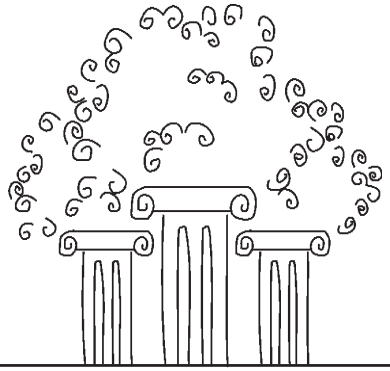
POLICY BRIEF

Reasonable Efforts in Nebraska



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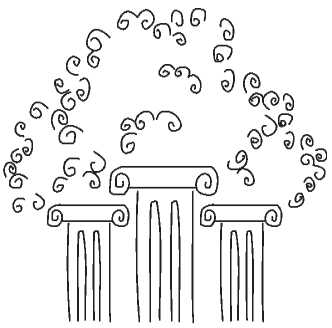
December 2009



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POLICY BRIEF:
REASONABLE EFFORTS IN NEBRASKA

INTRODUCTION

It is well established that the due process clause of the Fourteenth Amendment protects the fundamental rights of parents to make decisions for the care, custody, and control of their children.[1] In relying on that fundamental right, it is important that when a child is removed from the care, custody, and control of their parents that the state not interfere beyond what is necessary to protect the child. Requiring the state to make reasonable efforts to create a safe environment for children before removal or to rehabilitate the parent after removal helps maintain an appropriate balance between a parent's Fourteenth Amendment rights and the state's obligation to protect children.

Federal and state law mandates that the Nebraska Department of Health and Human Services ("NDHHS" or the "Department") make reasonable efforts to prevent the removal of a child from their home prior to being placed in foster care.[2] Both state and federal law also requires that reasonable efforts be made to reunify a family after removal.[3] However, in some cases, there are certain exceptions to making reasonable efforts which will be discussed in more detail below.[4]

There is no clear definition of "reasonable efforts." Instead, it is left to the courts to determine reasonable efforts on a case-by-case basis. Therefore, what may be deemed reasonable efforts in a case involving drugs, for example, may differ from what may be considered reasonable efforts in a case involving unsanitary living conditions.

It is the goal of this policy brief to help demystify what constitutes reasonable efforts and help practitioners understand how this requirement can be utilized to bring about positive results for children and families. This policy brief will also provide practical tips that may be used in court. The sections that follow will discuss the statutory and regulatory framework and existing case law related to reasonable efforts.

STATUTORY LAW ON REASONABLE EFFORTS

THE ORIGINS OF THE STATUTORY FRAMEWORK FOR REASONABLE EFFORTS

The history of the reasonable efforts requirement is best understood by looking at two pieces of federal legislation: the Adoption Assistance and Child Welfare Act of 1980 ("AACWA")[1] and the Adoption and Safe Families Act of 1997 ("ASFA").[2]

In 1980, Congress enacted the Adoption Assistance and Child Welfare Act which first introduced the requirement that states make reasonable efforts to maintain children in the home and to reunify families.[3] Congress' intent in passing AACWA was to find permanency for foster children by focusing on family preservation and reunification.

In 1997, Congress enacted the Adoption and Safe Families Act which modified the reasonable efforts requirement set forth in AACWA. Under ASFA, states are still required to make reasonable efforts to preserve and reunify the family but when making decisions about the removal of a child or the return of a child, the law now states that "the Child's health and safety shall be of paramount concern."[4] ASFA also established the requirement that states initiate termination of parental rights proceedings if children have been out of the home for 15 or more of the most recent 22 months. [5] This represented a pendulum swing from a focus on family reunification to an emphasis on achieving permanency through adoption.

The federal requirement to provide reasonable efforts is achieved by means of the spending power. That is, ASFA requires the state to make reasonable efforts in order to receive federal funding for those children placed in foster care.[6] Failure to comply with federal law jeopardizes state reimbursement for children removed from their home.[7] If a judge makes a finding that reasonable efforts have not been made, the case is ineligible for Title IV-E funding for the duration of the child's stay in foster care.[8]

Adoption and Safe Families Act (PL 105-89) of 1997

42 U.S.C. § 671. State plan for foster care and adoption assistance.

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan (including, if appropriate, through an interstate placement), and to complete whatever steps are necessary to finalize the permanent placement of the child.

(D) ….

