Reasonable Efforts and Parent-Child Reunification

Raymond C. O'Brien

The Catholic University of America, Columbus School of Law

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# REASONABLE EFFORTS AND PARENT–CHILD REUNIFICATION

*Raymond C. O’Brien*

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## INTRODUCTION

Involuntary removal of children from parental custody prompts social, legislative, and constitutional concerns. Children may be removed from

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* Professor of Law, The Catholic University of America; Visiting Professor, The Georgetown University Law Center. The author expresses his gratitude to the staff of the *Michigan State Law Review* at which the ideas expressed herein were presented at a symposium sponsored by them. The author also acknowledges the research and editorial assistance in the production of this article provided by Mickey Jett.
parental custody by state child-protection agencies for causes ranging from murder of a sibling or parent, sexual abuse, nutritional deficiencies, or failure to adequately supervise the child. But then, after removal, because a parent has a fundamental right under the Fourteenth Amendment to the custody of his or her child, the state has an obligation to reunify the parent and the child as promptly as possible and therefore may not stand idly by and wait for the parent to rehabilitate. To safeguard constitutional guarantees, legislation requires states to provide reasonable efforts to reunify parent and child with a few exceptions for aggravated circumstances.\textsuperscript{1} Defining what constitutes reasonable efforts is elusive, especially when the causes for removal are complex and often reoccurring, necessitating the child’s reentry into protective services. Furthermore, whatever constitutes reasonable efforts is further complicated when state revenues decrease in recessionary times.

Whenever federal and state budgets are constrained by increasing demand and decreasing tax revenues, reasonable efforts at reunification may quantitatively and qualitatively decrease. Fewer reunification services offered to parents may prolong the time necessary for parents to correct the cause or causes of the children’s removal. At some point, the parents’ right to state-supplied services competes with the child’s right to permanency. Increasingly, legislation stipulates that the health and safety of the child must be of paramount concern, not the parents’ predicaments that occasioned removal. Illustrative is federal legislation requiring that permanency hearings be conducted within twelve months of any child’s involuntary removal.\textsuperscript{2} Furthermore, if the child remains in state custody for fifteen of the last twenty-two months, the state must petition for termination of parental rights. Presumptively, if the state has sufficient resources to provide a parent with services and the parent cooperates with the state permanency plan, the child can be reunified with the parent within the stipulated time frame. But if reasonable efforts are reduced because of state budgetary constraints and the federal time frame establishes fixed parameters, the possible reunification of the parent and child decreases exponentially.

These are interesting times. State budgets have been adversely affected by a recession that began in 2008; families are adversely affected by this recession too, resulting in greater poverty and a corresponding rise in children being placed in protective care. Federal funding favors placing children in foster care and then placing them for adoption if there are aggravating circumstances or if the parent fails to cooperate with reasonable efforts at reunification within a prescribed period of time. Note that this period will be


\textsuperscript{2} \textsection 675(5)(C)(i).
assessed at a permanency hearing within a few months of the child's removal from the parent. Reunification is compounded by decreasing state resources available to assist parents whose children have been removed from their custody involuntarily, and this raises questions as to constitutional implications. Neither parent nor child has a private cause of action to bring against a state for failure to provide for reasonable services. Additionally, there is little—if any—federal oversight for state inadequacies in providing reasonable efforts. Unlike in criminal matters, the indigent parent has no constitutional right to have an attorney appointed; children have a right to representation because of federal law, but unfortunately that representation often is inadequate. A number of volunteer organizations have evolved to represent children, including the Court Appointed Special Advocates (CASA). But still at issue is what constitutes reasonable efforts on the part of the state during a time of diminishing state resources.

This Article first concludes that there is no ascertainable standard by which an observer may evaluate the reasonableness of state efforts. Federal legislation lacks specifics, and state legislation varies substantially in what is offered, who offers it, and what is expected. Second, federal and state court decisions continue to move towards preferring the health and safety of children over the constitutional rights of parents' custody over their children. Third, the recession that began in 2008 is not the first time that state budgets have decreased, prompting a decrease in the services offered to parents. But the 2008 recession was a significant and a prolonged recession, with child dependency consequences that may be more lasting and more pronounced than before. Fourth, the increasing occurrence of involuntary removal of children from parental custody requires states to acknowledge and foster voluntary support efforts for parents and children seeking reunification. In addition, volunteer organizations such as Court Appointed Special Advocates need to be fostered and recognized for the hands-on service each volunteer provides. And fifth, parents and children need effective legal representation throughout the proceedings to maximize any state reasonable efforts.

Overall, based on an assessment of the present efforts made by many states described in this Article, children and parents are denied equality of treatment when children are involuntarily removed because of conditions associated with poverty or mental handicap. This inequality of treatment is augmented by federal legislation, inadequate review of state efforts, and funding mandates that support foster placement, parental rights termination, and third-party adoption.

A. Constitutional Guarantees

Children may be involuntarily removed from the custody of their parents; also, the parent may voluntarily surrender the child to the state. In either situation, the child, upon removal by state authorities, is then termed a dependent child or a "[c]hild in need of protection . . . [and] services." Thereafter, unless the parent consents to termination of parental rights, the parent retains a right under the United States Constitution to the custody of his or her child. This right is guaranteed by the Fourteenth Amendment's Due Process Clause and is a fundamental right.

4. See, e.g., In re M.L., 757 A.2d 849, 850 (Pa. 2000). The court defines a dependent child under 42 PA. CONS. STAT. § 6302 as:

A child who:
(1) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals;
(2) has been placed for care or adoption in violation of law;
(3) has been abandoned by his parents, guardian, or other custodian;
(4) is without parent, guardian, or legal custodian.

Id. (quoting 42 PA. CONS. STAT. § 6302 (1999)).

5. See, e.g., MINN. STAT. § 260C.007 (2009). Minnesota defines a child in need of protection or services as a child who:

(1) is abandoned or without parent, guardian, or custodian;
(2) (i) has been a victim of physical or sexual abuse . . . , (ii) resides with or has resided with a victim of child abuse . . . , (iii) resides with or would reside with a perpetrator of domestic child abuse . . . , or (iv) is a victim of emotional maltreatment as defined in subdivision 15;
(3) is without necessary food, clothing, shelter, education, or other required care for the child's physical or mental health or morals because the child's parent, guardian, or custodian is unable or unwilling to provide for that care;
(4) is without the special care made necessary by a physical, mental, or emotional condition because the child's parent, guardian, or custodian is unable or unwilling to provide that care;
(5) is medically neglected, which includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition . . . ;
(6) is one whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody . . . ;
(7) has been placed for adoption or care in violation of law;
(8) is without proper parental care because of the emotional, mental, or physical disability, or state of immaturity of the child's parent, guardian, or other custodian.

Id.

6. See Wisconsin v. Yoder, 406 U.S. 205, 213-14 (1972) (protecting a parent's right to child rearing, education, and religion); Stanley v. Illinois, 405 U.S. 645, 650-51 (1972) (discussing a parent's right to raise a child); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (stating "that the custody, care and nurture of the child reside[s] first in the par-
Reasonable Efforts and Parent-Child Reunification

Prior to any consideration of the best interest of the child, courts looked to the right of the parent to raise the child and held that almost always it is in the best interest of the child to remain with the parent. Even when the child is involuntarily removed from the custody of the parent because of a specified condition, the parent retains a fundamental right to the custody of his or her child. The Supreme Court has stated that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." The nature of this fundamental right means that "[f]irst and foremost, the [state agency] must consider returning the child to the child's natural parents or guardians" upon involuntary removal.

In practical application, the fundamental right of parents to the custody of their children provides minimal assistance when a child is removed from their home because there are clear and convincing circumstances suggesting abuse, neglect, or abandonment. In addition, once the child is removed "[t]he state is clearly in control in neglect proceedings, for not only does it present the case to the court, but its 'adversary,' the parent, is [also] unfamiliar with the intricacies of the legal proceedings." As one commentator writes, "families involved in neglect proceedings are overwhelmingly poor." "Even if the [child protective service] is sensitive to [the] issues" that poverty precipitates, "[t]he cycle of poverty . . . is difficult for any family to break." One scholar has suggested that

[b]ecause there is much less room for error in poor families, virtually any small set-back can trigger another allegation of neglect. Furthermore, the same deficien-
cies that initially led to the charges of neglect—such as poor housing, lack of child care, lack of transportation, and stress—can make complying with the child welfare agency's service plan extremely difficult. Nevertheless, such compliance is critical to reuniting and preserving the family unit.14

Because the state's removal of the child is civil in nature, the parents lack the constitutional guarantee of the appointment of an attorney if they cannot afford one.15 Parents derive some protection, however, from termination proceedings through the level of proof required to terminate parental rights: the state cannot terminate parental rights without establishing that there is at least clear and convincing evidence.16 Children are entitled to some protection in dependency proceedings, as there are state and federal statutes requiring the appointment of attorneys or volunteers. The federal Child Abuse Prevention and Treatment Act (CAPTA), first enacted in 1974, requires states to document in any state dependency plan the provision for appointing a guardian ad litem to represent the child's best interests in every case of abuse or neglect that results in a judicial proceeding.17 Congress reauthorized CAPTA in 2010 and strengthened the requirement that each court-appointed guardian ad litem, attorney, or CASA receive training so as

