

Reevaluating Reasonable Efforts

SUPREME COURT OF TEXAS CHILDREN'S COMMISSION

AUGUST 17, 2023



Speakers

Hon. Piper McCraw

469th District Court Judge & Children's Commission Jurist in Residence

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Why Do Reasonable Efforts Matter?



To encourage the development of services to protect children in their own homes.



AND



To prevent the unnecessary removal of children from families.

Federal Law

The Adoption Assistance and Child Welfare Act of 1980

- The Federal Title IV-E program requires that states make certain reasonable efforts in child welfare cases as a prerequisite to receiving federal funding.
- If the required findings are not made, or if the court finds that the agency has not made such efforts, the agency is denied federal foster care reimbursement for the time during which the judge determines that no reasonable efforts were made.

Reasonable Efforts to Prevent Removal

45 C.F.R. § 1356.21(b)(1)

Child welfare agency must make reasonable efforts to maintain the family unit, and prevent ... unnecessary removal.

- **Timing:** Finding must be made within 60 days of the child's removal.
- **Impact:** If the court does not make the finding, the agency will not receive IV-E dollars for the duration of the child's stay in foster care.

Federal law
does NOT
require
reasonable
efforts findings
be a prong for
removal
findings.

Federal law requires the court must find that continuation of residence in the home would be contrary to the child's welfare or that placement is in child's best interest **45 C.F.R. § 1356.21(c)**

Under the federal framework, a judicial finding that the agency failed to make reasonable efforts to prevent removal does NOT prevent a judicial finding that the child be removed from the home.

Reasonable Efforts to Finalize Permanency

45 C.F.R. § 1356.21(b)(2)

Child welfare agency must make reasonable efforts to ... reunify and make and finalize alternate permanency plans (reunification, adoption, legal guardianship, relative placement, APPLA).

- **Timing:** Finding must be made within 12 months of foster care entry and at least once every 12 months thereafter.
- **Impact:** If the court does not make the finding, the agency will not receive IV-E funding ... until such a determination is made.

Judicial Responsibility to Document Reasonable Efforts

45 C.F.R. § 1356.21(d)

Documentation “must be explicitly documented ... on a case-by-case basis and so stated in the court order”

If reasonable efforts are not documented in the court order, a transcript of the proceedings is the only other documentation that will be accepted to verify.

- Neither affidavits nor *nunc pro tunc* orders will be accepted.
- Court orders that reference state law are not acceptable.