(E) in the case of a child who has been in foster care under the responsibility of the state for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under state law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the state shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the state, the child is being cared for by a relative;

(ii) a state agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the state has not provided to the family of the child, consistent with the time period in the state case plan, such services as the state deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.1

[1]

Note: Relevant sections of statutes included in text boxes in this policy brief have been excerpted from the original. Readers are urged to review the full section of the relevant authority to insure a complete understanding of the applicable context.

In October of 2008, the U.S. Congress passed and President George W. Bush signed into law the Fostering Connections to Success and Increasing Adoption Act of 2008.[1] Among other things, this law adds a new element to reasonable efforts that requires that reasonable efforts be made to keep siblings together in the same foster care, kinship guardianship, or adoptive placement, unless doing so would be contrary to the safety or well-being of any of the siblings. If siblings are not placed together, the state must make reasonable efforts to provide frequent visitation or other ongoing interaction between the siblings, unless this interaction would be contrary to a sibling's safety or well-being.[2]

REASONABLE EFFORTS GENERALLY

As noted above, federal law requires the state to make reasonable efforts to preserve and reunify the family and specifies that, in making those efforts, the child's health and safety are the paramount concern.[3] However, federal law does not specifically state what constitutes reasonable efforts. It does refer to services such as: mental health services, family counseling, and residential treatment services for substance abuse that can be utilized to help reunify families.[4] While these services have been placed in federal statute, the United States Supreme Court has held that states have broad discretion to comply with the directive of reasonable efforts.[5]

Nebraska's statutory scheme regarding reasonable efforts mirrors that of ASFA; therefore, the Nebraska statute also does not specifically state what constitutes reasonable efforts.[6] Despite the lack of a clear definition in statute, the Nebraska Family Policy Act sets forth an overarching policy for reasonable efforts that whenever children and families require assistance from the state that the health and safety of children is paramount and that "reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible."[7]

> Neb. Rev. Stat. § 43-283.01. Preserve and reunify the family; reasonable efforts; requirements.
>
> (1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.
>
> (2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.
> Neb. Rev. Stat. § 43-532. Family policy; declaration; legislative findings
>
> Neb. Rev. Stat. § 43-532. Family Policy; declaration; legislative findings.
>
> (2) When children and families require assistance from a department, agency, institution, committee, or commission of state government, the health and safety of the child is the paramount concern and reasonable efforts shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible.

EXCEPTIONS TO REASONABLE EFFORTS

Reasonable efforts are not required in some circumstances. Both Nebraska and federal statutes include exceptions to the reasonable efforts requirement.[1] The exceptions are similar in federal law and Nebraska law with certain additions recently signed into Nebraska law (see below).[2]

Generally, the exceptions set forth in Nebraska statutes include "aggravated circumstances," which include but are not limited to abandonment, torture, chronic abuse, and sexual abuse under subparagraph (a) of Neb. Rev. Stat. § 43-283.01(4) and also several specifically enumerated criminal violations set forth in subparagraph (b) of § 43-283.01(4). Reasonable efforts are also not required under subparagraph (c) of § 43-283.01(4) if the parental rights of the parents to a sibling have been involuntarily terminated.

It is the State's burden to prove by clear and convincing evidence that reasonable efforts are *not* necessary.[1] A court of competent jurisdiction must determine that an exception is present and therefore reasonable efforts are not required to preserve or reunify the family.[2] Ideally, if any exception to reasonable efforts exists, the state should bring this to the attention of the court early in the proceedings. For example, the county attorney may include in their pleadings to adjudicate the child to be within the meaning of Neb. Rev. Stat. § 43-247(a) that reasonable efforts are unnecessary due to one of the exceptions being present.[3] However, the state cannot simply ignore this requirement or raise it informally without obtaining a determination by a court of competent jurisdiction.

> Neb. Rev. Stat. § 43-283.01. Preserve and reunify the family; reasonable efforts; requirements.
>
> (4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:
>
> (a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;
>
> (b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent; or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or
>
> (c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

In addition to a determination that one of the exceptions to reasonable efforts exists, the Nebraska Court of Appeals has inferred in at least one case that, prior to excusing reasonable efforts, the juvenile court must also consider and determine whether the best interests of the child require reasonable efforts at reunification and that in such consideration the health and safety of the child must be paramount.[4]

It is important to note that when a court of competent jurisdiction finds that there is an exception to reasonable efforts, the statute then requires a hearing to determine placement of the child within thirty days of the determination.[5] The placement must be based on a permanency plan developed by the NDHHS.[6]