14. Id. at 2296-97.
15. Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 32-33 (1981) (holding that failure to appoint counsel to represent the parent in a parental termination proceeding did not violate the Due Process Clause). Many states do provide an attorney in civil dependency adjudications. See, e.g., In re J.W., 2013-Ohio-468 (holding that the indigent stepfather of children who were the subject of a dependency adjudication was entitled to appointed counsel in the custody proceeding). But see In re C.M., 48 A.3d 942, 945, 950 (N.H. 2012) (upholding the right of a state's legislature to abolish appointment of counsel for indigent parents in every civil dependency hearing and stating that "a determination of whether appointed counsel is necessary to adequately reduce the risk of erroneous deprivation should be made on a case-by-case basis in the first instance by the trial court"); Dep't of Family Servs. v. Currier, 2013 WY 16, 295 P.3d 837, 839 (Wyo. 2013) (finding "that due process [does not] require[] the state to provide an indigent [obligor] with [appointed] counsel in a civil contempt proceeding for non-payment of child support[, even] when incarceration is one of the possible penalties").
to be able to make appropriate recommendations to the court concerning the child’s best interests.\(^{18}\)

B. Advocates

The guardian ad litem (GAL) may be an attorney or a volunteer with appropriate training.\(^{19}\) Each state has adopted CAPTA guidelines in whole or in part, but “adherence to its GAL appointment mandates and adequate GAL training remains a problem.”\(^{20}\) Nebraska evaluated its GAL system in 2009, and the resulting findings offer insight into one state’s program.\(^{21}\) The report was issued in response to a 2008 request by the state legislature to

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21. See ERIK S. PITCHAL, MADELYN D. FREUNDLICH & CORENE KENDRICK, NAT’L ASS’N OF COUNSEL FOR CHILDREN, EVALUATION OF THE GUARDIAN AD LITEM SYSTEM IN NEBRASKA (2009) [hereinafter NACC NEBRASKA GAL REPORT], available at http://c.ymcdn.com/sites/www.naccchildlaw.org/resource/resmgr/nebraska/final_nebraska_gal_report_12.pdf. “[I]n October 2009, the national children’s advocacy organization First Star . . . released a report ranking the . . . quality of [each state’s] legal representation for abused and neglected children. Nebraska received a score of 76 out of 100”; in a previous report, Nebraska had scored 73 out of 100. Id. at 16-17. The problems cited as afflicting Nebraska were: (1) vague description of the role of GALs; (2) no mandatory training; (3) lack of continuity of counsel for each child; and (4) lack of a statutory right for the child to be present at all child protective, foster care, or dependency hearings. Id. at 17.
evaluate the state’s GAL system on fifteen different measures and then to offer recommendations to improve performance. \(^{22}\) Nebraska law defines a GAL as an attorney licensed to practice law by the Supreme Court of Nebraska. \(^{23}\) "[T]he GAL is expected [first,] to represent the child’s best interests before the court[; second, to] . . . ‘defend the legal and social interests’ of the child[,] and [third, to] ‘act as counsel for the juvenile.’" \(^{24}\) To qualify, an attorney GAL must complete an initial six hours of specialized training provided by the Administrative Office of the Court and then undergo three additional hours of specialized training each year to maintain eligibility. \(^{25}\) Overall, and not limited to Nebraska, lack of training in the complex field of child dependency is a major deficiency in providing adequate reasonable efforts to children and their parents.

Nebraska’s state statute and policy intend that a GAL should act as an attorney for the child. \(^{26}\) It asserts that the “GAL has the right to file motions, present evidence and witnesses, cross-examine witness[es], file petitions on behalf of the child to terminate the parent’s parental rights, and to move the court to order treatment and services for the child.” \(^{27}\) State law further specifies that the “GAL must attend all hearings, meet with the child within two weeks of appointment and every six months thereafter, submit a written report at every disposition and review hearing, and make recommendations to the court.” \(^{28}\) The counties in the state provide for appointment of the GAL and for compensation. \(^{29}\) Judges or their designated representatives appoint the GAL from a list of approved attorneys; compensation varies according to the county, but in 2006, the GAL was paid, on average, around $70 per hour. \(^{30}\)

\(^{22}\) Id. at vi-vii.

\(^{23}\) Id. at 12.

\(^{24}\) Id. (quoting NEB. REV. STAT. §§ 43-272.01(2)(a)-(b), 43-272(3) (Supp. 2012)).

\(^{25}\) NEB. CT. R. § 4-401. State guidelines relating to training of GALs nonetheless permit a judge to appoint an attorney with no training as a GAL “if the judge determines that an attorney with the training required herein is unavailable within the county.” Id.

\(^{26}\) Commentators favor a client-directed role for attorneys. See Duquette with Darwall, supra note 20, at 98-100 ("[T]hat a lawyer should take direction from his or her child client if the child is determined to have developed the cognitive capacity to engage in reasoned decision making.").

\(^{27}\) NACC NEBRASKA GAL REPORT, supra note 21, at 12 (citing NEB. REV. STAT. § 43-272.01(2)).

\(^{28}\) Id. (citing NEB. REV. STAT. § 43-272.01(2)).

\(^{29}\) Id. at 13.

\(^{30}\) Id. at 13. “According to information gathered by the ABA Center on Children and the Law in 2006, . . . most jurisdictions pay in the range of $50 to $70 per hour.” Id. at 61. “Some have differentials for in-court . . . time, and some have per-case maximums. At the high end, Nevada and Kentucky pay $100 per hour; at the low end, Rhode Island pays $30 per hour.” Id. “Colorado currently pays $65 per hour.” Id.

In 33 states, the District of Columbia, American Samoa, and Guam, fees and expenses for attorney and/or GAL services are paid by the court handling the case. In
A GAL must be appointed whenever a judge signs a temporary custody order directing that the child has been or will be removed from the home. At this point, the caseworker assigned must develop a case plan for the child and for the family. "The case plan provides [for] the safety, well-being, and permanency goals for the child and states what the parents and the agency must do so the child remains in foster care no longer than is absolutely necessary." After the GAL's appointment, state law requires that he or she meet with the child, the caseworker assigned, and the foster parent or caretaker for the child. Meeting with anyone else is optional, based on whether someone else may have information pertaining to why the child has been declared a dependent child.

After the court signs the temporary ex parte custody order, often there is a pre-hearing conference at which the process will be explained to the parent, possible kinship placements for the child are identified, and reasonable efforts to reunify the family are discussed. The GAL is required to be present at the pre-hearing conference and then at the subsequent temporary custody hearing. At this temporary custody hearing, usually within ten or fourteen days after state intervention, the county attorney must prove the allegations resulting in the child's removal or assumption of legal custody by the state by a preponderance of the evidence. Then, following the temporary custody hearing, there is an adjudication hearing held within ninety days. The purpose of this hearing is to prove the allegations made by at least a preponderance of the evidence; the GAL is able to present evidence, witnesses, and cross-examine witnesses at this hearing. If parents admit to the charges, the process goes directly to the dispositional hearing. At this

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six States and American Samoa, these costs are funded by the State; in 15 States, expenses are paid by the county. To the extent that they are able to pay, the court in 22 States and Guam may require the parent or guardian of the child or other appropriate party to reimburse the court for any attorney or GAL fees that have been paid. In Tennessee and American Samoa, the person found responsible for the abuse or neglect is required to pay these expenses.

**Representation of Children,** supra note 19, at 7-8.

31. NACC NEBRASKA GAL REPORT, supra note 21, at 18.
32. Id.
33. Id.
34. Id.
35. Neb. Rev. Stat. § 43-272.01(2)(d) (Supp. 2012). "GAL guidelines promulgated by the Nebraska Supreme Court" state that a GAL shall "meet with the child 'prior to any hearing at which substantive issues affecting the juvenile's legal or best interests are anticipated to be addressed by the court.'" NACC NEBRASKA GAL REPORT, supra note 21, at 23.
36. NACC NEBRASKA GAL REPORT, supra note 21, at 19.
37. Id. at 20, 23.
38. See In re Corey P., 697 N.W.2d 647, 656 (Neb. 2005).
39. NACC NEBRASKA GAL REPORT, supra note 21, at 23.
40. Id. at 23-24.
41. See id. at 24.
hearing, the state submits a case plan, and the court may order it to be implemented or offer modifications. The GAL has the right to object to the plan, offer suggested revisions, or recommend an alternative plan.

Six months after the adoption of the case plan at the dispositional hearing, an initial review is held. Another will be held every six months thereafter. At these hearings, the court reviews the status of the case, including the progress made by the parent(s) in complying with the case plan, whether DHHS has provided the services that the court ordered at the dispositional hearing, and the case plan and any changes needed to the case plan; the court acts to ensure the child is spending as little time as possible in foster care.

Prior to the review, the GAL must submit a written report and a recommendation that is based on the GAL’s meeting with the child and any existent reports on the child. The GAL is also expected to present evidence, object to any adverse recommendations, and advocate for the child’s presence at the hearing.