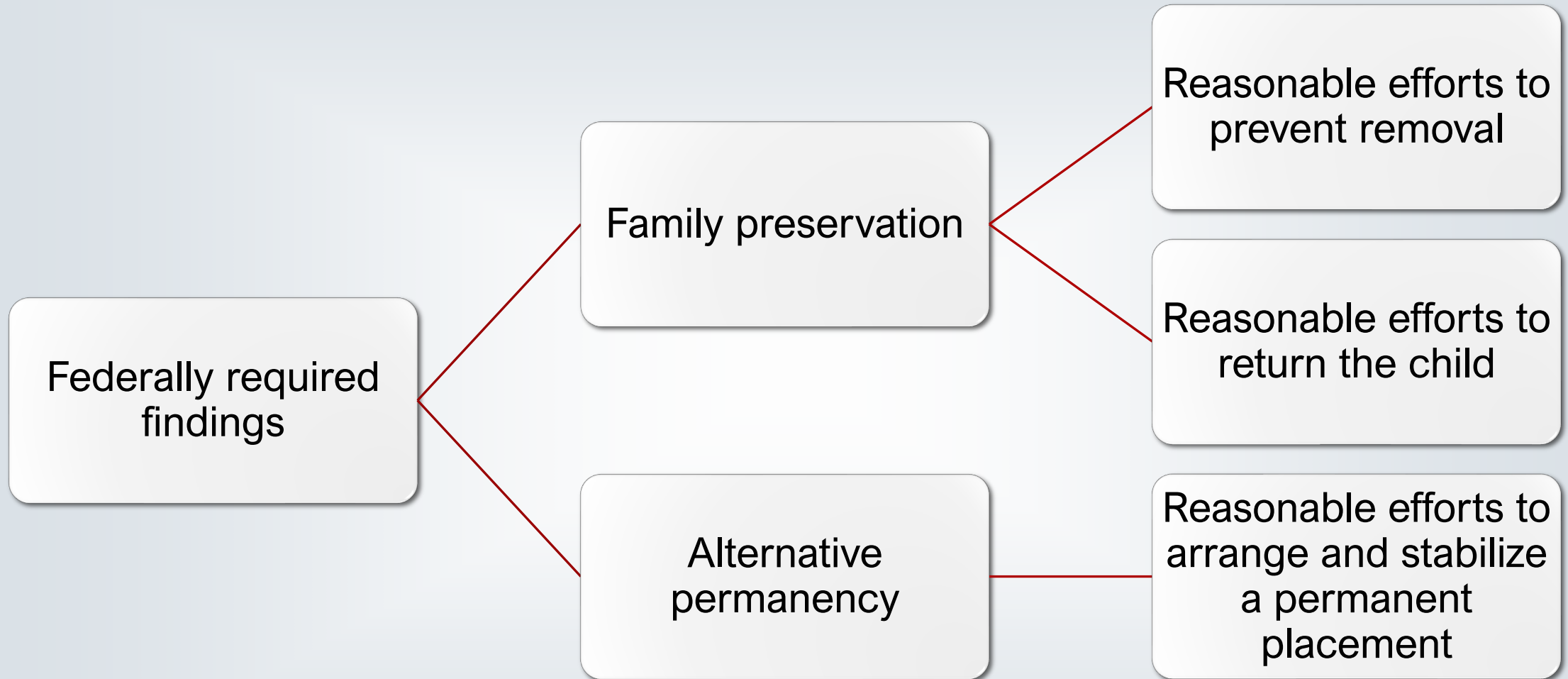
Legislative Intent

Documentation of Judicial Determinations **45 C.F.R. § 1356.21(d)**

Our purpose ... can be found in the legislative history of the Federal foster care program. The Senate report on the bill characterized the required judicial determinations as “**important safeguard(s) against inappropriate agency action**” and made clear that such requirements were not to become a mere pro forma exercise in paper shuffling to obtain Federal funding”

We concluded, based on our review of State’ documentation of judicial determinations over the past years, that, in many instances, **these important safeguards had become precisely what Congress was concerned that they not become.**

Our primary concern is that judicial determinations be made on a case-by case basis and it was **not our intent to create a policy that was overly prescriptive and burdensome.** The suggestion that the court order reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by case basis... would satisfy this requirement.



Definition of Reasonable Efforts

The federal law does not define reasonable efforts and explains that to do so would be a direct contradiction of the intent of the law which requires determinations be made on a case-by-case basis.

However, the federal policy offers the following guidance:

1. Health or Safety
2. Services: Factors Present in the Child or Parent
3. Services: Customization
4. Services: Availability
5. Agency's Activities Associated with the Permanency Goal



Texas Law

Reasonable Efforts Generally

Tex. Fam. Code § 262.001

- In determining the **reasonable efforts** that are required to be made with respect to preventing or eliminating the need to remove a child from the child's home or to make it possible to return a child to the child's home, the child's health and safety is the paramount concern.



Ex Parte Hearings

Emergency Affidavits **Tex. Fam. Code §§ 262.101, 262.105**

Emergency Ex Parte Orders **Tex. Fam. Code §§ 262.102, 262.107**

- **Reasonable efforts**, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

HB 968 and HB 1087 (88th Regular Legislative Session)

- An emergency removal affidavit and emergency removal order must describe with specificity in a separate section all **reasonable efforts** made to prevent or eliminate removal or return the child home.



Adversary Hearing

Tex. Fam. Code § 262.201(g)

For a parent from whom the child was removed:

- **Reasonable efforts**, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- **Reasonable efforts** have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

Tex. Fam. Code § 262.201(g-1)

For a parent not involved in the removal:

- **Reasonable efforts** have been made to enable that person's possession, but possession by that person presents a continuing danger to the physical health and safety of the child.