As noted above, recent legislation passed by the Nebraska Legislature includes new exceptions to the reasonable efforts requirement that do not exist in federal law. LB 517 introduced by Senator Thomas Hansen in 2009 added language to Nebraska state law that would except reasonable efforts when a parent of a child has subjected the child *or another minor child* to aggravated circumstances or *when the parent has been convicted of felony sexual assault of the other parent of the child under section 28.319.01 or 28-320.01* (felony child sexual assault) *or a comparable crime in another state.*[7] The new language (in italics above) extends the aggravated circumstances exception to situations involving any other minor child and does not limit the exception to "another minor child of the parent" as in the next sub-section (4)(b).[8] In addition, Nebraska state law now includes language which excepts reasonable efforts when the parent has been convicted of felony sexual assault of the other parent under the child sexual assault statutes.[9]

REASONABLE EFFORTS DETERMINATION AND REVIEW

Unless a specific determination has been made that reasonable efforts are *not* required, the juvenile court must periodically review what efforts have been and must be made to reunify the family throughout a case.[10]

The Nebraska Supreme Court addressed the question of when reasonable efforts must be reviewed in *In re Interest of DeWayne G.*[11] In this case, a juvenile court denied a father's request for a separate hearing on reasonable efforts filed in conjunction with a pending termination proceeding pursuant to § 42-292 (1),(2),(4) and the father appealed. The Nebraska Supreme Court affirmed the juvenile court's decision and held that the plain language of the statute does not grant a parent or any other party "the right to bring a motion requesting a 'separate hearing' on the issue of reasonable efforts to preserve and unify." [12] The Supreme Court reasoned that the Legislature did not intend for Neb. Rev. Stat. § 43-282.01 to grant a party the right to separate layer of reasonable efforts hearings but did amend the juvenile code to indicate specific stages within the juvenile proceedings where the juvenile court must consider reasonable efforts.[13] It held that reasonable efforts, if required under § 43-283.01, must be reviewed by the juvenile court at four stages in a juvenile court case:

> "(1) when removing from the home a juvenile adjudged to be under subsection (3) or (4) or § 43-247 pursuant to § 43-284,
> (2) when the court continues a juvenile's out-of-home placement pending adjudication pursuant to § 43-254,
> (3) when the court reviews a juvenile's status and permanency planning pursuant to § 43-1315, and
> (4) when termination of parental rights to a juvenile is sought by the State under § 43-292(6)."[14]

Since the father's motion fell outside this procedural framework, the Supreme Court held he was not entitled to a separate independent hearing.[15]

REASONABLE EFFORTS PRIOR TO REMOVAL

As stated above, reasonable efforts must be made "prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home."[16] Put another way, reasonable efforts must be made prior to a child's removal from the home and to reunify the family after removal.

Nebraska case law has provided at least one example of a reasonable effort that could be made prior to removal. In *In re Interest of Stephanie H.*, the Nebraska Court of Appeals considered a case in which the state removed a child from a custodial parent's home and placed the child in foster care rather than the home of the non-custodial parent, despite there being no abuse allegations made against her.[17] The Court of Appeals found that reasonable efforts were not made in this case prior to removal and stated, "we cannot help but ask what better and more straightforward method of preserving families could there be, in circumstances such as this, than placement of the children with a fit and willing parent, even if that parent had previously been a noncustodial parent in a divorce."[18]

REASONABLE EFFORTS TO REUNIFY

Reasonable efforts is also required in order to reunify the family following removal. Therefore, reasonable efforts can also be part of the calculus when there has been a motion to terminate parental rights filed if the county attorney includes that allegation in the petition.[19] Specifically, there are ten grounds under which parental rights may be terminated under Nebraska statutes.[20] To terminate parental rights, the state needs to prove only one of those grounds and that termination would be in the best interests of the child.[21] Only one of those grounds, subsection (6) of §43-292 (which alleges that reasonable efforts have failed to correct the condition leading to the adjudication), specifically requires that the state prove that reasonable efforts were made and failed.[22]

> Neb. Rev. Stat. §43-292. Termination of parental rights; grounds.
>
> The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:
>
> (6) Following a determination that the juvenile is one as described in subdivision (3)(a) of § 43-247, reasonable efforts to preserve and reunify the family if required under § 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination.