Twelve months after the dispositional hearing, a permanency hearing must be held. At this hearing, the court decides “whether the parent(s) and child are receiving and participating in [state] services and sets a permanency goal for the child.” Based on the evidence thus far, the county attorney or the GAL may petition “the court for termination of parental rights so that [the] child may be freed for adoption.” The Nebraska study, based on surveys of participants in the system, reported that few GALs petition to terminate parental rights because of a feeling that it should be up to [the state] and the county attorney to decide when to terminate parental rights and a culture in the community that parents’ rights should not be terminated so long as they are making an effort to improve, regardless of the federal law requirements that a [termination] petition be filed if a child has been in foster care for 15 of the most recent 22 months.
When the National Association of Counsel for Children evaluated the GAL system in Nebraska, it concluded that the structure then existing resulted in "uneven performance and lack of accountability."53 And while the report concluded that there are individual GALs able to overcome structural problems and provide good service, overall, the average level of service was not ideal.54

Any deficiency in the services provided by the GALs is augmented by the fact that the parents are often victims of poverty, mental disease, alcohol or drug dependencies, or adverse social interactions.55 They therefore often lack appreciation of counseling and other therapeutic services. In a study of North Carolina family-reunification programs for state fiscal year 2007, it was reported that

over two thirds (70%) of identified caretakers were female. The majority (71%) of identified caretakers were the mother[s] of the children removed from the home, and 25% were identified as the children's father. The majority of identified caretakers were White (58%), 32% were African-American, and 10% comprised other minority races. The average age of identified caretakers served by the program was 32 years. . . . Only 34% of identified caretakers were employed in full-time work,


54. NACC NEBRASKA GAL REPORT, supra note 21, at vi ("[O]verall, GALs are not visiting their clients; they are not zealously advocating for appropriate permanency for their clients; they are not making their clients' position known to the court; they are not using independent experts to assist them in understanding their clients and in presenting alternative service plans to the court; they are not actively investigating their clients' education needs; and they are not receiving sufficient training or supervision."). Furthermore:

researchers have identified both systemic and individual attorney problems that have contributed to poor representation of children . . . [such as] unavailability of training or consultation for inexperienced attorneys, the appointment of different attorneys for the same child at different hearings, delayed attorney appointments, low rate of compensation for attorneys, and a shortage of attorneys willing to represent children.


and one-third (36%) of identified caretakers were unemployed and in need of work. Half (50%) of all identified caretakers had less than a high school diploma. 56

The most frequently occurring precipitating causes placing the child in an at-risk category were "child abuse/neglect, unemployment, domestic violence, drug abuse, grief/loss, mental illness, and alcohol abuse." 57

Children described as at-risk may be characterized as follows:

Fewer than half (47%) . . . were male and . . . [t]he average age of the child was 6 years. Forty-five percent of the children were White, one-third (36%) were African American, and other minority children represented 20% of the children served. The majority (87%) of children were in [state] legal custody due to neglect. The most frequently cited issues placing children at-risk for role dysfunction include neglect, family disruption, and family violence. Other issues affecting between 10% and 20% of children include grief or loss, being undisciplined, being out of parental control, and drug abuse. 58

Even prior to the recession that occurred in 2008, there were indications that reasonable efforts offered by the state to promote parent-child reunification were strained. 59 This is illustrated in a report compiled for the North Carolina Department of Health and Human Services. The report documents that in 2004, time spent on reunifying families where children were at risk was 181 hours per case. 60 By 2007, this number dropped to 125 hours per case. 61 As two scholars note:

There is no apparent reason in the program data for this time reduction, although it may be related to budget issues or administrative decisions . . . . Whatever the reason, there is an ongoing trend indicating a reduction in intensity of service (and therefore, dose) and a concomitant decrease in program success with respect to reunification. 62

II. FEDERAL CHILD-WELFARE GOALS

A. Adoption Assistance and Child Welfare Act of 1980

Prior to 1980, federal subsidies to the states for child welfare were provided through Part B of Title IV of the Social Security Act of 1935. 63 The Adoption Assistance and Child Welfare Act of 1980 (AACWA) sig-

56. Id. at 8.
57. Id. at 10.
58. Id. at 14.
59. See id. at 45-46.
60. Id. at 46.
61. Id.
62. Id.
naled a significant shift in federal priorities. The AACWA mandated that, in order to receive federal funds for foster care, the state must provide a written case plan for each child for whom the state seeks federal maintenance payments. This plan must provide a description of the placement, a discussion of the appropriateness of the placement, and a description of the reasonable services provided to the parents to facilitate the return of the child to his or her home or to establish another permanent placement for the child. The AACWA also specifies that the state must implement first, an administrative review of the placement plan at least every six months and, second, a judicial review no later than eighteen months after the initial placement and periodically thereafter. These procedures do not apply if, upon involuntary removal from the custody of the parents, the child is placed with relatives. This placement is termed "kinship care," and at the judicial review, the court may grant a state’s petition to award the relatives guardianship over the child pending reunification. Then, if there is at least clear and convincing evidence of the parent’s failure to cooperate with state efforts to be determined at a subsequent hearing, the parent’s parental rights may be terminated, and the child can be placed for adoption with other parties.

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64. The Act has been defined as:
[A] blueprint for combined efforts of the judicial, executive, and legislative branches of government to preserve families and, if necessary, build new families for children. It requires that states recruit culturally diverse foster and adoptive families; provide reasonable efforts to prevent or eliminate the need for removal of the child from his home or to make it possible for the child to return to his home; establish standards for foster family homes and review the standards periodically; set goals and a plan for the number of children in foster care; and have a data collection and reporting system about the children in care. Peterson, supra note 17, at 1091.


67. Id. § 475(5)(B)-(C). Judicial review is required to decide if the child should be reunified with the parents, if the court should terminate the parental rights and place the child up for adoption, or if the child should continue in foster care. Id. § 475(5)(C).

68. Adoption and Safe Families Act of 1997 § 303(a).

69. When implementing the 1980 Federal Act, one Maryland court described the procedural process as follows:
Under the federal act, a state is required, among other things, to provide a written case plan for each child for whom the state claims federal foster care maintenance payments. 42 U.S.C. § 671(a)(16). The case plan must include a description of the home or institution into which the child is placed, a discussion of the appropriateness of the placement, and a description of the services provided to the parents,
One of the reasons why Congress enacted the AACWA of 1980 was to curb "foster care drift." At the time of its enactment, more than 500,000 children resided in foster care while child-protective agencies worked with families by providing services and an open time frame for modification of adverse behavior. The "AACWA sought to end the stagnation and indecision keeping children in foster homes [not only] by requiring states to make reasonable efforts to reunite families" but also by providing a test for failure to respond to those services. Taken as a whole, the 1980 Legislation supported family reunification, providing services to keep the child in the home or to reunify that family if the child was removed. As long as the child was safe, the primary goal of any state reasonable efforts was to preserve the family structure. What constituted "reasonable efforts" under the statute was left to the state to determine without any mandate in the federal statute. The Legislation did mandate, however, a time frame that the state had to follow: an eighteen-month permanency plan was required.

Initially, the Legislation had the desired effect, and within five years of its passage, the AACWA reduced the number of children in foster care to 270,000. But success was short-lived, and by 1997 the number of children

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child and foster parents to facilitate return of the child to his or her own home or to establish another permanent placement for the child. 42 U.S.C. § 675(1). The state must also implement a case review system that provides for administrative review of the case plan at least every six months and judicial review no later than eighteen months after placement and periodically thereafter. 42 U.S.C. § 675(5)(B) and (C). The purpose of the judicial review is to "determine the future status of the child" including whether the child should be returned to its biological parents, continued in foster care for a specified period, placed for adoption, or because of the child's special needs or circumstances, continued in foster care on a long term basis. 42 U.S.C. § 675(5)(C).


70. See Bailie, supra note 12, at 2289 (citing Martin Guggenheim, The Effect of Recent Trends to Accelerate the Termination of Parental Rights of Children in Foster Care—An Empirical Analysis in Two States, 29 FAM. L.Q. 121, 122-25 (1995) (offering further explanation of this term)).


73. The reasonable efforts initiative began as an endeavor to ensure that states provided an adequate level of social services to families before removing children from their homes. This endeavor addressed the concern that Child Protective Services (CPS) case managers were unnecessarily placing children in foster care, and thus contributing to the growth of the nation's foster care population. Crossley, supra note 63, at 260-61.
in foster care had swelled to more than 500,000 once again. Critics of state reasonable efforts, the pro-family mentality of the 1980 Act, and the process as a whole, argued that state agencies were too focused on repairing dysfunctional families instead of finding a permanent home for children languishing in foster care. The subsequent federal legislation would focus more on what is a reasonable placement for the child and less on reasonable efforts to correct parents’ behavior.

B. Adoption and Safe Families Act of 1997

In 1997 Congress enacted the Adoption and Safe Families Act of 1997 (ASFA), which shifted the focus from reunifying the family to permanency, health, and safety for children. The policy is reflected in this statement: “Foremost, Congress sought to shift the pendulum of the child protection system away from what many saw as an unreasonable emphasis on family preservation and towards permanency, and thus health and safety, for the children.” While the 1997 ASFA appears to be a continuation of reasonable efforts to reunify the family, the focus is no longer primarily on providing services to families. Instead, the legislation’s goal is to achieve permanency for children and at an accelerated pace. The only exceptions in this permanency plan occur in the event that: (1) “the child is being cared for by a relative”; (2) child protective services documents a compelling reason for why a parental termination petition should not be initiated; or (3) the state does not provide “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” when such services are warranted.

75. See Bean, supra note 71, at 326.
77. The Act has been described as embodying three core principles: the safety of children, the notion that foster care is a temporary setting and not a place for children to grow up, and the belief that permanency planning should begin upon the child’s entry into foster care. Peterson, supra note 17, at 1092.
79. The Act begins by stating that the child’s health and safety shall be of paramount concern, then appears to reapply the goals of the 1980 legislation by specifying that reasonable efforts shall be made to preserve and reunify families, including eliminating the necessity of removing the child from the home prior to placing the child in kinship care or foster care. The Act then returns, however, to the child’s right to permanence by specifying when reasonable efforts need not be made and permitting aggravated circumstances to justify not permitting any services to a parent. See 42 U.S.C. § 671(a)(15)(A)-(D) (2006).
80. Id. § 675(5)(E)(i)-(iii).
The 1997 ASFA legislation focused on the health and safety of the child as the paramount concern, but the emphasis was on permanency for the child as soon as possible. Three additional features contained in the new legislation illustrate this fact. First, specific deadlines are established. Although the 1980 legislation required a permanency plan within eighteen months, the 1997 Act specifies a twelve-month period for the state to hold a permanency hearing. This shorter period of time lessens the opportunity for any beneficial results from state reasonable efforts expended to reunite the family; concomitantly, the shorter time frame lessens the time that a child will spend in foster care while waiting for parental conduct to improve. Also, the new legislation requires the state to petition a court for termination of parental rights if a child resides in foster care for fifteen of the most recent twenty-two months. Thus, if a child is returned to the parents only to be removed again, the short period at home does not necessitate a new start to the time frame for termination. Third and finally, if reasonable services to reunite the family are not required because of aggravated circumstances, a permanency plan for the child’s placement must be held within thirty days of that decision to deny services. This is an important new feature of the ASFA because it permits easier termination of parental rights.

