

Policy Brief SAFETY

REASONABLE EFFORTS AND WAIVERS IN CHILD WELFARE

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In the broadest terms, the purpose of the child welfare system is to strengthen families and promote the safety and well-being of children. When a family is brought to the attention of child protective services (CPS) by way of an allegation of abuse and/or neglect, CPS undergoes an investigation. If the allegations are substantiated, a family is provided with a case plan which outlines the services and resources that will be provided for the protection and care of their child. If a child is at risk of immediate danger, then the child may be removed from home and provided with alternative living arrangement with relatives or foster parents. Ultimately, the child welfare system must make “reasonable efforts” to arrange for the reunification of the child and family, the adoption of the child, or some other permanent placement. However, in some aggravating circumstances that are defined broadly under federal law, the child welfare system will wish to waive these reasonable efforts.

Defining Reasonable Efforts in Statute

Currently, NRS 432B.393 does not provide a clear definition of reasonable efforts, which can be problematic when multiple parties, including the child welfare system, the courts, and families are involved in the process of trying to achieve some form of permanency for a child. The purpose for requiring the child welfare agency to make reasonable efforts for reunification are to ensure that families are given an opportunity to correct the issues that led to involvement with the child welfare agency in the first place. Examples of reasonable efforts may include ensuring that a parent receives services such as substance abuse treatment, mental health counseling, or parenting classes, but also includes ensuring that parents have access to community resources such as housing assistance, medical care and food.

The services and/or resources provided to a family which would constitute “reasonable efforts” on behalf of the agency vary depending on the specific needs and issues the family is facing. And, since each family is different, it can be difficult to clearly articulate what, specifically, constitutes reasonable efforts. At a minimum, efforts to reunify a child and family are reasonable when the services and/or resources offered to the family are: culturally appropriate, available and accessible within the specified timeframe, and are designed to meet the specific needs of the family to provide a safe and stable home for their child(ren).

Recommendation: Revise NRS 432B. 393(4) as follows (changes in *italics*):

Except as otherwise provided in subsection 6, for the purposes of this section, unless the context otherwise requires, “reasonable efforts” have been made if an agency which provides child welfare services to children with legal custody of a child has exercised diligence and care in arranging *culturally appropriate, accessible and available services that are designed to improve the capacity of families to provide safe and stable homes for their children* ~~for the child~~, with the health and safety of the child as its paramount concerns. The exercise of such diligence and care includes, without limitation, obtaining

necessary and appropriate information concerning the child for the purposes of [NRS 127.152](#), [127.410](#) and [424.038](#).

Waiver of Reasonable Efforts

The federal Adoption and Safe Families Act (ASFA) [42USC§671(a)(15)] allows states to waive reasonable efforts when certain aggravating circumstances exist such as a parent subjecting a child to abandonment, torture, chronic or sexual abuse; the parent committing voluntary manslaughter of another child or to the other parent; etc. The purpose is to avoid unnecessary efforts by the agency to reunify a family when reunification would not be in the best interest of the child due to concerns of safety. Essentially, when reasonable efforts are not made, reunification of the family is an unlikely option and termination of parental rights (the “death penalty” for parents) is not far behind. As such, the ability of the agency to waive reasonable efforts should only be utilized in the most severe cases and in all cases, should be approved by the court.

In 1999, the Nevada legislature enacted legislation to codify ASFA requirements regarding waiver of reasonable efforts. However, in doing so, Nevada created even more flexibility for allowing waivers well beyond the intent of the federal statute. Although there are circumstances where the requirement for reasonable efforts only creates a delay in permanency for the child(ren), given the severe consequences to the family unit, great caution and restrictions should be in place to limit waivers to only the most severe circumstances.

Recommendation: NRS 432B.393 should be revised to reflect the following:

- Language more closely aligns with the federal statutes by limiting waivers to only the most severe aggravating circumstances (see attachment “Comparison of Federal and State Waivers”).
- The ability for the child welfare system to waive reasonable efforts should include instances where the parent or primary caretaker of the child has ‘been found guilty of committing sexual abuse against the specified child or any other child of the parent.’
- A clear statement that the decision to waive reasonable efforts by the child welfare system must be approved by the court.

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