The Nebraska Supreme Court, in interpreting this section, has held that in order to terminate parental rights under Neb. Rev. Stat. § 43-292(6), the state is only required to prove that "parents have been provided with a *reasonable opportunity* to rehabilitate themselves according to a court-ordered plan and have failed to do so."[1] In addition, case law has indicated that reasonable efforts do not require that "all possible alternatives to be exhausted." [2] The court has

further clarified that the state is *not* required to show that "noncompliance with a court-ordered rehabilitation plan is willful" in order to prove that parents have failed to rehabilitate themselves.[3]

Although the state is not required to specifically show that reasonable efforts have been provided if they are not proceeding under Neb. Rev. Stat. § 43-292(6), Nebraska cases have nevertheless articulated that when proceeding solely under § 43-292 (7) (that the juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months), termination is not in a child's best interest when a parent has made reasonable efforts to rehabilitate themselves.[4] In this context, the Nebraska appellate courts have looked at the progress and opportunity for a parent to comply with a plan of rehabilitation in analyzing the issue of best interests under Neb. Rev. Stat. § 43-292(7).[5] The Nebraska Supreme Court has stated that "the law does not require perfection of a parent but continued improvement in parenting skills and a beneficial relationship between parent and child."[6]

ACTIVE EFFORTS UNDER THE INDIAN CHILD WELFARE ACT

In cases involving an Indian child, the both federal and Nebraska ICWA require that the party seeking the placement or termination of parental rights to the Indian child must prove that *active efforts* "have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts have been unsuccessful."[7]

Like reasonable efforts, the term active efforts is not clearly defined in statute. Instead, the Nebraska Supreme Court has indicated that active efforts is reviewed on a case-by-case basis.[8] The Supreme Court has made clear however that active efforts require more than reasonable efforts in non-ICWA cases[9] and that "at least some efforts should be culturally relevant."[10] While courts in other states have determined that active efforts must be proven beyond a reasonable doubt under ICWA, the Nebraska Supreme Court held that active efforts in Nebraska must only be proven by clear and convincing evidence.[11]

CASE LAW ON REASONABLE EFFORTS

The following case law outlines how the Nebraska Supreme Court and Court of Appeals have interpreted various aspects of the reasonable efforts requirement and the exceptions to reasonable efforts.

EXCEPTIONS TO REASONABLE EFFORTS

Court Determination and Standard of Proof

With regard to the statutory exceptions to reasonable efforts, the Nebraska Court of Appeals has indicated that the juvenile court in which the adjudication occurred is a court of competent jurisdiction to make the determination as to whether an exception exists.[12] The Nebraska Court of Appeals has also held that clear and convincing evidence is the standard required to excuse reasonable efforts because "dispensing with reasonable efforts at reunification frequently amounts to a substantial step toward termination of parental rights."[13]

Aggravated Circumstances – Situations Not Enumerated in Statute

As noted above, the Nebraska statute lists aggravated circumstances as an exception to the reasonable efforts requirement and enumerates specific situations that would meet the definition including abandonment, torture, chronic abuse and sexual abuse.[14] The Nebraska Supreme Court has held that aggravated circumstances is not limited by those situation enumerated by statute.[15] *In re Interest of Jac'Quez N.,* the Nebraska Supreme Court found that aggravated circumstances had been met in a situation outside of those specified by statute.[16]

In *Jac'Quez N.*, the child was brought into the emergency room with severe injuries consistent with non-accidental trauma, specifically "shaken baby syndrome." The parents had delayed two days in seeking medical treatment, fearing that the child would be removed from their care and that delay had contributed to injuries so severe that the child was expected to be blind and deaf and his development was not expected to progress. The juvenile court granted the state's petition to terminate the parental rights of the father and the father did not appeal. However, the juvenile court denied the state's petition to terminate the parental rights of the mother. The state appealed and asserted that the court erred when it failed to find that reasonable efforts at reunification with the mother were not required because of aggravated circumstances. The Nebraska Supreme Court agreed.

In discussing what constitutes aggravated circumstances outside of those specifically enumerated in the statute, the Nebraska Supreme Court relied on a New Jersey Superior Court decision that found certain "common threads or themes that were consistent with the intent and purpose of the federal legislation" and stated that,

> "the term aggravated circumstances embodies the concept that the nature of the abuse or neglect must have been so severe or repetitive that to attempt reunification would jeopardize and compromise the safety of the child and would place the child in a position of an unreasonable risk to be re-abused."[17]

The Nebraska Supreme Court found that the mother's delay in obtaining needed medical assistance for her child due to her fears of having him removed from her care when he had obviously sustained serious injury coupled with the fact that the child now needed a "heightened level of care" constituted an unreasonable risk that he would be re-abused.[18] On this basis, the Supreme Court found an aggravated circumstance excusing the requirement to provide reasonable efforts existed, although it was not one of the examples specified in the statute.[19]