The ASFA dispenses with the need to provide reasonable services whenever the parent’s rights over a sibling of the dependent child have been terminated involuntarily. Keeping with the intent of the 1997 Legislation, this contributes to a speedier permanency plan for the child. And similarly, the third feature occurs whenever a court has determined that “the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse).” This aggravated circumstances feature of the 1997 Legislation follows the theme that “in determining reasonable efforts to be made with respect to a child . . . the child’s health and safety shall be the paramount concern.” In addition, “[n]otthing in [the Act] shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases,” including

81. See id. Note, however, that the court may appoint a legal guardian as part of the permanency plan. See id. § 675(5)(E).
82. Id.
83. Id. § 671(a)(15)(E)(i). States may have difficulty in formulating when reunification efforts are not required. See, e.g., Melissa R. v. Superior Court, 144 Cal. Rptr. 3d 48, 49 (Ct. App. 2012) (holding that California had to provide reunification services to a parent who had failed to reunify with a child and then lost parental rights over the child in another state, Wisconsin, even though such a failure would have justified withholding services if it had occurred in California).
85. Id. § 671(a)(15)(D)(i).
86. Id. § 671(a)(15)(A).
Reasonable Efforts and Parent–Child Reunification

those listed as aggravated circumstances. As commentators have noted, this provision of the 1997 legislation incorporates features of the Child Abuse and Prevention Act Amendments of 1996, which identifies certain “aggravated circumstances” that involve another child or a parent of the child and that create a presumption that providing reasonable services to a parent should be omitted.

Throughout the ASFA, the emphasis is on the permanency of the child in a safe home rather than on providing the extensive services necessary to make the existing home safe for the child’s reunification with the parents. This is the essence of the conflict. There are those who argue for a speedy resolution to benefit the child and society versus those who argue that more and better resources should be offered to parent–child reunification. The following is illustrative of the former argument:

Increased adoption from foster care is a way of decreasing the number of young people who must spend much of their youth in unstable and less than ideal living arrangements. It may also be a way of preventing the long-term detrimental consequences of such an upbringing. . . . Despite the risks involved, sizable numbers of middle-class couples are prepared to adopt these maltreated children. . . . There would be benefits for both the children who await adoption and for U.S. society as a whole if adoption of children in foster care by qualified non-relatives were made easier, faster, and more frequent. Yet advocates of family preservation have resisted efforts to make it so.

Critics of speedier resolution, and particularly the aggravated circumstances exception to providing reasonable services, argue that children are

87. Id. § 678.
88. Child Abuse and Prevention Act Amendments of 1996, Pub. L. No. 104-235, 110 Stat. 3063 (codified as amended at 42 U.S.C. § 5101-5109 (Supp. V 2005)). The Adoption and Safe Families Act simply codified several criminal acts defined in CAPTA as being sufficient to preclude offering services to reunify the family. These criminal acts include murder of another child of the parent, voluntary manslaughter of another child of the parent, aiding in the commission of such a murder or voluntary manslaughter, or committing a felony assault to the child or another child of the parent. § 671(a)(15)(D)(ii). See Bean, supra note 78, at 248-55, 264-83 (commenting on the codification of these acts as precluding reunification).
89. NICHOLAS ZILL, CTR. ON CHILDREN & FAMILIES, ADOPTION FROM FOSTER CARE: AIDING CHILDREN WHILE SAVING PUBLIC MONEY 2-3 (2011), available at http://www.firststar.org/LinkClick.aspx?fileticket=ZMo29x7Bdcc%3D&tabid=146. The article uses surveys from the federal National Survey of Adoptive Parents to illustrate that children adopted from foster care are substantially better off in terms of family resources than children who live with their birth mothers only, particularly single mothers who have never married. . . . Even though they live in more favorable home environments, children adopted from foster care cost the public less money than children living in foster care families. This is because adoptive parents are more likely than foster parents to be working outside the home on a full-time basis and less likely to be heavily reliant on welfare, food stamps, and government-sponsored health care.

Id. at 4.
being removed too quickly and without meeting constitutional protections. An aggravated circumstance is far too nebulous, permitting the withholding of reasonable efforts without "requir[ing] child-specific harm to the subject-child." Critics argue that the aggravated circumstances exception "invites inconsistent, unpredictable decisions about when a state should expend efforts to reunite a child with his or her parents." In other words, the state court is permitted to speculate on what a court may determine to be aggravated circumstances and other similar circumstances and may therefore deem sufficient reasonable efforts are not required prior to termination of parental rights.

This use of conjecture may be appropriate in criminal proceedings defined under the Child Abuse and Prevention Act Amendments of 1996. However, when children are removed from a home and subject to the ASFA of 1997, it is often because of chronic problems, which, although serious, may be able to be addressed through reasonable efforts provided. For example:

Parents who have neglected a child as a result of a drug addiction ... may be able to submit test results to show they are no longer doing drugs. While not proving lasting change, the evidence does establish a drug-free status quo and may suggest a diminished risk to the child should reunification occur.

The suggestion is made that prior to the denial of reasonable efforts based on one of the aggravated circumstances listed in the ASFA, the court must be satisfied that harm to the child is likely imminent if reunification is attempted. A nexus must exist, however, "between the harm the parent has already created and the harm predicted to the subject-child should reunification efforts be attempted. Finally, the predicted harm must be of sufficient magnitude to justify denying reasonable efforts." While laudable, the suggestion made by Professor Bean is but a suggestion, and the language of the federal legislation used in the context of the statutory time frames "may actually work to tear apart families who would otherwise have succeeded in rebuilding their lives."

90. Bean, supra note 78, at 277.
92. Bean, supra note 78, at 255.
93. See id.
94. Id.
95. See id. at 283.
96. Id.
97. Bailie, supra note 12, at 2293. See, e.g., In re Adoption/Guardianship Nos. J9610436 & J9711031, 796 A.2d 778, 782 (Md. 2002) ("Unfortunately, poverty is also a deeply-rooted problem and, thus, one that cannot be alleviated quickly. As such, the
A comparison of the two federal legislative efforts just discussed illustrates that federal policy regarding children and reunification efforts shifted between 1980 and 1997. What is consistent in both statutes is the continued absence of firm federal guidance as to what is required when a state is told to provide reasonable efforts with respect to a dependent child. The ASFA of 1997 further challenged parental custody rights by shortening the periods of planning and specifying a time frame for parents to rectify problems or suffer termination of their parental rights. In addition, the 1997 Statute's uncertainty of what constitutes aggravated circumstances, thereby precluding the requirement of reunification services, diminishes the possibility of a workable and long-term response to the difficulties the child faced in the parent's home. This, coupled with decreasing state revenues, increasing numbers of children entering child protective service, and lopsided federal subsidies for foster care and adoption assistance create an adverse environment for parents who are poor, marginalized, or simply unassisted. It has become the responsibility of the states to assess what constitutes reasonable efforts, determine the parameters of aggravated circumstances, and balance the constitutional rights of the parents against the pending federal deadlines promoting a quick, permanent solution.

III. STATE RESPONSES TO FEDERAL LEGISLATION

A. Establishing Child Dependency

Prior to 1982, states varied in both their approach to what level of proof was necessary to deprive a parent of the custody of his or her child and also with what was necessary to terminate a parent's rights in the child. A few states permitted parents to lose custody of their children and then to have their parental rights terminated upon a showing by the state of a mere fair preponderance of the evidence. This is the lowest level of proof, less than clear and convincing or beyond a reasonable doubt. But in 1982 the United States Supreme Court held that when terminating a parent's rights to his or her child, "the 'fair preponderance of the evidence' standard . . . violates the Due Process Clause of the Fourteenth Amendment."98 From then onward, in order to terminate a parent-child relationship, at least a "clear and convincing evidence" standard of proof must be present.99 Commentators suggested that the Court's requirement of a higher standard of proof resulted in part from a decision the previous year holding that parents did

[ASFA's] new time lines for child protective cases may actually work to tear apart families who would otherwise have succeeded in rebuilding their lives.

99. Id. at 748.
not have a right to a state-appointed attorney in a civil termination of parental rights hearing.\textsuperscript{100}

The higher standard of proof announced in the 1982 decision was viewed by the Court as protecting a fundamental right of a parent; it also served as a bulwark to provide protection for parents who are often poorly educated and forced to confront extensive state resources when their children have been removed from their home. The Court expounded on the idea that "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."\textsuperscript{101} With that said, the rights of parents must be balanced against the rights of children who are entitled to protection from physical abuse and neglect. When a child is civilly removed from the care and custody of a parent, the goal of the state's courts and social service agencies is first to provide protection from harm. This goal continues as the state provides reasonable efforts to the parents in an effort to promote reunification.

1. Abuse and Neglect

One court described abuse and neglect cases as "fact sensitive," "idiosyncratic," and requiring "careful, individual scrutiny."\textsuperscript{102} The court went on to state that "[i]n child abuse and neglect cases, [courts] recognize the need to evaluate the totality of the proofs because the evidence can be synergistically related."\textsuperscript{103} Typically, when a state intervenes to protect an abused or neglected child under the age of eighteen, the conduct precipitating removal will include the following:

"a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court."\textsuperscript{104}

\textsuperscript{101} Santosky, 455 U.S. at 753.
\textsuperscript{103} Id. at 857.
\textsuperscript{104} Id. at 852 (quoting N.J. STAT. ANN. § 9:6-8.21(c)(4) (West 2012)).
Often, a state removes a child from a parent's custody, thereby making the child dependent because of overt abuse such as beating, shaking, or burning a child. Sometimes the abuse is psychological, as when a parent coaches a child to lie about the other parent's fictitious abuse, thereby causing the child psychological harm and a continuing risk of harm. Sometimes the cause of a child's dependency is neglect. Illustrative is one case where a mother did not take her child for a "recommended follow-up blood screening to determine if [the child] had sickle cell disease or merely the trait," and the court held that the mother was guilty of medical neglect.

