

MODEL QUESTIONS FOR

DEFINING

REASONABLE EFFORTS

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INTRODUCTION

The following series of questions has been prepared as a guide for judges in evaluating whether child welfare agencies have made "reasonable efforts" to preserve or reunify families in abuse/neglect cases. The questions also can be used for the same purpose by anyone else involved in these cases, including child welfare workers, attorneys, CASAs, citizen review board members, etc

The purpose of the questions is not to have judges ask every question in every case. Rather, eventually judges should be able to quickly determine those questions which are most important in deciding whether "reasonable efforts" have been made in a particular case. Additionally, the questions are not meant to result in a win or lose situation. For example, if the caseworker cannot give the "right" answer to a particular question, the judge need not feel compelled to make a negative "reasonable efforts" finding in the case. Rather, the answers should give the judge some parameters for making the "reasonable efforts" determination.

Furthermore, while the answers to these questions may lead to a negative finding initially, the judge can always change that finding as developments change. For example, suppose that a judge finds that visitation every other week for one hour is "unreasonable" for a particular family and that therefore the agency is not making "reasonable efforts" in that case. By the next court hearing, if visits are then taking place at least weekly for several hours in duration, the judge might then change the negative finding to a positive one. Very often the answers to these questions are important enough to the preservation or reunification of a family that they should be addressed in the case plan so that everyone knows the "reasonable efforts" that the judge expects to be made in the case.

The questions have been formulated in consultation with family preservation experts and with reference to service methods that have proven successful with families in crisis. Each of the questions is followed by a discussion explaining the relevance of the question to a "reasonable efforts" finding. After every section, reference materials are listed that support the questions and the accompanying discussion. Copies of most reference materials are available from the Youth Law Center upon request.

The importance of these questions cannot be overemphasized. Because a primary goal of Pub. L. 96-272 is to prevent children from languishing in foster care, Congress gave families very short time periods for reunification. Given these shortened time periods, due process requires that agencies make "reasonable efforts" when helping families. Family

preservation and child welfare services which we know to be successful for preservation and reunification should be our goal. Many of these service orientations are based on common sense, recognizing that the families in question are in crisis. Courts should carefully scrutinize service plans with these premises in mind.

Finally, these questions are meant to be a starting point for defining "reasonable efforts" in individual cases. The document itself is a working draft. YLC staff greatly welcomes feedback on the questions. Any suggestions on how to add, change or otherwise improve the questions will be greatly appreciated.

QUESTIONS COMMON TO ALL SERVICES

Overview

Evaluating "reasonable efforts" necessarily involves some assessment of behavioral patterns, both those of the agency and those of the client family. Frequently, the behavioral patterns under scrutiny concern compliance or non-compliance with a case plan; e.g. did the parent attend counseling sessions? or were parenting classes completed as required? What is assessed is utilization of services. Utilization of services, however, cannot occur without access to services. In other words, utilization is a product or an outcome of access.

Social and behavioral scientists have known for decades that access to health and human services depends on certain prerequisites. If these prerequisites are not met, they become barriers to utilization of services. The literature on access and utilization of services is varied. Some studies concentrate on access and utilization of medical services or types of medical services, while others focus on mental health or some combination of psychosocial services. All can be categorized, however, under the umbrella of health and human services.

The research is generally of two types: studies that analyze characteristics of the service system as they influence use or non-use of services and studies that analyze characteristics of the clients or population in relation to patterns of service utilization. Researchers may label and measure the prerequisites of access and utilization differently but there is agreement on what the components of access must entail. These include:

- **Awareness, Need:** The client family and the agency must recognize that there is a need for services. It is important to note that how people define need or a problem and what to do about it involves the interplay of social, cultural, and psychological factors. How people respond to a crisis situation such as illness, death, or family discord is learned behavior based on cultural values and norms.
- **Availability, Geographic Access:** The services should be within reach. Often this is defined in terms of distance with travel time less than 30 minutes. It also includes waiting time to get an appointment or service and the wait once a client reaches the agency if services are provided out of the home.
- **Ability to Obtain, Financial Access:** The services should be affordable. The assessment should consider direct and indirect costs, e.g. bus fare, gas costs,

childcare costs and competing survival needs such as food and housing.

- **Acceptability:** The services should be acceptable to the client. Usually this means that some standard is maintained, e.g. confidence in expertise of service providers, rapport and satisfaction with services
- **Appropriateness, Social and Cultural Access:** The services should be compatible with the client family's ethnic and sociocultural background. This includes the way services are organized: the composition and training of the staff and staffing patterns. It refers to the service or treatment models employed by service providers. Assessing appropriateness of services includes considering how conflicting values and attitudes of the staff and client (e.g. stigma, class biases, ethnocentrism) can impede a family's access and utilization of services and hinder compliance with regimens set forth in the case plan.