Abandonment

Abandonment is one of the aggravated circumstances excusing reasonable efforts listed in Neb. Rev. Stat. § 43-283.01(4)(a). However, the Nebraska Court of Appeals has articulated that reasonable efforts is not excused and termination of parental rights is not appropriate on the basis of abandonment where the father has made efforts to make contact with his child but, due to failures on the part of the NDHHS, these efforts were unsuccessful.[20] In *In re Interest of Dezziny C.* the Nebraska Court of Appeals upheld a decision by the juvenile court that rejected the state's attempt to terminate a father's parental rights by alleging that he abandoned his daughter and failed to give her proper parental care.[21] The father attempted to intervene in the juvenile court matter involving his child. The father made contact with the NDHHS case manager to establish visitation and the case manager failed to make the

arrangements. Another worker was assigned to the case and again failed to make contact with the father despite his efforts. Eventually supervised visitation was established between the father and child. However, despite the commencement of visitation, the state subsequently filed a supplemental petition and a motion to terminate parental rights. The supplemental petition alleged that the father's lack of parenting placed Deztiny within the meaning of § 43-247(a) and that reasonable efforts were not necessary because the father allegedly abandoned his daughter. The motion to terminate parental rights also alleged abandonment pursuant to §43-292(1). In analyzing the father's conduct six months prior to the filing as is required to prove abandonment under §43-292(1), the Court of Appeals found that the father's continuing efforts to have contact with his daughter proved there had been more than token contacts with the child.[22] The failure of the caseworkers to assist the father in his attempt to be reunified with his daughter was cited by the court as evidence of the father's lack of intent to abandon. The Nebraska Court of Appeals reversed the juvenile court findings that the father abandoned his child, that reasonable efforts were not necessary, and that his parental rights should be terminated.

Specified Crimes

Other exceptions to the reasonable effort requirement include certain specified crimes committed by a parent against one or more of their children.[23] The Nebraska Court of Appeals provided an analysis of one of these exceptions in *In re Interest of Hailey M.*[24] In *Hailey M.,* the state sought an order to forego reasonable efforts pursuant to Neb. Rev. Stat. §43-283.01(4)(b)(iii) which states, "that a parent of a juvenile has aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent." The state also sought to terminate the parental rights of the mother, Tammy, pursuant to §43-292(10)(c) which mirrors the language found in §43-283.01(4)(b)(iii). Nine years prior to the birth of Hailey, her mother, Tammy, was found to have been responsible for the death of Hailey's brother, Christopher, by failing to protect him from abuse by her boyfriend and not seeking medical treatment for the injuries that he suffered from the abuse. Christopher eventually died as a result of the injuries. Tammy pled to one count of felony child abuse and was sentenced to 5 to 12 years in prison. In applying the facts directly to §43-283.01(4), the Court of Appeals upheld the juvenile court finding of clear and convincing evidence that an exception existed to the requirement of reasonable efforts due to the mother's conviction and role in aiding and abetting in Hailey's sibling's death. These actions constituted an aggravated circumstance clearly excusing reasonable efforts. The Court of Appeals also upheld the termination of the mother's parental rights.

REASONABLE EFFORTS AT TERMINATION OF PARENTAL RIGHTS

A Reasonable Plan of Reunification

Prior to the enactment ASFA, the Nebraska Supreme Court held in *In re Interest of L.J.* that the state fails to make reasonable efforts if a parent is unable to comply with a court ordered plan not because of unfitness but because of poverty.[25] In this case, the juvenile court adopted a plan proposed by the Nebraska Department of Health and Human Services that required the mother to pay child support she was unable to afford. The child was also moved outside of the city where the mother resided which made it difficult for her to participate in regular visitation due to her financial situation. Further, the mother was also unable to access court ordered psychotherapy services due to a

past due bill that she was unable to pay. The Supreme Court reversed and remanded the termination, holding that the plan of rehabilitation was unreasonable.[26]

More recently, the Nebraska Supreme Court indicated that the adoption of a permanency objective of reunification without any means for the parent to achieve that goal may be grounds for overturning a termination of parental rights. In *In re Interest of Mainor T. & Estela T.* the juvenile court found that reasonable efforts were excused on the basis that the mother had abandoned her children when she was deported after her children were removed from her home based on allegations of abuse and neglect.[27] During the disposition and subsequent review hearings, the permanency objective remained reunification, but the case plan submitted to the court contained no services proposed to help with reunification.[28] The Supreme Court vacated and remanded the adjudication, disposition, and termination orders, holding, among other things, that the juvenile court's adoption of a case plan that did not provide the mother with any means of achieving the permanency objective of reunification and without any requirement that DHHS make reasonable efforts to provide services toward the goal of reunification was fundamentally unfair and denied the mother's due process rights.[29] The Supreme Court also held that the mother's deportation did not constitute abandonment.[30]

WHAT CAN BE DONE IN INDIVIDUAL CASES?