In many cases the parent is mentally unable to care for the child; the parent's rights are then terminated because of the dire future prospects for the child. One court stated that the

[p]rognostic evidence must show that the parent is presently unable to supply physical and emotional care for the child, with the aid of available social agencies if necessary, and that this inability of a parent will continue for time enough to render improbable the successful assimilation of the child into a family if the parent's rights are not terminated.

2. Poverty

The majority of children declared dependent are victims of neglect. These families are typically poor. Poverty may precipitate conditions that can then be defined as neglect. Often too, when children are removed and reasonable efforts provided, the parents may be unable to respond to the

105. Often parents justify abusive treatment as an exercise of parental discipline, but a parent must use reasonable force to discipline a child or it constitutes abuse. See, e.g., Simmons v. State, Dep't of Human Servs., 803 N.W.2d 587, 590 (N.D. 2011) (holding that a father's beating of a two-year-old with a wooden back scratcher was child abuse and not parental discipline).

106. See In re M.A., 60 A.3d 732 (Vt. 2012). But see In re Drake M., 149 Cal. Rptr. 3d 875 (Ct. App. 2012) (finding that a nine-month-old boy was not endangered by his father's use of medical marijuana three or four times a week); State v. Orquiz, 284 P.3d 418 (N.M. Ct. App. 2012) (convicting the father of child abuse by endangerment when the father's nine-year-old son was riding in a car that the father crashed into a ditch while driving intoxicated).


108. In re J.A.L., 432 N.W.2d 876, 878 (N.D. 1988) (holding that only continuous foster care for mother and child would suffice where the child was diagnosed with cerebral palsy and the services provided were ineffective); In re M.R.R., 807 N.W.2d 158 (Iowa Ct. App. 2011) (holding that a child is only dependent when "parent[s] are unwilling or unable to provide" necessary medical treatment); see also In re C.W., No. C-110342, 2011 WL 4375334, at *5-6 (Ohio Ct. App. Sept. 21, 2011) (holding that neither the Americans with Disabilities Act of 1990, nor its related regulations, provide that a violation of the ADA or its regulations by a public entity may be used as a defense against a legal action by that public entity).


110. Id. ("[F]amilies involved in neglect proceedings are overwhelmingly poor.").
reasonable efforts because of the consequences of poverty, the reason why their children were declared dependent initially. Their poverty creates a vicious cycle. As one study shows, "[t]he most recent data gathered during the 2010 census indicated that between 2008 and 2009, with the onset of the current recession, the number of children living below federal poverty standards in the United States increased from 18 percent to almost 21 percent, representing approximately 1.5 million children." Estimates show that by 2009, one year after the start of what may be described as one of the worst economic downturns in generations, the number of children living in poverty "rose dramatically to 15.5 million children (or one in five children in the United States)." Furthermore, in 2009, "700,000 children spent at least some time in foster care. 255,418 entered care while an additional 276,266 left or exited foster care. Of the 276,266 children that left foster care, 140,061 or 51 percent were reunified with a parent or primary caretaker." But this data also indicates a significant number were either emancipated or adopted.

One commentator describes the syndrome occasioned by childhood poverty as the following:

"Poverty is linked with poor nutrition, lack of medical care, inadequate daycare, poor educational facilities, and psychological feelings of helplessness and stress. Any one of these conditions could support an allegation of specific harm." Because the definition of neglect encompasses many circumstances that are a direct result of


114. Id.
poverty, child welfare agencies may have no choice but to intervene in poor families' lives. 115

State courts often refer to particular obstacles to reunification of the family, almost all associated with poverty. Among them are: "lack of financial resources, lack of stable housing or employment, . . . drug or alcohol dependency," incarceration, and an inability to visit with children and keep scheduled appointments with counselors. 116

3. Process

Whenever a child is declared to be dependent, a process begins that is similar in scope among the various states. 117 Unless a child is surrendered by a parent to a state agency, child-protection proceedings start with a report of suspected child abuse or neglect. 118 The report initiates an investigation of the allegations made by the state child protective services. 119 If the agency finds that a child is in danger, the agency will recommend services that will allow the child to remain within the home. 120 If the agency finds that the services will be inadequate, then the child will be removed from the home and placed in kinship care or foster care. 121 Upon removal, "the child protective [services] will file a petition [in] family court reporting the facts surrounding the parent’s alleged neglect or abuse." 122 There will then be a fact-finding hearing, at which the child, the parent, and the state may be represented by attorneys. 123 The court must determine if there is clear and convincing evidence to deprive the parent of the child; only a preponderance of the evidence is necessary to remove a child, but a hearing must be held within a reasonable amount of time to afford the parent due process. 124

If the court decides at a subsequent hearing that there is sufficient clear and convincing evidence to keep the child in dependency, then, in

116. See Bean, supra note 71, at 348-49 (discussing these factors).
117. See Bailie, supra note 12, at 2298-302.
118. Id. at 2298.
119. Id. at 2298-99.
120. Id. at 2299.
121. The 2012 federal budget allocates "$80 million for the Guardianship Assistance program, a state optional program enacted as part of the Fostering Connections to Success Act." 2012 Budget Analysis, supra note 18, at 8. Kinship care is similar to foster care in that payments are based on a "child's eligibility . . . to the AFDC July 16, 1996 income eligibility standard"; under kinship care a child is placed with a family member pending reunification efforts. Id.
122. See Bailie, supra note 12, at 2300.
123. Id.
124. Id.
most situations, it is the responsibility of the parent to work with reasonable efforts offered by the state to correct the adverse conditions at home. If the court determines that reasonable efforts at reunification are not necessary because of aggravated circumstances, then the court may proceed to terminate the parent’s rights to custody of the child. Assuming, however, that evidence presented at the hearing justifies reasonable reunification efforts, the state will establish a family services plan and the parent must visit with the child and complete the requirements of the plan. One commentator maintains that “[t]he parent’s active participation in this process and frequent visitation with [the] child are crucial to [the] child’s expedient return home.” If the parent does not cooperate with the reasonable efforts made to reunify the parent, and the child remains within foster care for fifteen of the next twenty-two months, the state may petition to terminate the parent’s right to custody of his or her child.

Although the process just described varies among the states, this description provides an insight into what occurs when a child is involuntarily removed from a parent’s custody. Assuming that reasonable efforts are mandated, and hence there were no aggravating circumstances, the goal is to keep the child in the parental household and to provide services to rectify problems. If the child is removed and placed in kinship care, time deadlines occasioned by federal legislation are held in abeyance. But if a child is placed in foster care, the parent’s immediate cooperation with reasonable

125. Id. at 2301-02.
126. See, e.g., In re Ashley S., 762 A.2d 941, 945 (Me. 2000), overruled by In re B.C., 58 A.3d 1118 (Me. 2012) (interpreting the provisions of 22 ME REV. STAT. § 4041(2)(A)(1) (Supp. 2000) and holding that “if the court finds the existence of an ‘aggravating factor,’ . . . is inconsistent with the permanency plan for the child, or if two placements of the child with the same parent have failed, the Department may be relieved of its reunification responsibilities”). Some courts have provided reasonable reunification services even though aggravating circumstances existed and would have precluded the necessity. See, e.g., People ex rel. D.B., 670 N.W.2d 67, 72 (S.D. 2003).
127. Bailie, supra note 12, at 2301-02. See, e.g., In re Gabriel K., 136 Cal. Rptr. 3d 813 (Ct. App. 2012) (terminating the mother’s rights when the mother failed to attend drug rehabilitation programs, “did not comply with the elements of her case plan, and failed to apprise caseworkers of her whereabouts”); In re Valencia Katina H., 501 N.Y.S.2d 887 (App. Div. 1986) (holding that termination of parental rights could occur when the parent failed to visit with his children and failed to keep child protective services aware of his location for more than six months).
128. See, e.g., In re K.M.O., 2012 WY 99, 280 P.3d 1203, 1210-11 (Wyo. 2012) (holding that the children residing in foster care for fifteen of the most recent twenty-two months was clear and convincing evidence sufficient to satisfy the first element in terminating parental rights). Some states have even shorter deadlines than the Federal Act. See Dorothy Roberts, ASFA: An Assault on Family Preservation, available at http://www.pbs.org/wgbh/pages/frontline/shows/fostercre/insider, as excerpted from DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) (“In Nevada, for example, a parent’s failure to comply with the terms of the reunification plan within six months can trigger a hearing on termination of parental rights.”).
efforts is essential to prevent termination of parental rights. If the efforts are not reasonably related to the individual circumstances precipitating the dependency, then any reasonable efforts provided serve only as a shibboleth.

B. Reasonable Efforts

The ASFA specifies that reasonable efforts shall be made to preserve and reunify families under two circumstances: first, prior to the placement of the child in foster care so as to prevent or eliminate the need for removing the child from the child’s home; and second, to make it possible for the child to safely return to the home if removal becomes necessary. Timing is essential. The ASFA specifies that if a child is placed in foster care, then there must be a permanency plan hearing for the child within twelve months and every twelve months afterwards, but initially, reasonable efforts must be offered within sixty days of the child’s removal.

Throughout this process, the state must provide adequate reasonable efforts because the parents’ cooperation or noncooperation will provide the clear and convincing evidence permitting any termination of parental rights. The goal for the families affected, the states, and for the courts is to “offer services that fit together as a package and accommodate a parent’s other obligations, including work.”

129. 42 U.S.C. § 671(a)(15)(B) (2006). No reasonable efforts are required if a court holds that there exist aggravating circumstances permitting termination of parental rights. Id. § 671(a)(15)(D).