These five components of access: awareness, availability, ability to obtain, acceptability and appropriateness are guiding principles for defining reasonable efforts. The following questions provide a framework for determining to what extent components of a case plan meet the prerequisites for access to services. The subsequent discussion sections document their theoretical and practical significance for case plan development, service delivery and evaluation.

1. Did the worker (agency) follow state and agency regulations?

Discussion: When the agency does not follow either the state's or its own regulations/procedures, it very often has not made reasonable efforts. For example, regulations almost always require a face to face visit with the child and available parents prior to removing a child from the home. If this is not done, it is very hard to see how the agency could have made reasonable efforts to prevent the child's removal. Another example would be the agency's failure to staff a case for any period of time. If no worker is on a case, it is impossible for the agency to make reasonable efforts during the time the case is unstaffed.

2. Were the parents (and child, where appropriate) involved in developing the case plan?

Discussion: Federal law and most state laws or regulations recognize the importance of having parents (and often the older child) involved in the development of the case plan. In some states, parents must actually sign the plan. The case plan sets forth the goals of the case and provides the roadmap for reaching these goals. Developing the roadmap must be a collective effort.

The shape this collective effort takes depends on the particular crisis situation and agreement about how to work toward successful resolution. In some cases, it may be more appropriate to involve not only the parents and child but the extended family or members of the client family's social network in developing the case plan. There is substantial agreement in the health and human service literature that the inclusion of natural or informal systems of support in an intervention plan can enhance social and therapeutic outcomes. There is also a critical cultural dimension to case plan development as a collaborative effort. Individual and family decision-making patterns and strategies are culturally based. Behavioral changes often involve not just the individual but the entire family system. Frequently, it is to these traditional sources of support that a client family turns for help prior to coming in contact with helping agencies. For example, the National Survey of Black Americans showed that the social network was used extensively for handling personal crises. 87% of the respondents reported seeking help from at least one member of their social network.

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3. How long do families have to wait to receive the service?

Discussion: Families in crisis should not have to wait weeks or months at a time to receive a service. Indeed, sometimes even a few days wait can be unreasonable. From a psychological perspective, a family in crisis may be very open to change during that crisis, thereby making services such as family counseling very effective at that time. Once a crisis

is over, very often because the children have been removed, the family will reorganize without the children, making reunification difficult. Also keeping in mind the fact that parents can have their parental rights terminated in very short periods of time, waiting lists can mean the difference between a service being "reasonable" or "unreasonable."

Long waits to receive services of any kind are a major barrier to service utilization. The practice contradicts everything that is known about how to effectively intervene with families in crisis and acute care situations. There are decades of research that show a relationship between long waits and underutilization of services, client dissatisfaction and potentially life threatening situations. The implications are grave for families in crisis who depend on public health and social welfare agencies whose policy priorities have produced overloaded and understaffed systems. Often families pay a double price to receive services: appointment and service delays in addition to long waits to be seen once a family reaches the service. Across the spectrum of health and human service delivery, experts agree that the timeliness of services, flexibility in appointment scheduling, and limiting the waiting time for services are critical components of effective service delivery.

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4. Was the service in the family's native language? How long has the family been in this country/state?

Discussion: The rationale behind this question should need little explanation. Telling a family to avail themselves of a particular service, such as counseling or parenting

education, which is not in the family's native language or where the family has a minimal understanding of English, is patently "unreasonable." For a family in crisis, this is even more important. "Reasonable efforts" means services should accommodate the family, not that the family accommodate the system.

Despite the passage of the English Only Initiative, unprecedented demographic trends at national, state and local levels underscore the critical importance of multilingual and multicultural services. In California, foreign immigration is the primary demographic factor responsible for the state's changing population growth profile. During the 1970's, immigration accounted for almost half of California's new residents. Estimates since 1980 are not as decisive, but one third of California's recent growth has been attributed to immigration. Between 1970 and 1980, the Latino population increased 61%. Current estimates are that Latinos make up 8% of the total U.S. population with numbers in excess of 20 million. The term Latino refers to multiple ethnic groups with different national origins and cultural traditions. Latinos constitute 20% of California's population with the majority of Mexican origin.