A primary goal of this Policy Brief is to equip attorneys with strategies to raise and address the issue of reasonable efforts in their individual cases as appropriate. The following are some practical tips that we hope will be helpful to practitioners.

AT THE ONSET OF THE CASE

As noted above, the state is required to provide reasonable efforts prior to removing a child from the home. However, most attorneys are not appointed until after the removal has occurred. Therefore, the first opportunity you may have to raise concerns about the state's failure to provide reasonable efforts prior to removal will likely be at the detention hearing. In order to do so, it is imperative that you speak with your client and collect as much information as possible from the initial assessment worker and others as soon as you are appointed. Try to determine what services may have been or are currently available to place the child back in the home as quickly as possible. If you believe that reasonable efforts were not provided to prevent the removal of the child from the home, object to the finding of reasonable efforts at the detention hearing and put on evidence of the state's failure in this regard. It may also be helpful to put on evidence of services or other measures that could be provided to safely return the child to the home.

PROVIDING ONGOING EFFORTS

Reasonable efforts are also required to reunify the family and should be provided on an ongoing basis throughout the course of the case. Services often commence following the adoption of the case plan at the dispositional hearing; however, in many cases, it may be beneficial to try to work with NDHHS, and the court if necessary, to get services

into place prior to that time. At the dispositional hearing, you should strongly advocate for specific, appropriate services and object to any services that are unnecessary or inappropriate. Case plans should be developed with the family and should be individualized. Note that under Neb. Rev. Stat. § 43-285(2), if any other party, "including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests." Therefore, in certain circumstances, it may be useful for the guardian ad litem or parent's attorney to prepare and submit an alternate plan if the Department's plan does not appear to be in the child's best interests.[31] As the case progresses, if appears that NDHHS is failing to provide the services set forth in the case plan or those that are necessary to reunify the family, you should bring the matter to the attention of the court during the course of all status and permanency hearings, and at the termination hearing, if Neb. Rev. Stat. § 43-292(6) is pled.[32]

FORMALLY RAISING REASONABLE EFFORTS ON BEHALF OF THE PARENT OR CHILD

In addition to raising reasonable efforts as the issue arises through the course of the case, practitioners may need to be more proactive in certain circumstances. Various approaches exist to doing so and may vary by jurisdiction. For example, some practitioners have successfully utilized Nebraska's civil contempt power to assist their clients with receiving court ordered services.[33] Practically speaking, this involves filing an "Order to Show Cause." This order is obtained by filing and setting a hearing on a "Motion to Show Cause." To succeed in obtaining a contempt order there must be a showing that the alleged disobedience was "willful."[34] Seeking a contempt order can motivate the offending party to quickly rectify the problem because the court has the power to impose a fine or even imprisonment to enforce its order.[35]

A sample Motion to Show Cause and Order to Show Cause are available through Nebraska Appleseed's Juvenile Document Bank. Members of the Foster Care Reform Legal Resource Center may access the Juvenile Document Bank at: http://neappleseed.org/lrc/

Another possible method for formally raising the issue of reasonable efforts is to file a "Motion for Reasonable Efforts." This is slightly different than a contempt motion in that it is seeking to have the juvenile court to make a "no reasonable efforts finding." The effect of a "no reasonable efforts finding," as noted above, is that the state loses federal Title IV-E funding for the case and must then rely solely on state funding. However, when considering this approach, recall that the Nebraska Supreme Court held in *In re Interest of DeWayne G.* that the statute does not provide a party with a right to bring a motion for a separate hearing on the issue of reasonable efforts outside of those set forth in Neb. Rev. Stat. §43-283.01.[36] Instead, as a practical matter, courts may hear this motion in the context of a review or other specified hearing in compliance with *DeWayne G.*

A sample Motion for Reasonable Efforts is available through Nebraska Appleseed's Juvenile Document Bank. Members of the Foster Care Reform Legal Resource Center may access the Juvenile Document Bank at: http://neappleseed.org/lrc/

CONCLUSION

Reasonable efforts is a critical component necessary to protect the best interests of children and the constitutional rights of parents. Attorneys representing children and parents in juvenile court can play an important role in insuring that appropriate services and protections are put into place in accordance with the reasonable efforts requirement. Please contact the Foster Care Reform Legal Resource Center if you have a case addressing these issues or for more information about how to raise the issue of reasonable efforts.