130. Id. § 675(5)(C)(i). If a court determines that reasonable services are not to be made, then a permanency hearing must be held within thirty days. The permanency plan involves consideration of reunification, legal guardianship, or kinship care with a fit and willing relative. The plan is a case-specific judicial determination, and it must be made within twelve months of the entry of the child into foster care, which is either the time there is a factual determination of abuse or neglect or the date that is sixty days after the removal of the child from the home. See 45 C.F.R. § 1356.21(b)(2), (d) (2007). If a reasonable efforts determination is not made on a timely basis, the child remains ineligible for federal Title IV-E foster care funding until the first of the month such a judicial determination is made. Id. § 1356.21(b)(2).

131. Id. § 1356.21(b)(1), (d). If the sixty-day deadline is not met, the child loses eligibility for Title IV-E funding for the foster care. Id. § 1356.21(c) (stating that failure to make a timely and adequate finding of reasonable efforts where a child is removed by a court results in the loss of federal Title IV-E funding for the duration of the foster care placement).

132. § 675(5)(E)(iii) (“[T]he 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 671(a)(15)(B)(ii) of this title are required to be made with respect to the child.”).

Reasonable efforts sufficient to reunite parent and child are factually
determinative, and "[i]t is difficult, if not impossible, to exaggerate the
importance of reunification [services] in the dependency system." There
is a lack of a concise definition in the federal statutes or in judicial opinions
as to reasonable services, but a few state statutes offer suggestions. Oregon,
for example, states that the efforts to reunify the family must bear a rational
relationship to the jurisdictional findings that brought the ward within the
court’s jurisdiction. And to ensure for effective planning for wards, the
Oregon Department of Human Services shall include in the case plan
"[a]ppropriate services to allow the parent the opportunity to adjust the par-
ent’s circumstances, conduct or conditions to make it possible for the ward
to safely return home within a reasonable time." And the Department of
Human Services has an obligation to make “active efforts to prevent or
eliminate the need for removal of the ward from the home” and to make
“reasonable or active efforts to make it possible for the ward to safely return

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134. Reasonable efforts to provide services “means an earnest and conscientious
effort to take good faith steps to provide those services, taking into consideration the charac-
teristics of the parent or child, the level of cooperation of the parent, and other relevant cir-
cumstances of the case.” In re Elijah W.L., 785 N.W.2d 369, 383 (Wis. 2010). See also In re
Ronell A., 52 Cal. Rptr. 2d 474 (Ct. App. 1996) (judging reasonableness of services on con-
tent and implementation). Key elements of any reunification effort have been suggested to be
the following: (1) an agency priority of reunification; (2) a “systemwide effort[] to recognize
and address the disproportionate representation of children of color in the child welfare sys-
tem”; (3) “active collaboration with the courts in working toward timely [and] stable reunifi-
cation”; (4) “collaboration with related agencies . . . [to address] financial need, substance
abuse, mental health, and domestic violence” issues; (5) “broad-based community-partnership[s]”; (6) strategies for achieving timely and stable reunification; (7) “policies and
standards that clearly define expectations, identify requirements, and reinforce casework
practices that support reunification”; (8) adequately “train[] supervisors who [then] explain
agency policies that support safe and timely reunification, offer coaching to caseworkers, and
provide support and feedback”; (9) assign manageable caseloads to caseworkers so that they
can engage families; (10) make available “diverse out-of-home and post-reunification ser-
vices that can respond specifically to the family’s identified needs and conditions”; (11)
maintain a “data system[] that monitor[s] and measure[s] . . . case-level data on timeliness of
reunification and reentry into foster care”; and (12) obtain “external assistance in the form of
training, consultation, and technical assistance from recognized experts.” CHILD WELFARE
INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., SUPPORTING REUNIFICATION AND
PREVENTING REENTRY INTO OUT-OF-HOME CARE (2012), available at

Rptr. 2d 200 (Ct. App. 1995) (“Family preservation, with the attendant reunification plan and
reunification services, is the first priority when child dependency proceedings are com-
menced.”).

136. OR. REV. STAT. ANN. § 419B.343(1)(a) (West 2013); see also Family Support
and Related Services, WASH. DEP’T SOC. & HEALTH SERV.,
http://www.dshs.wa.gov/ca/about/srv-intro.asp (last visited Oct. 29, 2013) (providing a
service array for Washington, along with the projected implementation timeline).

137. § 419B.343(2)(a).
Reasonable Efforts and Parent–Child Reunification

The services aimed at reunification must go beyond mere matter of form and include real, genuine assistance. The services offered to the mother were the following:

From 2000 through 2007, DHS offered or provided a wide array of services to the mother, including: DHS case management; Department of Correctional Services probation supervision; United Action for Youth Teen Parenting Program; House of Mercy residential program for mothers and children; Families, Inc. services; Visiting Nurse Association visitation supervision; parenting instruction; supervised visitation; budgeting assistance; protective day care; Family Team Meetings; mental health evaluation; individual therapy; substance abuse evaluation, treatment, and drug testing; domestic violence counseling, shelter, and support; paternity testing; foster family care. In addition, DHS made referrals and/or assisted her with applications for a number of services through federal, state and/or local agencies, including: Women’s Resource and Action Center; Domestic Violence Intervention.

138. Id. § 419B.340(1); see also State ex rel. Juvenile Dep’t of Jackson Cnty v. K.D., 209 P.3d 810 (Or. App. 2009) (holding that state DHS is obliged to undertake reasonable efforts to make it possible for the ward to safely return home based on the circumstances existing during the period prior to the permanency hearing and that period must be sufficient in length to afford a good opportunity to assess parental progress).


142. Id. at *2.

143. Id.

144. Id.

145. Id.

146. Id.
In spite of the extensive array of state services offered to the mother, all of which were reasonably calculated to address the causes that precipitated the removal of her children, her parental rights to her twins were terminated. The court held that there was clear and convincing proof that the mother had not made any significant improvement in her ability to regain custody of the children. The court’s holding terminating parental rights illustrates that compliance with reasonable services by a parent is linked to reunification with any child involuntarily removed from the parent’s custody.

2. Refusal to Cooperate

Most often the reason for the termination of parental rights is the parent’s refusal to adequately cooperate with the services provided. Courts have argued that a “relevant consideration in determining ‘reasonable ef-

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147. Id. at *4-5. Professor Bean lists the array of services that most states offer. Among them are: “drug treatment, housing assistance, homemaker services, counseling, transportation, parenting education, anger management classes, mental health care, child-development classes, home visits by nurses, day care, referrals to medical care, domestic violence counseling, financial management services, alcohol recovery support, stress management services, nutritional guidance, and arrangements for visitation” with children. Bean, supra note 71, at 345-46 (footnotes omitted); see also In re Jonathan T., 148 A.2d 82, 88 (N.H. 2002). Services in In re Jonathan T. included: school-based and outpatient services to the family, including parent aide services, preschool and day care, parenting and stress management classes, therapy and counseling, supervised visitations, financial management assistance and nutritional guidance. In some cases, these services exceeded normal protocol. For example, at one point the parent aide was visiting the family’s home every day, well above the one-visit-per-month guideline. . . . [The agency] also made additional efforts by holding pre-visitation meetings with the respondents to discuss the previous visitation as well as concerns, suggestions and planning issues.

Id.


149. Id. at *5. The court reported that the mother’s situation had further deteriorated since reasonable efforts were provided. Id. at *5-6 (“She lost her job. She was evicted due to non-payment of rent and there is a $1200 claim pending against her. She is again living with her sister, . . . with whom she has had a [convulsive] relationship over the years. . . . She has not been regularly attending mental health counseling as recommended in her psychological evaluation. She has not even scheduled the neuropsychological evaluation that was recommended. She has not been following through with domestic violence services. . . . She continues to drive without a valid license, putting herself at risk of arrest.”).

fort[s]’ to provide services is the parents’ ‘level of cooperation.’”\textsuperscript{151} State statutes permit termination of parental rights upon a showing that the parent clearly and convincingly did not cooperate with services offered. One Connecticut decision applied its state’s statute in a typical holding:

One of the four predicates for the termination of parental rights under [the state statute] covers the situation in which, over an extended period of time, “the parent of a child who has been found by the superior court to have been neglected or unprovided for in a prior proceeding has failed to achieve such a degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child.”\textsuperscript{152}

One court summarized the effect of a parent’s refusal to cooperate with services by finding that there was “more than adequate evidence of the agency’s performance in these regards, particularly in its repeated efforts to inform [the parent] of the vital necessity of her accepting counseling services.”\textsuperscript{153} The court went on to point out that “[t]he agency devised reunification plans, arranged and facilitated visits, and provided transportation for those visits even though [the parent] often had access to public transportation.”\textsuperscript{154} The parent’s rights to the child were terminated because the parent did not cooperate with reasonable efforts provided to address the specific cause of the removal of the child.\textsuperscript{155} Even though the parent obtained a job and a better apartment, the failure to cooperate with the specific services offered resulted in termination of parental rights.\textsuperscript{156}

While states must provide reasonable services to promote reunification, the services offered do not have to continue for the time initially contemplated.\textsuperscript{157} Furthermore, the state may terminate reasonable efforts provided to one parent and continue providing them to the other parent.\textsuperscript{158} Illustrative of this duality is a case involving parents of a five-year-old girl.\textsuperscript{159} The child was removed from the custody of the parents and her “maternal grandmother acquired temporary guardianship.”\textsuperscript{160} Eventually, the daughter

\textsuperscript{151} In re Elijah W.L., 785 N.W.2d 369, 386 (Wis. 2010) (quoting Wis. Stat. § 48.415(2)(a)2.a. (2013)); see also In re T.G., 115 Cal. Rptr. 3d 406, 412-15 (Ct. App. 2010) (finding that the parent must keep the social worker informed as to that parent’s whereabouts); In re William G., 107 Cal. Rptr. 2d 436, 439 (Ct. App. 2001) (stating that a parent must appear in court even though the parent was fearful of an outstanding warrant).