The population increase of Asian and Pacific Americans is equally striking. Between 1970 and 1980, the Asian and Pacific American population grew to 3.5 million - an increase of 128 percent. Asian and Pacific American is really an umbrella category for describing more than 32 ethnic groups, most of whom are immigrants or refugees with a diverse cultural and sociopolitical heritage

The service implications of this diversity are many. They include but also extend beyond imperative issues of providing "basic" translation services for clients. For example, status issues may inhibit satisfactory communication between a monolingual Hmong and an educated Vietnamese man. Language and communication problems may also apply to service delivery to Black families. As with other ethnic groups, differences in national origin, social status, class and values orientation are elements of intraethnic group diversity. Social scientists and other linguistic specialists recognize variations in Black language patterns as culturally patterned and not simply a distorted version of English. Disdain for, and ignorance about the cultural basis of a client family's speech patterns can hinder the communication and service delivery process in subtle and obvious ways. Research generally confirms that reducing language barriers is essential to equal access to health and human services.

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5. How far was service from the family's home?

Discussion: When a service is not available in the family's community, a number of pressures are put on families to avail themselves of the service. These pressures add to the crisis situation. They do not relieve it. Transportation alone can be a major problem. (See question 6.) Also, when the service is in a different community, the chances that it will be culturally appropriate diminishes.

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6. Was transportation available? How accessible was it?

Discussion: Many times families are expected to arrange their own transportation to a service. Even when they are given bus fare or transportation passes, the distance from the service may require the parent to spend several hours just getting to the service. For persons in crisis, these demands can be overwhelming. For working parents, the demands are even greater.

Available transportation is a mandatory prerequisite for use of services. Access to transportation is related to factors such as cost, distance and travel time as well as more subjective issues like safety when families rely on public transportation. When transportation resources are available (e.g. bus tokens, ride sharing, money for gas), families may have to weigh the benefits of having transportation against the costs of lengthy rides and long waits whether at the bus stop or at the agency. These decisions often involve devoting an entire day in order to receive an hour or less of services. As health and human service options diminish due to Medicaid restrictions and the unavailability of service providers for families without public or private insurance, families cannot always choose to use services that are closer to home. Moreover, the services that are closer to home may not be the services most appropriate for the client family's needs.

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7. Is childcare available if children are living with the family?

Discussion: Asking parents in crisis to find their own childcare may mean that parents do not avail themselves of a service. It is important to recognize that many of the families who are on the verge of having their children removed may be very socially isolated, with few resources for childcare. Also, even if the agency makes provisions for childcare, if it is not in the parent's community, it may place a great burden on the parents just to get their children there.

For many families the on-going lack of childcare or a suitable support system is a contributing factor to family stress and dysfunction. To compound that with the additional burden of locating and transporting children to and from childcare in order to comply with case plan obligations is a set-up for failure. For low-income families, often with already marginal-to-absent resources and higher levels of environmental stress, daily childcare needs can present formidable obstacles to service utilization.

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INTENSIVE IN-HOME SERVICES

Introduction

The following questions address the generic components of true intensive in-home services. Probably the most well-known and oldest such program is the Homebuilders Program in the state of Washington. These programs embody the very best "reasonable efforts" an agency can make on behalf of troubled families. While many times agencies may claim they have offered "intensive" in-home services to the families they serve, upon closer scrutiny, the services provided are a far cry from the intensity of programs based on the Homebuilders Model. The questions below offer parameters to test the true "intensity" of these services.

1. Are the children on the verge of placement?

2. Are the services crisis oriented?

Discussion: Recognizing that families who are on the verge of having their children put into foster care are in crisis, intensive in-home services are crisis-oriented. This means that the service focuses on the family's immediate needs so that the situation can be stabilized. The family is seen as soon as possible after they are referred.

3. Does the worker combine "hard" and "soft" services?

Discussion: The role of the worker who provides intensive in-home services is both that of family therapist and broker of services. Such a worker may actually do counseling with the mother in such a family while driving her to get food stamps or buy groceries. The worker may also help the family to advocate for their own needs, such as getting the housing authority to provide extermination service.

4. Is staff available on a 24-hour basis?

Discussion: Since crises do not occur only during 9 to 5 on weekdays, the worker or team of workers must be available around the clock.

5. Do intake/assessment procedures ensure no child is left in danger?

Discussion: Since the workers in these programs may spend as much as 10-15 hours

a week in the family home, they will have a wealth of information about the family at their fingertips. Therefore, their assessment of possible harm to the child if left in the home is based on this information. Additionally, the family knows that the worker is on call at all times and that the worker will respond in any emergency.

6. Do the services deal with whole family?

Discussion: True intensive in-home services deal with the entire family system, not just the parent or child in isolation.

