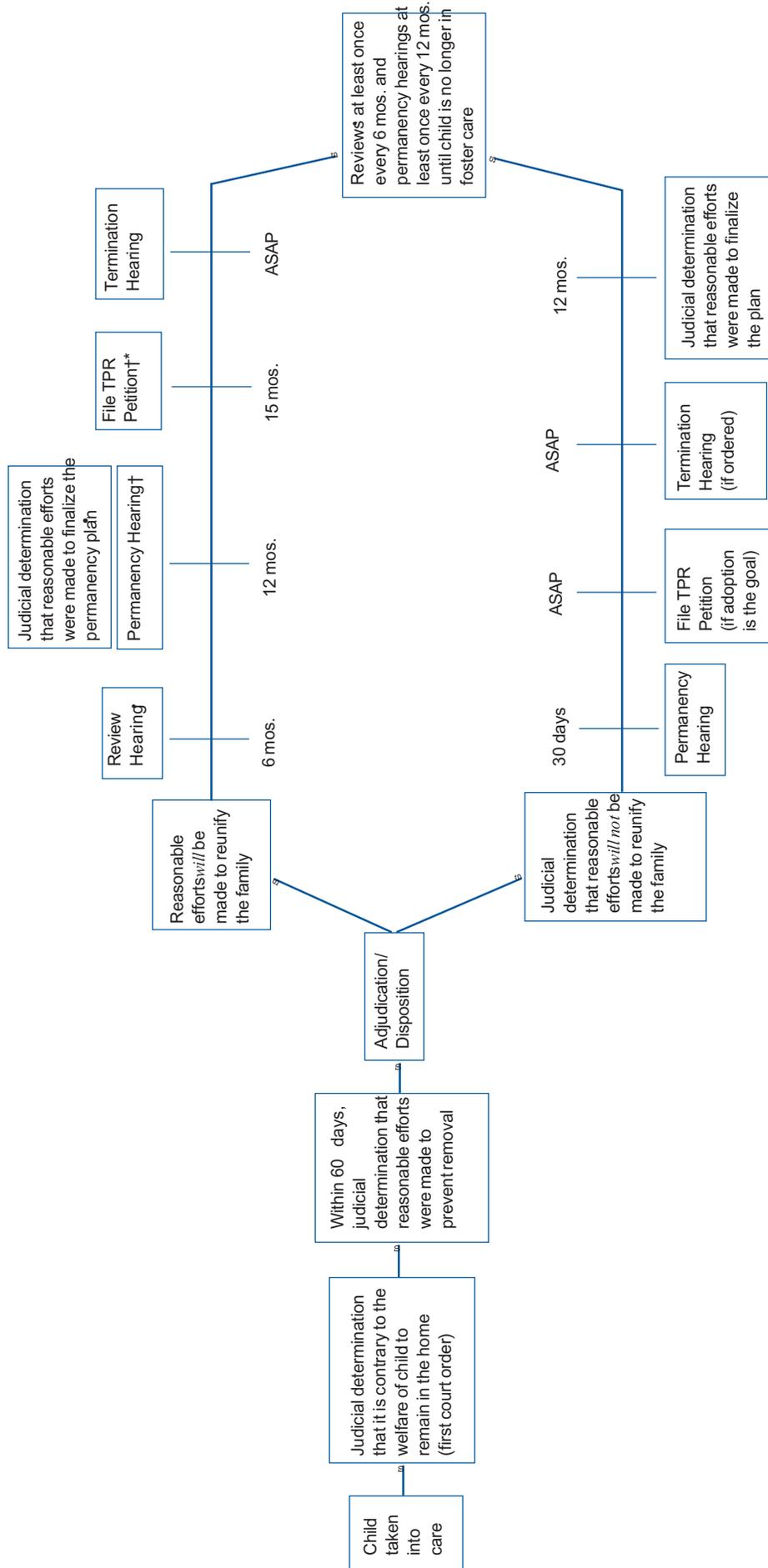


5. Another Planned Living Arrangement (APPLA)

- a. Under ASFA, long-term foster care is no longer a permanent option. However, when the more permanent options of reunification, adoption, guardianship or relative placement have been ruled out, another planned permanent living arrangement (called APPLA) may be an option for the child. An APPLA may be chosen only if the agency has documented compelling reasons based on the child's unique situation. As discussed in the above section on TPR exceptions, compelling reasons must be child and case specific. The requirement to document compelling reasons applies to both TPR exceptions and the choice of APPLA. They are distinct requirements, i.e., compelling reasons not to file TPR must be documented separately from the compelling reasons to choose APPLA.
- b. Federal regulations do not define APPLA, but offer some guidance on what constitutes an APPLA.
 - ▶The regulations state that “far too many children are given the permanency plan of long-term foster care, which is not a permanent living situation for the child.”
 - ▶Three examples of APPLAs
 1. An older teen who requests emancipation;
 2. A child with a significant bond to the parent, but whose parent cannot care for the child due to emotional or physical disability and the child's foster parent has committed to raising the child to the age of majority and to facilitate visitation with the parent;
 3. Where the Indian tribe has identified an APPLA.
 - ▶Examples are meant to give guidance and not to create strict guidelines. The regulations are clear that compelling reasons should not be created for broad categories of children. For example, we cannot say that an APPLA will be chosen for all older teens, or all children whose parents have a disability. The child's own unique circumstances must be considered in formulating a permanent plan.
- c. The permanent plan should include services and supports necessary to make the placement as permanent as possible. This is particularly important in an APPLA, where the child will not have an adoptive or biological family to turn to for support after being released from agency custody.

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- d. Connections for the child should be sought through supportive adults. That could mean facilitating visitation with distant relatives, or fostering involvement in community or school groups.
 - e. APPLA does not rule out a child living in foster care until adulthood, but it does require the foster parent to commit to raising the child until adulthood. It is unacceptable for the child to be placed in foster care and then moved from home to home. If the foster parents need extra supports or services to make a long-term commitment, they should notify the agency and court of their needs.
 - f. While APPLA is the least preferred option, **it is an option where compelling reasons exist**, and where no more permanent plan is available. But because impermanent placements are generally recognized as being detrimental to children, APPLA should only be chosen after a close examination of what would be in the child's best interests. It is important not to use the APPLA as a "catch-all" for situations that do not fit the other plans. Rather, it should be a deliberate, thoughtful plan, made in light of the child's unique needs and wishes.
 - g. APPLA cannot be used as a "catch-all" for situations that do not fit the other plans. Rather, it should be a deliberate, thoughtful plan, made in light of the child's unique needs and wishes.

ADOPTION AND SAFE FAMILIES ACT TIMELINE



• If the review hearing is held by the court, it must be held at least once every six months.

• The determination that reasonable efforts to finalize the plan be made is often made at the permanency hearing, although it can occur at another point in the proceedings as long as the 12 month deadline is met.

† When calculating when to have the permanency hearing or the 15 of 22 months, use the earlier of the date of adjudication or the date the child is removed from the home.

* Unless one of the following exceptions is documented: child is being cared for by a relative, agency has not provided the services deemed necessary to rehabilitate the family, or a compelling reason exists.