\textsuperscript{153} In re Kathaleen, 460 A.2d 12, 14 (R.I. 1983).

\textsuperscript{154} Id.

\textsuperscript{155} Id. at 15.

\textsuperscript{156} Id.

\textsuperscript{157} See, e.g., In re Aryanna C., 34 Cal. Rptr. 3d 288, 289 (Ct. App. 2005).

\textsuperscript{158} See, e.g., In re Jesse W., 68 Cal. Rptr. 3d 435, 439-40 (Ct. App. 2007).

\textsuperscript{159} In re Katelynn Y., 147 Cal. Rptr. 3d 423, 426 (Ct. App. 2012).

\textsuperscript{160} Id.
was placed with the paternal grandparents.\textsuperscript{161} Both of the parents “have a history of methamphetamine use and domestic violence.”\textsuperscript{162} Additionally, when a therapist treated the daughter, it was revealed that her parents had sexually abused her.\textsuperscript{163} The daughter also witnessed her mother and a male other than her father having sex.\textsuperscript{164} Child protective services alleged that the girl suffered from “severe anxiety, depression, withdrawal and outwardly aggressive behavior toward herself and others.”\textsuperscript{165}

After ordering that the parents receive reasonable services to promote rehabilitation, to include “parenting education [and] counseling with a therapist specializing in sexual abuse and substance abuse treatment,” the mother “did not participate in services” offered.\textsuperscript{166} The father was incarcerated and initially cooperated with the services offered for three months, but then stopped attending sessions when he was released from prison.\textsuperscript{167} After a short time, he then began to avail himself of the services again and was cooperating with state efforts when the state refused services to the mother.\textsuperscript{168}

The court, upon review, held that:

“[b]ecause reunification services are a benefit, not a constitutional entitlement, the juvenile court has discretion to terminate those services at any time, depending on the circumstances presented. . . . In deciding whether to terminate the services of one parent who has failed to participate or make progress toward reunification, the court is not constrained by a consideration of the other parent’s participation in services.”\textsuperscript{169}

\section*{3. Unreasonable Efforts}

There is another aspect of reasonable efforts: What happens when they are offered to parents and because of cooperation the child is returned to the family home only to be removed again because of parental regression into harmful conduct? When the child returns to a dependency status, this is referred to as reentry. In a report prepared by the Wisconsin Department of Children and Families, the Division of Safety and Permanence found that:

\begin{itemize}
  \item 161. Id.
  \item 162. Id.
  \item 163. Id.
  \item 164. Id.
  \item 165. Id.
  \item 166. Id.
  \item 167. Id.
  \item 168. Id.
  \item 169. Id. at 428 (quoting \textit{In re Jesse W.}, 68 Cal. Rptr. 3d 435, 440 (Ct. App. 2007)). See also \textit{In re Eden F.}, 741 A.2d 873, 886 (Conn. 1999) (“Proof of reasonable reunification efforts is not a constitutionally mandated prerequisite to granting a petition for the termination of parental rights. The constitutional requirement of proof by clear and convincing evidence applies only to those findings upon which the ultimate decision to terminate parental rights is predicated.”).
\end{itemize}
Reasonable Efforts and Parent–Child Reunification

Currently, case management and other support services for the child and family cease fairly abruptly at the point of reunification. At the time of reunification a family is relatively strong, having just concluded a period of tailored support services. Clinical experience in Wisconsin indicates that often, however, the family has not yet developed the capacity to successfully and safely manage the periodic and unexpected life stresses which arise over the subsequent months. The family has no supports from the child welfare system to assist in handing those post-reunification stresses effectively. 170

Most often, the family’s lack of preparedness results in the child’s reentry into protective out-of-home care. This reentry often has a range of negative impacts on the safety and general well-being of the child. Furthermore, “[r]e-entry into out-of-home care subjects the child to the trauma of recurrence of maltreatment or neglect which precipitates a child’s re-entry into out-of-home care and another separation from his/her parent or relative caregiver.” 171 One academic states that “[s]cientific research has shown that trauma experienced in childhood creates a ‘toxic stress’ that leads to immediate and lifelong impairments in behavior, cognitive development and learning, and mental and physical health.” 172 It is further argued that “children in out-of-home care tend to have poorer social, emotional, educational, and health outcomes than their peers, due to disruptions in school and/or child care settings, loss of close connections to family and friends, and other factors.” 173

Admittedly, states often fail to meet the reasonable efforts mandate. For example, state services offered were unreasonable when reunification depended on the father finding his way to his own home but child protective services did nothing to assist. 174 Likewise, a state failed when a sixty-day trial visit with the parent was indefinitely delayed by the state agency even


171. Id. at 6-7.

172. Id. at 7.

173. Id.

though the visits were deemed reasonable to bring about parent–child reunification. Such failures prompt liability questions.

4. Liability of Service Providers

Federal law, § 1983, permits plaintiffs to sue state officials for the deprivation of any right secured by federal law or the federal Constitution. But the cause of action under § 1983 is limited to the following: (1) when the statute creates specific, individual enforceable rights; or (2) when the statute uses rights-creating language; and (3) when Congress has not precluded individual enforcement of that right. Only an “unambiguously conferred right [will] support a cause of action brought under § 1983.” Laws that impose generalized duties upon the state, but which do not mandate individual outcomes, may create “interests” or “benefits,” but they do not create the kind of individualized “rights” that § 1983 protects.

Individual claimants do not have a federal right to enforce strict compliance with a reasonable efforts mandate. In 1989, the Court in DeShaney v. Winnebago County Department of Social Services held that a parent had no due process right to sue the government for its failure to protect a child from the abuse of another private party—the other parent in this case. And specifically, in reference to child-welfare law, the Supreme Court issued its opinion in Suter v. Artist M. in 1992, which denied plaintiffs the right to use § 1983 to enforce the Child Welfare Act. The cause of action in the Suter decision had been brought on behalf of children against the director of the Illinois child abuse and neglect agency, alleging that the agency failed to comply with the “reasonable efforts” requirements of the AACWA of 1980. The facts involved a class of Illinois plaintiffs, including children residing in Illinois’s child protective services agency, arguing that “the state

179. Id.
181. 503 U.S. 347, 357 (1992). Because Suter precludes private litigation to define what constitutes “reasonable efforts,” it compounds the deficiency created by Congress when it failed to define reasonable efforts in the Adoption Assistance and Child Welfare Act of 1980. See Bean, supra note 71, at 324-26; Crossley, supra note 63, at 261-62 (“The federal government’s failure to provide guidance on the requirements needed to satisfy reasonable efforts, along with the general shift away from preservation and reunification services, has left states to decide how to define the rules and standards for making reasonable efforts.”).
182. Suter, 503 U.S. at 352.
Reasonable Efforts and Parent–Child Reunification

failed to make reasonable efforts by failing to promptly appoint case managers to children entering the CPS system and to promptly reassign children to new case managers when necessary. The Court did not reach the issue of whether the state satisfied its agreement to make reasonable efforts but instead held that individual private plaintiffs did not have a federally enforceable right to reasonable efforts.

Commentators have suggested that the decision in Suter did permit the Secretary of Health and Human Services to enforce the reasonable efforts provision of the Child Welfare Act with specific guidelines. But regrettably, the Secretary has failed to monitor each state’s efforts. Congress ratified this approach, and in response to Suter, Congress enacted an amendment to the Social Security Act in 1994. The amendment, applicable to the effect of failure to carry out a state plan to adequately offer reasonable services, provides for the following:

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., . . . but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

If the Secretary does not monitor the state plans and if there is no private cause of action to hold the state accountable (as a result of Suter and

183. Crossley, supra note 63, at 289.
184. Id.
185. Id. at 289-90.
186. Id. But see In re Rood, 763 N.W.2d 587, 598 (Mich. 2009) (holding that a parent may challenge the state’s failure to follow proper procedures when the state seeks to terminate parental rights over a child).
Congress's statutory response) then there is no federal standard of what constitutes reasonable services to be offered to the parent. Critics argue that "[b]oth actions represented missed opportunities to define, clarify, and provide measurement indicia for reasonable efforts. Congress could have resolved the Supreme Court's concern about the absence of guidance on reasonable efforts by simply providing factors to be considered in determining whether a state had complied." Instead, as a result, the test of what is reasonable depends solely on whether a court holds that what is offered and what the parent rejects provide clear and convincing evidence to terminate parental rights. In the alternative, courts may terminate parental rights when it determines there are aggravated circumstances; this too is elusive. Taken as a whole, what is reasonable may depend on a number of factors: (1) whether the parents and the child are adequately represented by attorneys, even though an attorney is not required in a civil proceeding; (2) whether the parents visit with the child; and (3) the age and placement of the child. Shrinking state budgets harbor attendant concerns. One commentator suggests that what a state may reasonably provide is often less than what is contemplated:

"Caseworkers cannot keep up.... The heavy demand on child welfare agencies in fact hinders the provision of services to protect and support families.... The problems become interchangeable, the serious ones indistinguishable from the minor ones; and needs are generalized and defined according to what services are currently available." Because underfunded, understaffed, and mismanaged child welfare agencies are responsible for handling and evaluating families' problems, these agencies cannot meet their mandates and families suffer in the process. Although states must make "reasonable efforts" to keep families together, in practice child welfare agencies make "efforts that are reasonable in relation to funding available, but not in relation to caseworkers' knowledge of effective programming." Thus, the reasonable efforts requirement, originally created to protect families, does not achieve its purpose in practice. Furthermore, the clarification of this requirement provided by the Adoption and Safe Families Act of 1997 is not likely to encourage agencies to make greater efforts to help families. Accordingly, indigent parents are in great need of trained, competent, and able advocates to help them obtain the services they require.