7. Is the work done in the home?

Discussion: The family's home is the laboratory for making changes. Providing services in the home allows this laboratory to be used to the fullest extent. Additionally, families tend to be more receptive and less intimidated when a service is on their turf. Responding to a family in their own home eliminates the constant struggle to get the family to appointments, recognizing that people in crisis have great difficulty in fitting into someone else's predetermined schedule.

8. Are services based on family's need and not just on what's available?

Discussion: Intensive in-home services recognize that traditional methods of service delivery to families tend to be unsuccessful because they force families to avail themselves of services simply because they are available, and not necessarily because the family needs them. Therefore, workers providing intensive in-home services make every attempt to develop and deliver services based on the family's needs. To do otherwise is not to make "reasonable efforts."

9. Are caseloads small?

10. Is staff involved for short periods?

11. Is there followup/evaluation?

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PARENTING EDUCATION

1. Location/transportation?

(See questions 5 and 6 under section "Questions Common to All Services.")

2. Times?

Discussion: Many parents who are working may have a very difficult time attending parenting classes scheduled during their work hours. Agencies should make every effort to accommodate the parent's working schedule.

3. Is child care available?

(See question 7 under section "Questions Common to All Services.")

4. Who takes responsibility for enrolling parents?

Discussion: Many parents involved with the dependency system are in crisis and often do not have the ability to enroll themselves in a parenting class. In some cases, it may be necessary for a worker to do more than just hand a parent a telephone number of a parenting class provider. They may need to initially enroll the parent and make other arrangements to ensure the parent begins the classes.

5. How long before class starts?

(See question 3 under section "Questions Common to All Services.")

6. What is the reading level of materials used in class?

Discussion: Many times instructors of parenting classes rely on reading materials to impart knowledge to parents. Unfortunately, these materials often are not geared to the reading level of the parents and they may miss very valuable information on parenting skills. Parenting handbooks are being developed that are geared to a fourth grade reading level. Agencies and service providers should be aware of these materials and make them available to parents where appropriate.

7. How individualized is class?

- special needs child?
- age of child?
- cultural/language considerations?

(See question 4 under "Questions Common to All Services")

Discussion: All too often, agencies develop "boiler plate" case plans requiring every parent to attend a parenting class regardless of whether the parent really needs the class. While certainly almost any parent would "benefit" from such a class, not every parent needs such a service. Also, while some parents may be able to improve their parenting skills by attending a very general class, some parents require a very specialized, intensive class. Agencies should assess parents' needs in a manner that does not waste limited service resources

For example, a parent of a failure to thrive infant should have very focused parenting instruction that addresses the particular aspect of their parenting that has brought them into the system. Likewise, parents who have physically abused their children with inappropriate discipline methods need special help in that area. Also, parents of adolescents have different parenting issues from parents of small children. To combine parents with such diverse needs in the same class may not be a "reasonable effort" in many situations.

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VISITATION

1. How soon did visits begin after child's removal?

Discussion: Many times after children have been removed from their homes, it may be two weeks or sometimes longer before they have their first visit with their parents. From a psychological standpoint, this can be a very damaging interval for both the parent and the child and may decrease the family's chances for a successful reunification. Regardless of the nature of the family's problems before the child was removed, both the parent and the child are probably experiencing strong reactions to the separation.

For a child, the effects of the separation are numerous. First, on a cognitive level, the child may suffer a short-term memory deficit. This is often why children are labeled "learning disabled" once they have been removed. Any kind of crisis can do this for a child, but separation from the biological parent is often a trigger. Second, the child may show signs of grief behavior, part of which may be anger at being separated from their parent.

The parent likewise may be in this grief stage and experiencing anger within the first week or two after placement, much of which may be expressed toward the worker. At any rate, regardless of the behavior, it is very important that the first visit take place as soon as possible after the child has been removed so that the grief process does not become the main dynamic that is going on.

2. What is the role of foster parent? Were biological parent and foster parent able to meet soon after the child's placement? Did they get to discuss how the foster parent would care for the child with the biological parent conveying any special needs or routines of the child to the foster parent?

Discussion: Foster parents are a valuable untapped resource for helping parents learn appropriate parenting skills. They can be effective role models if the parent can trust and respect them. The purpose of having biological and foster parents meet soon after the child's placement is to nurture this kind of continuity of care that children in placement so desperately need. Having the child's caregivers communicate directly about the child's needs and routines honors the child's attachment to the parent and supports the reunification process.