CITATIONS

[1] *Troxel v. Granville,* 530 U.S. 57, 120 S. Ct. 2054 (2000).

[2] 42 U.S.C. § 671(15)(B)(i) (2006), Neb. Rev. Stat. § 43-283.01 (2009).

[3] 42 U.S.C. § 671(15)(B) (2006), Neb. Rev. Stat. § 43-283.01.

[4] Neb. Rev. Stat. § 43-283.01(4) (2009).

[5] Adoption Assistance and Child Welfare Act, Pub. L. No. 96-272, § 101(a)(1) (1980).

[6] 42 U.S.C. § 671 (2009).

[7] Pub. L. No. 96-272, § 101(a)(1), 94 Stat. 500.

[8] 42 U.S.C. § 671(15)(a) (2006).

[9] 42 U.S.C. § 675 (2009).

[10] *Id.*

[11] 42 U.S.C. § 671; *See also* U.S. Department of Health and Human Services Office of the Assistant Secretary for Planning and Evaluation, *Federal Foster Care Financing: How and Why the Current Funding Structure Fails to Meet the Needs of the Child Welfare Field*, August 2005.

[12] Sarah Helvey, *Federal Foster Care Financing Issues in Nebraska,* The Nebraska Lawyer, Nov.-Dec. 2008, 15, *available at* http://www.nebar.com/pdfs/nelawyer/2008/NOVDEC08/1108c.pdf.

[13] Note: Relevant sections of statutes included in text boxes in this policy brief have been excerpted from the original. Readers are urged to review the full section of the relevant authority to insure a complete understanding of the applicable context.

[14] Fostering Connections to Success and Increasing Adoptions Act, Pub. L. No. 110-351 (2008).

[15] *Id.*; *see also* Center for Law and Social Policy, *Fostering Connections to Success and Increasing Adoptions Act 2008 resources, available at* http://www.clasp.org/resources_and_publications/publication?id=0429&list=publications (last visited November 10, 2009).

[16] 42 U.S.C. § 671(15).

[17] 42 U.S.C. § 629(a) (2009).

[18] *Suter v. Artist M.*, 503 U.S. 347 (1992) (The U.S. Supreme Court found that there was no private right of action in the Adoption Assistance and Child Welfare Act of 1980 to control the services provided by a state as a part of reasonable efforts).

[19] Neb. Rev. Stat. § 43-283.01.

[20] Neb. Rev. Stat. § 43-532 (1987).

[21] 42 U.S.C. § 671(15)(D) (2009); Neb. Rev. Stat. § 43-283.01(4).

[22] *Id.*

[23] *In re Interest of Dezztiny C.*, 15 Neb. App. 179, 185, 723 N.W.2d 652, 661 (2006). *See also In re Interest of Jac'Quez N.,* 266 Neb. 782, 788, 789 N.W. 2d 429, 435 (2003) (clear and convincing evidence is necessary to show that reasonable efforts do not have to be made).

[24] *In re Interest of Janet J.,* 12 Neb. App. 42, 56, 666 N.W. 2d 741, 749 (2003).

[25] *See In re Interest of Jac'Quez N.*, 266 Neb. 782, 789 N.W.2d 429 (state sought to forego reasonable efforts along with the petition and motion to terminate); *In re Interest of Hailey M.*, 15 Neb. App. 323, 726 N.W. 2d 576 (2007) (state sought an order eliminating the requirement for reasonable efforts at the time of the filing of the petition).

[26] *In re Interest of Janet J.*, 12 Neb. App. at 56, 666 N.W.2d at 752.

[27] Neb. Rev. Stat. § 43-283.01(5) (1998).

[28] *In re Interest of DeWayne G.,* 263 Neb. 43, 638 N.W.2d 510 (2002).

[29] Neb. Rev. Stat. § 43-283.01(4)(a) (2009); Laws 2009, LB 517, § 1 (emphasis added).

[30] Neb. Rev. Stat. § 43-283.01(4)(a).

[31] *Id.*

[32] Neb. Rev. Stat. § 43-1315 (1998).

[33] 263 Neb. 43, 638 N.W.2d 510.