Tex. Fam. Code § 262.201(g-2) HB 1087 (88th Regular Legislative Session)

- Orders to describe with specificity in a separate section all **reasonable efforts** made to prevent or eliminate removal or return the child home and to place the child with a non-custodial parent.



Status Hearing

Tex. Fam. Code § 263.202

- The court must find whether a service plan ensures that **reasonable efforts** are made to enable the child's parents to provide a safe environment for the child.

Permanency Hearings Before and After a Final Order

Tex. Fam. Code §§ 263.306, 263.5031

- The court must determine the appropriateness of the primary and alternative permanency goals for the child developed in accordance with department rule and whether the department has made **reasonable efforts** to finalize the permanency plan, including the concurrent permanency goals.



Termination

Tex. Fam. Code 161.001(f) (2023) HB 1087 (88th Regular Legislative Session)

- The court may not order termination of parental rights in a suit by DFPS unless the court finds by clear and convincing evidence that DFPS made **reasonable efforts** to return the child to the parent before commencement of a trial on the merits, and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent.
- The court does not have to make a finding regarding **reasonable efforts** if a service plan for the parent was waived due to aggravated circumstances.

Tex. Fam. Code 161.001(g) (2023)

- The court must include in a separate section of its order written findings describing with specificity the **reasonable efforts** DFPS made to return the child to the child's home.



ICWA: Termination Requirements

25 U.S.C. § 1912(d)

- Requires proof beyond a reasonable doubt that **active efforts** were made to provide remedial and rehabilitative services to prevent the breakup of the Indian family were made but proved unsuccessful.

Termination: Constructive Abandonment

Tex. Fam. Code 161.001(b)(1)(N)

The child has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

- The department has made **reasonable efforts** to return the child to the parent;
- The parent has not regularly visited or maintained significant contact with the child; and
- The parent has demonstrated an inability to provide the child with a safe environment.



Termination: Failure to Complete Services

Tex. Fam. Code 161.001(b)(1)(O)

Does not mention reasonable efforts, *but see*

Tex. Fam. Code 161.001(d)


A court may not order termination under **Tex. Fam. Code 161.001 (b)(1)(O)** based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

- The parent was unable to comply with specific provisions of the court order; and
- The parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.



Termination: Inability to Care

Tex. Fam. Code § 161.003

- The parent has a mental or emotional illness or a mental deficiency that renders the parent unable to provide for the physical, emotional, and mental needs of the child;
- The illness or deficiency, in all reasonable probability, proved by clear and convincing evidence, will continue to render the parent unable to provide for the child's needs until the 18th birthday of the child;
- The department has been the temporary or sole managing conservator of the child of the parent for at least six months preceding the date of the hearing on the termination held in accordance with Subsection (c); 

Inability to Care, continued

Tex. Fam. Code § 161.003

- The department has made **reasonable efforts** to return the child to the parent; and
- The termination is in the best interest of the child.



Extended Jurisdiction

Tex. Fam. Code § 263.602

- Whether the young adult's living arrangement is safe and appropriate and whether the department has made **reasonable efforts** to place the young adult in the least restrictive environment necessary to meet the young adult's needs; and
- Whether the department is making **reasonable efforts** to finalize the permanency plan that is in effect for the young adult, including a permanency plan for independent living.



Exceptions to Reasonable Efforts

Aggravated Circumstances

Tex. Fam. Code. § 262.2015

Applies to:

- Abandonment
- The child is the victim of serious bodily injury or sexual abuse
- A violent offense against the child or another child of the parent
- Murder or manslaughter of the child's other parent
- Registered sex offenders

Aggravated Circumstances

Tex. Fam. Code. § 262.2015

- Waives the requirement for service plan
- Waives the requirement for reasonable efforts to return the child to a parent
- Permanency Hearing made be held within 30 days of the finding
- Accelerated trial schedule
- **Reasonable efforts** must still be made to finalize the permanent placement of the child.

Court Ordered Services

Tex. Fam. Code § 264.203

No mention of reasonable efforts

Questions?

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<http://texaschildrenscommission.gov>