3. How often do visits take place?

Discussion: The frequency of visits for children in foster care is vitally important. The more often the visits take place, the more likely the family will be reunified. Particularly when the child is an infant, frequency of visitation can be crucial. Once-a-week visits with a small child can be of little value when trying to preserve the parent/child attachment. With an infant, a short once-a-week visit will be meaningless since no attachment can even be established. If workers fail to adopt plentiful visitation schedules for families, judges should question whether the agency is making the requisite "reasonable efforts" to reunify a family.

4. How long do visits last?

Discussion: A visit that only lasts an hour can be extremely destructive for both parent and the child. Very often after removal the children will express anger toward the parents because, in the eyes of the children, the parents have abandoned them. It may take the child a fair amount of time, frequently more than the typical hour long visit, to try and work through some of that anger with the parent. If the visit does not allow the family this time, the only thing that someone supervising the visit may see from the child is anger and rejection toward the parent. When asked how the visit went, this supervising person may not be able to relate a positive parent-child interaction.

When judges receive this kind of information, they should not assume that the visit went badly but rather that the child's anger may indicate a very strong attachment to the parent. If the worker is contemplating reunification within a few months, overnight or weekend visits should certainly be strongly considered.

5. Are visits supervised?

Discussion: Very often workers will insist that visits be supervised. In that situation, judges should always ask the worker to justify the supervision requirement. If the allegations in the petition are such that they do not justify supervision, supervised visits should not be allowed. For example, if the allegations are neglect, there is probably no reason to have supervised visits. Second, even if the allegations are for abuse, if the abuse has not been proven to be at the hands of the parent, the judge should question the supervision requirement.

6. Location of visit?

Discussion: The location of the visit is also extremely important in terms of making "reasonable efforts" to reunify families. The more home-like the location and the more familiar the location to both parent and child, the more likely the parent and child will be relaxed and able to have a positive interaction.

7. Transportation?

Discussion: This question is very much interrelated with the following question about where the child is placed. Often children are placed at great distances from the parent's home, making visitation almost impossible. To ask parents who are in crisis and who have had their children removed, to spend from 1-1/2 - 2 hours taking buses to visit their child can exhaust even the most loving parent. This is especially true if the visit is very short.

8. Is the child placed near his/her family?

9. What are the child's reactions after visits?

Discussion: A worker's evaluation of a child's reaction after visits should be carefully scrutinized. Many foster children, after a visit with their parents, will demonstrate behavior such as crying, vomiting, and nightmares. Such a reaction should not be taken as proof that the parent-child interaction is a negative one. Rather such behavior may indicate that the child is attached to the parent and that attachment has again been severed at the end of the visit and the child is experiencing all of the anger and different feelings that come from being separated from the parent. Further, if a child appears quite complacent after a visit, this does not necessarily mean that the parent-child interaction was positive. What it may mean is that the child has shut down and has accepted the situation.

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COUNSELING

1. What is the purpose of the counseling?

Discussion: This is a very basic question to ask when accessing whether to require a parent to attend counseling sessions as part of the case plan. First, does the parent actually need counseling? Again, as with other services, while a parent may benefit from the counseling, it may not be necessary to address the issues which brought the family into the system.

A case plan which only requires counseling, without any more description of the type of counseling required, is not a reasonable effort. For instance, it is not enough to require "individual therapy"--"individual therapy" for what purpose? For example, if it is a sexual abuse case and the therapy does not deal with the molestation, it is not a reasonable service even though the therapy may deal with many of the stresses in the parent's life

2. Should it happen right away or should other needs of family, such as housing or emergency financial assistance, be taken care of first?

3. Does the counseling utilize a family systems approach as opposed to a psychoanalytical approach?

4. Is there an evaluation component to the counseling? Is this necessary? If a psychological evaluation is prepared, can parent read and understand it?

5. Is the counselor sensitive to the cultural values of the client?

6. Is counseling available?

Discussion: When resources are scarce, it is vital that agencies use what actually is available. For example, if a parent requires alcohol or drug counseling, a requirement that they attend Alcoholics Anonymous, Narcotics Anonymous, and Alenon Alateen, may be a very wise use of resources. These services are always available, the cost is minimal, and they have shown to be very effective treatment programs. Alenon Alateen programs are particularly important when there are spouses and older children in a family situation who are functioning as co-dependents with the substance abusing parent.

Although workers may complain that they are unable to verify a parent's attendance at

these programs, it is incumbent on workers to learn enough about the programs so that they can question parents about their participation. For example, a worker can ask a parent if they have done a particular step in the AA's Twelve Step program,--e.g., Have you completed the Fourth Step of Personal Inventory?, etc.

Case plans can also require that the parent have a sponsor from the program. A sponsor is someone who has successfully completed the program and has maintained sobriety for several years. This person can give 24-hour support by phone to the parent.