[34] *In re Interest of DeWayne G.*, 263 Neb. at 53, 638 N.W.2d at 518.

[35] *Id.*

[36] *Id.* at 54, 519.

[37] *Id.*

[38] Neb. Rev. Stat. § 43-283.01(2) (2009).

[39] *In re Interest of Stephanie H.*, 10 Neb. App 908, 639 N.W.2d 668 (2002).

[40] *Id.* at 926, 683.

[41] Neb. Rev. Stat. § 43-292(6) (1998).

[42] Neb. Rev. Stat. § 43-292 (1998).

[43] *In re Interest of Phoenix L.,* 270 Neb. 870, 780 N.W.2d 786 (2006).

[44] *In re Interest of DeWayne G.,* 262 Neb. at 53-54, 638 N.W.2d at 518.

[45] *In re Interest of Kassara M.*, 258 Neb. 90, 97, 601 N.W.2d 917, 924 (1999) (emphasis added); *see also In re Interest of L.H. et al.*, 241 Neb. 232, 244, 487 N.W. 2d 279, 288 (1992).

[46] *In re Interest of S.R., D.R., and B.R.*, 239 Neb. 871, 877, 479 N.W.2d 126, 130 (1992); *see also In re Interest of Heather G.,* 12 Neb. App. 13, 36, 664 N.W.2d 488, 503 (2003).

[47] *In re Interest of Kassara M.,* 258 Neb. at 99, 601 N.W.2d at 925.

[48] *See In re Interest of Xavier H.,* 274 Neb. 331, 346, 740 N.W.2d 13, 23 (2007); *In re Interest of Rebecka P.,* 266 Neb. 869, 874, 669 N.W.2d 658, 663 (2003); *See also In re Interest of Aaron D.*, 269 Neb. 249, 691 N.W.2d 164 (2005).

[49] *See In re Interest of Xavier H.,* 274 Neb. 331, 740 N.W.2d 13; *In re Interest of Aaron D.,* 269 Neb. 249, 691 N.W. 2d 164; *In re Interest of Angelica L. and Daniel L.*, 277 Neb. 984, 767 N.W.2d 74 (2009).

[50] *In re Interest of Aaron D.,* 269 Neb. at 265, 691 N.W.2d at 176.

[51] 25 U.S.C. § 1912(d) (2008); Neb. Rev. Stat. § 43-1505(4) (1987).

[52] *In re Interest of Walter W.*, 274 Neb. 859, 865, 744 N.W. 2d 55, 61 (2008).

[53] *Id.* at 865, 61; *In re Interest of Sabrienia B.,* 9 Neb. App. 888, 895, 621, N.W.2d 836, 842 (2001).

[54] *Id.* at 867, 62.

[55] *Id.* at 864, 60.

[56] *In re Interest of Janet J.,* 12 Neb. App. at 53, 666 N.W.2d at 750.

[57] *In re Interest of Ja'Quez N.*, 266 Neb. App. at 789, 669 N.W.2d at 435.

[58] Neb. Rev. Stat. § 43-283.01(4)(a).

[59] *In re Interest of Ja'Quez N.*, 266 Neb. App. 782, 669 N.W.2d 429.

[60] *Id.* at 791, 435.

[61] *Id.* at 792, 436.

[62] *Id.*

[63] *Id.*

[64] *In re Interest of Dezztiny C.*, 15 Neb. App. 179, 723 N.W.2d 652.

[65] *Id.* at 190, 660.

[66] *Id.* at 185, 657.

[67] Neb. Rev. Stat. §43-283.01(4)(b) (1998).

[68] *In re Interest of Hailey M.*, 15 Neb. App. 323, 726 N.W.2d 576 (2007).

[69] *In re Interest of L.J.*, 220 Neb. 102, 368 N.W.2d 474 (1985).

[70] *Id.* at 112, 481.

[71] *In re Interest of Mainor T. & Estela T.,* 267 Neb. 232, 674 N.W.2d. 442 (2004).

[72] *Id.*

[73] *Id.* at 255, 462.

[74] *Id.* at 256, 463.

[75] ***In re Interest of Jason H.*, WL 33335 (1995).**

[76] *In re Interest of DeWayne G.,* 263 Neb. at 53, 638 N.W.2d at 520.

[77] Neb. Rev. Stat. § 25-2121 (1929).

[78] *Id.*

[79] *Id.*

[80] *In re Interest of DeWayne G.,* 263 Neb. 43, 638 N.W.2d 510