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INCARCERATED PARENTS AND THEIR CHILDREN

When a parent is incarcerated and a child is in foster care placement, additional questions should be considered.

1. Has the parent received timely notice of court proceedings?
2. Has the parent been included in the case plan?
3. Has placement with extended family members been thoroughly explored?
4. Has visitation been considered, particularly when special visitation services (such as Children's Centers, Contact Visiting Programs, Family Living Unit (Overnight) Visiting Programs and Special Transportation Services) are available at the prison or jail?
5. Has availability of counseling been explored for the child to deal with the effects of parental separation and incarceration?
6. Is there a parenting course or other relevant course available to the parent at the prison or jail?
7. Are there counseling services available to the parent at the prison or jail?
8. Has placement been considered in an outside halfway house or treatment program (such as the Mother-Infant Care Program, the Teen Mother Program for CYA mothers, or county programs for mothers in county jails) which allow placement of mother and infant in a community setting?
9. Does the caseworker know the prison or jail regulations concerning visitation, phone access, mail access, calculation of good time and actual date of release of the parent?
10. Is the parent aware that she/he has the right to be present at court hearings concerning her/his child(ren) under Penal Code Section 2625?

(For more information, please read Attachment A.)

ACKNOWLEDGMENTS

The Youth Law Center wishes to specifically thank the following persons for their help in drafting and critiquing the questions: Ellen Barry, Director, Legal Services for Prisoners with Children; Valata Jenkins-Monroe, Ph.D., Clinical Consultant, San Francisco D.S.S.; Director, Institute for Developmental Studies, Oakland; Associate Professor, California School of Professional Psychology, Berkeley; Nika St. Claire, M.F.C.C., Senior Case Manager, Drug-Exposed Babies Clinic, Center for the Vulnerable Child, Children's Hospital, Oakland, CA; and Jan Gates-Williams, M.A. and Ph.D. Candidate, Medical Anthropology, Oakland, CA.

Reunification Difficult for Incarcerated Parents and Their Children

by Ellen Barry

Sean is a healthy, active eight-year-old who lives with his mother, step-father and two-year-old sister in Sacramento. When Sean was born, his mother, Joan, was in federal prison with almost two years left of her sentence to serve. Sean was separated from Joan 48 hours after he was born, and placed in foster care. His foster parents refused Joan's collect calls, and resisted bringing Sean to the prison to visit with his mother. The social worker discussed adoption with Joan, but she was determined to reunify with her baby. With the assistance of local community agencies, Joan had Sean transferred to a different foster home close to the prison. Sean was placed with a foster mother who brought Sean to the prison every week to visit with his mother, worked closely with Joan to plan toward reunification, kept Sean for an extra week without pay after Joan was released so that the mother could get settled, and drove the baby to the mother's new home at her own expense. The Juvenile Court and local Department of Social Services cooperated fully with the placement and encouraged the process of reunification between Sean and his mother.

Sean originally entered the system in 1977. If Sean were to enter the foster care system today, it is far *less* likely that he would be reunified with his mother in the future, even with the passage of the Federal Adoption Assistance and Child Welfare Act of 1980.¹

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The Adoption Assistance and Child Welfare Act of 1980, the culmination of years of effort on the part of advocates for children and families, mandated sweeping changes in the foster care system which were designed to rectify serious abuses. One of the primary mandates of the statute is that children remain with their families whenever possible, and that families be provided with preplacement *preventive services* in order to keep the family intact and minimize the potential trauma of separation for the child. If the child must be placed in foster care, either because it is not possible to protect the child *within the home* or because the parent is unable to care for the child, the federal law requires that *reunification services* be provided to families, and that placement of the child back with the natural parent be the primary goal of foster placement.

All states which receive federal funding under P.L. 96-272 are required to enact legislation conforming with the federal law. Specifically, states must design and implement programs providing reunification services to families where children are placed in foster care. Although a number of states have already enacted such legislation and local jurisdictions appear to be complying with the new requirements, it is important to look beyond the statutory

changes and legislative reports to determine what is *actually* happening under the new federal policy toward foster care. One way of determining how the new law has affected the functioning of the foster care system is to focus on one specific population—incarcerated parents and their children.

Although the problems faced by incarcerated parents and their children are unique in some ways, in other ways these problems are remarkably similar to those faced by other families in crisis. By identifying these problems, designing workable solutions, and implementing these solutions for this specific population, we understand better how the foster care system works—and does not work—for other families in crisis.

Preplacement Issues

Children whose parents are incarcerated do not automatically end up in the foster care system. In many instances, incarcerated parents are able to make arrangements with extended family members to care for their children during the time that they are in prison. However, an increasing number of children of incarcerated parents are entering the foster care system and, although we do not have enough data yet on the impact of P.L. 96-272 to make a definitive assessment, it appears from case histories that an increasing number of these children are not being reunified with their families.

Because of the genuine and legitimate belief that children should not have to endure the disruption and trauma resulting from multiple foster care placements, and that children are entitled to a permanent home, Congress, through P.L. 96-272, and state legislatures, through complying state statutes, have attempted to limit the time that children remain in foster care. In California, for example, the law now allows for termination of parental rights where



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¹Public Law 96-272, 42 U.S.C. 8470 et seq.



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a child has been in foster care for a period of twelve months, and during that period of time the child's parent has failed to maintain an adequate relationship with the child by providing both a home and care and control for the child.² Prior to the enactment of P.L. 96-272, the State of California permitted parents a period of 24 months in which to reunify with their children before a petition to terminate parental rights could be filed, based solely on the fact that a child had been in foster care placement.

By definition, a parent who is incarcerated for a felony charge—no matter how minor—will be given a sentence of one year or longer. Even in cases where a parent is convicted of a misdemeanor offense and sentenced to serve time at a county jail, a parent may be incarcerated for anywhere from several weeks to nine or ten months. Thus, an incarcerated parent cannot, by definition, "provide a home" for his or her child during the twelve-month period that the child is in foster care.

Because of the clear difficulties involved in reunifying children whose parents are incarcerated with their families, and the corresponding likelihood that these children will be subjected to increased trauma due to the severance of the familial relationship, it is imperative that careful planning be done to meet the special needs of these children. Although placement with extended family members is an acknowledged priority under P.L. 96-272 for all children, it is even more critical for the children of incarcerated parents. Unfortunately, practitioners, incarcerated parents, and relatives report a number of cases in which extended family members are often not contacted by social workers, or if contacted, they are not advised of the possibility that a child may be adopted if

the child remains in out-of-home foster care placement for a year. In some cases, grandparents have made repeated appearances in Juvenile Court requesting that their grandchildren be placed in their care, only to be rejected for reasons that are questionable at best. One grandmother was told she was "too old" to take care of her grandson (she was 46 and had a seven-year-old child of her own). One grandmother requested that her granddaughter be placed in her care while her daughter was in jail for five months. The local Department of Social Services initiated an investigation and then refused to allow the child to be cared for by her grandmother. Yet, when the mother was released from jail, the department required that the grandmother remain in the home as a condition of returning the child to the mother's care. At times, placement with extended family is denied because of racial or class-based stereotypes or because of the *de facto* association between the relatives and the parent, a convicted criminal. For example, in another incident, a grandmother was told that she could not have her grandchild placed in her care because the social worker felt that she was a "shabby" housekeeper, and that she "must be using drugs." This woman had worked for seventeen years at an aircraft manufacturing plant, had never been arrested, and also had strong ties in her community.

Placement of the children of incarcerated parents with relatives greatly reduces the likelihood that children will be permanently separated from their parents, their siblings, their extended families, and their cultures. In addition, it increases the likelihood of children maintaining contact with their parents during the period of the parent's incarceration. This solution, however, is not accepted or encouraged by county welfare and social services offices, particularly where very young children are concerned.

Reunification Services

Once a child is placed in foster care, the "permanency planning" clock starts ticking for both parent and child. States which receive Title IV-B funding for foster care placements are required by law to provide a scheme whereby courts overseeing foster care placements make a determination that "reasonable efforts" have been made to reunify a parent and child.³ Moreover, all complying state statutes require that such reasonable efforts be made to provide reunification services to parents *before* a court may terminate the parental rights of parents whose children have been in foster care for over twelve months.⁴ Although P.L. 96-272 does not define "reunification services," federal regulations have developed guidelines as to what type of services may be appropriate,⁵ and recent state cases interpreting the "reasonableness" of "reasonable efforts" are beginning to define the parameters of this concept.⁶

When a parent is incarcerated, however, and her or his child is in foster care, it is rarely the case that the parent receives *any* services from the welfare or social services agency. All states require that parents be notified of dependency proceedings, review hearings, and permanency planning hearings. Yet, it is not uncommon for an incarcerated parent to receive notice either one or two days prior to the hearing, or after the hearing date, and in some cases parents receive no notice at all. Some states allow incarcerated parents to be transported to hearings affecting the custody of

Continued on next page

²42 U.S.C. §672(a)(1) and 671(a)(15).

³Cf. Calif. Welf. & Inst. C. §16507; Calif. Civ. C. §232(a)(7).

⁴45 CFR §135715(e)(2).

⁵See, e.g., In Re Jeremy C. (1980) 109 Cal. App. 3d 384, 388-393, 167 Cal. Rptr. 283; In Re Bernadette C. (1982) 127 Cal. App. 3d 318, 625-626, 179 Cal. Rptr. 688; Matter of John B. (1984) 205 Cal. Rptr. 321, 324-325.

⁶California Civil Code §232(a)(7).

Reunification (from previous page)

their children,⁷ yet parents cannot exercise this right effectively if they do not receive notice within the prescribed statutory time period. Many states allow for the appointment of counsel in dependency actions where the parent is indigent, but if a parent is incarcerated, it is often the case that the parent has had no opportunity to speak with the attorney prior to the hearing. Social workers rarely visit parents in jail or prison (due often to high caseloads, limited funding, and lack of access to the correctional system) and often submit court reports without including statements from these parents. In many cases, counties have made a *de facto* determination that it is not possible to provide reunification services when a parent is incarcerated.

When reunification services have not been provided during a parent's incarceration, once she or he is released from prison, it is often virtually impossible for her or him to reunify with the child. In almost every case, the parent would have been separated from the child for a period of twelve months or longer. Often, the parent has had limited contact with the social worker, since prisoners are only allowed to make collect calls, and many departments of social services no longer accept collect calls.⁸ The limitation on phone calls also greatly restricts the incarcerated parent's contact with her children. Often, foster parents are not reimbursed for collect phone calls and will not accept such calls; and, if a mother has more than one child in different foster homes, she may have to wait for as long as several months to talk with each of her children. As is clear to see, without active intervention on the part of social services and community agencies, the relationship between an incarcerated mother and her child may deteriorate dramatically while the mother is in prison, to the ultimate detriment of the child as well as the mother.

Recommendations for Change

Through the intervention of community agencies specializing in the needs of the children of incarcerated parents,⁹ children can be reunified successfully with their parents when these parents are released from prison. If this is to happen, maintaining a healthy and active relationship between a child and his parent during the period of a parent's incarceration is more often than not beneficial for that child.¹⁰

Prevention and reunification services *must* be provided to families even where a parent is incarcerated. P.L. 96-272 does not allow states arbitrarily to exclude certain parents from receiving prevention and reunification services. However, in the case where a parent is incarcerated and unable to have access to many of the services traditionally encompassed under "reunification services," the provision of such services should be defined within the context of the parent's incarceration.

Thus, "reunification services" for families where a parent is incarcerated may include: funding to foster parents to allow parents to call their children collect; transportation costs to bring children to visit their parents; funding for social services departments to allow parents to call social workers collect; funding to transport parents to and from court hearings; and first and last month's

rent for parents being released into the community.¹¹ In addition, the children of incarcerated parents should be placed, whenever possible, with extended family members. When this is not possible, children should be placed in foster homes close to the prison in order to facilitate visitation between the parent and child on a regular basis. Children's centers—special programs within prisons which are designed to create a supportive and non-threatening environment in which the parent and child can visit and interact in a more normalized environment—should be available to all prisoner parents and their children.¹²

Finally, more training is needed for foster parents who provide care for the children of incarcerated parents, and for social workers who work with these parents. Many of the problems faced by incarcerated parents in maintaining contact with their children could be rectified with a minimum of funding if more accurate information were available to social services agencies about the functioning of the correctional system. In the end, better coordination between social services agencies, the courts, and the corrections department would increase the likelihood of prisoner parents being properly notified, adequately represented in legal proceedings, and given the services to which they—and their children—are entitled.

Ellen Barry is the Director of Legal Services for Prisoners with Children. For information or assistance in this area of the law, contact her at 1663 Mission Street, 5th Floor, San Francisco, CA 94103, (415) 543-3379.

¹¹Some studies have determined that 66% of incarcerated women were unemployed at the time of their incarceration; most prisons release prisoners with a minimal amount of "gate" money. CIW, for example, releases a woman prisoner with \$200 and no transportation money.

¹²For information about children's centers, contact Prison MATCH, 1515 Webster St., Oakland, CA 94608.



⁷Cf. Calif. Penal C. §2625.

⁸Phone access is often severely limited in prison. For example, the California Institution for Women allows one collect phone call every two weeks.

⁹Cf. Prison MATCH, 1515 Webster St., Oakland, CA 94608; Aid to Incarcerated Mothers, 138 Tremont, Boston, MA 02111.

¹⁰Cf. McGowan, Brenda and Karen Blumenthal, Why Punish the Children? (1978).