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188. See Crossley, supra note 63, at 263 (arguing that "the policies and actions of the federal government have made the reasonable efforts clause a hollow requirement and recommends that federal authorities or individual states act to provide context for understanding the reasonable efforts standard").

189. Id. at 290.

190. Some states sought to provide courts with greater clarity as to what constitutes reasonable efforts. See, e.g., id. at 293-312 (analyzing state legislative and judicial formulations of what constitutes reasonable state efforts).

191. Balt., supra note 12, at 2320 (citations omitted).
C. Budgetary Constraints

Recessionary periods and the less available state revenues that accompany them have always been factors in defining what constitutes reasonable services offered to families in need. While the recession that began in 2008 and which has continued for a significant time afterwards is not the first time states experienced budget constraints, it occasioned significant shortfalls in state budgets. One report notes that “since the start of the recent recession, critical social services have been cut in at least 46 states.” 192

Commentators are quick to correlate curtailed state resources and concomitantly the ability of state agencies to provide adequate reasonable services. One such commentator argued that “[a]cross the country, child protection and other human services agencies are facing budget shortages that have caused funding freezes and service cuts.” 193 Another recent article observed that “once children are taken into care, they become wards of child-welfare agencies that also face financial challenges, including budget cuts and funding freezes that may lessen their capacity to ensure that children taken away from their families can thrive and achieve permanency.” 194 Fewer dollars compel state agencies to make decisions as to who will most likely benefit from dollars spent on services. “In an era of dwindling resources, the state may reasonably focus its reunification efforts on those families most likely to be reconciled.” 195 And judges are not immune from financial constraints: “Judges may allow for lapses in following federal reasonable efforts requirements so that agencies may conserve their resources.” 196 Allocation of scarce resources prompts the question of which families are most likely to be reunified.

Although the statutory framework that gives structure and purpose to the child welfare system gives clear priority to natural families and reunifications, rates of reunification have declined during the 1990s. The simple fact is, over the past 20 years, little progress has been made in defining and implementing meaningful reunification programs. 197

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192. Sell et al., supra note 112, at 32.
194. Id. at 304, 307 (adding that “research indicates that children of color receive fewer supportive services than their white peers, stay in the system longer, are less likely to be reunited with their families, and take longer to be adopted”).
196. Bean, supra note 71, at 334. Professor Bean adds: “Usually, the recognition that resources are relevant is simply implicit in court opinions; occasionally, there is an explicit comment. The implicit recognition is most often reflected in the courts’ references to available services.” Id. at 365.
197. Fred Wulczyn, Family Reunification, Future Child., Winter 2004, at 95, 110. Some commentators suggest that successful reunification programs include the following: (1) “meaningful family engagement”; (2) “[i]ndividualized needs assessment and clear, mutually
1. Endangered Services

Particular services seem most impacted by budget cuts. For example, among the services curtailed is the "the availability of contract-based therapeutic services, which include evaluations that are critical to understanding the nature of a family's circumstances, and therefore essential to the development of an effective plan for the reunification of children and their parents." Also, attorneys serving as GALs complained that payments were often six months late, there was a high turnover in therapists, long waits for beds in in-patient drug-treatment programs, lack of transportation services, and an inability to provide bus passes to parents seeking to visit with their children across town.

Judicial decisions imply that what is reasonable bears a relationship to what is available. These decisions support the nexus between the reasonableness of services and available state resources: "the State must put forth reasonable efforts given its available staff and financial resources to maintain the legal bond between parent and child." This prompts one commentator to write, "when [the ASFA's] emphasis on the safety of the child combines with limited state budgets, courts may be pressed to find reunification efforts reasonable when they would otherwise be inadequate." And while courts may order the appointment of counsel to assist parents in civil dependency matters on a case-by-case basis, the legislature must compare the costs versus benefits of providing and paying for counsel in abuse and neglect cases against a vast array of other programs and interests . . . while also making judgments as to what level of resources the public can reasonably be called upon to provide through taxation.

Utilizing aggravated circumstances—the exception to mandated reasonable services—may be more attractive when there are fewer state and county dollars to pay for services. Illustrative is a Maine decision that occurred prior to the current recession. The family consisted of a single mother and eight children. The mother suffered from a "severe personality..."
disorder which interferes with her ability to understand the needs and actions of her children and to respond appropriately.\textsuperscript{204} The mother had been married to a man whom she later described "as a chronic alcoholic and who used her as a punching bag."\textsuperscript{205} Then, following a divorce from the first man, she dated another man, but he also perpetrated domestic violence against her. With a protection order still in place against the second man, she married him while the order was still in place.\textsuperscript{206} Soon afterwards, the mother’s parental rights were terminated because her children “suffered from painful medical and dental neglect and had trouble walking correctly. They had been kept in a cage-like enclosure, euphemistically referred to as a crib, to control them, much like one would cage an animal and they exhibited many feral traits, including being totally uncontrollable.”\textsuperscript{207} When her last child was born, the state declared the child a dependent child based on the prior involuntary terminations and the mother’s demonstrated inability to take advantage of reasonable services.\textsuperscript{208} The court concluded that this was a proper exercise of its discretion.\textsuperscript{209}

Instructive in this case is the court’s assessment of how the state’s financial budget constraints may adversely impact reasonable services. The mother argued that even though aggravated circumstances existed when her last child was involuntarily removed and her rights eventually terminated, her situation had improved.\textsuperscript{210} Because of this, there would be a “high risk for erroneous deprivation of a parent’s rights” if she were not offered reasonable efforts to reunify her with her child.\textsuperscript{211} In rejecting her argument, the court incorporated concern over budgetary constraints: “The State . . . has a legitimate interest in making the best use of its limited resources. . . . If difficult decisions regarding allocation of scarce resources must be made, the Legislature’s determination that a prior involuntary termination is a factor to be considered is both reasonable and legitimate.”\textsuperscript{212} Thus, reasonable services may be offered less frequently when there are aggravated circumstances; refusal of services would conserve limited state resources.

\begin{itemize}
\item \textsuperscript{204} Id. at 452.
\item \textsuperscript{205} Id.
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Id.
\item \textsuperscript{208} Id. at 453-54.
\item \textsuperscript{209} Id. at 455.
\item \textsuperscript{210} Id. at 453-54.
\item \textsuperscript{211} Id. at 455.
\item \textsuperscript{212} Id. at 456. Prior involuntary termination of parental rights is a statutory aggravating factor justifying a denial of additional services. See ME. REV. STAT. tit. 22, § 4002(1-B)(C) (2012).
2. Federal Disparity in Funding

Budgetary constraints and decreasing reasonable efforts are not hindered by federal monitoring of what constitutes states' reasonable efforts to reunify families. Professor Will L. Crossley, quoting Marcia Lowry, writes that "[i]t is virtually impossible to fail [a Department of Health and Human Services] audit." Professor Crossley describes the lax procedures that some states follow in providing reasonable services, monitoring reasonable services, and determining what constitutes reasonable services. Improvements have been adopted, but the states must contend with fewer state resources to provide for reasonable efforts, and the federal resources go primarily to foster care and adoption assistance, not to assisting states with funding an array of reasonable efforts to keep families together.


214. Crossley, supra note 63, at 284-86 (stating that states did not provide services even though the file stated that they did or that the best interest of the child was satisfied but without reference to any reasonable efforts to provide for reunification).


216. Pertinent federal programs and corresponding 2012 budgets are as follows:

1. "The Abandoned Infants Assistance Program awards grants to public, nonprofit, and private organizations to provide services for infants and young children, particularly those with AIDS, who remain hospitalized due to a lack of appropriate out-of-home placement alternatives." 2012 CHILDREN'S BUDGET, supra note 111, at 19. The 2012 budget: $11.6 million, same as in 2008. Id.

2. "Adoption Incentives Program provides incentive payments to states that increase the number of adoptions of children in the public foster care system." Id. at 20. The 2012 budget: $39.3 million, up from $43.4 million in 2008. Id.

3. "Adoption Opportunities grants provide funds for projects designed to eliminate barriers to adoption and help find permanent families for children who would benefit from adoption, particularly children with special needs." Id. The 2012 Budget: $39.2 million, up from $26.4 million in 2008. Id.


5. Child Welfare Services State Grants may be used for services such as investigation of child abuse and neglect, removal of children from unsafe homes, and financial support for children in foster care. Id. The 2012 budget: $280.6 million, down from $281.7 million in 2008. Id.

6. "Child Welfare Services Training Grants provide fund[ing] to accredited public or other nonprofit institutions of higher learning for specific projects to
Because placing children in foster care will be subsidized by the federal funds if states follow the proper procedures, states can begin the dependency process with little concern over state budgetary constraints. Thus, if states provide inadequate reasonable efforts to precipitate reunification, train prospective and current personnel for child welfare work: $26.1 million, up from $7 million in 2008. *Id.* at 22.

(7) "Community Services Block Grant Program offers funds to states to address the causes of poverty by providing effective services in communities . . . such as child care, transportation, employment, education, and self-help projects": $712.3 million, up from $653.8 million in 2008. *Id.*

(8) "Kinship Guardianship assistance payments are made on behalf of children [paid] to grandparents and other relatives who have assumed legal guardianship [over] children" under the terms of a state contract: $80 million, up from $14 million in 2009, the first year of the program. *Id.* at 23.

(9) Adoption Assistance Paid to States assists states in developing "adoption assistance agreements with parents who adopt children with a specific condition or situation that prevents placements without further assistance from the state": $2.4 billion, up from $2.2 billion in 2008. *Id.* at 24.

(10) Payment to States for Foster Care is the largest federal expenditure: $4.1 billion, down from $4.6 billion in 2008. *Id.*

(11) Promoting Safe and Stable Families Grants offer funds to states to "prevent the unnecessary separation of children from their families, to improve the quality of care and services to children and their families, and to promote family reunification": $345 million for mandatory grants, the same as in 2008; $63.1 million for discretionary grants, down from $63.3 million in 2008. *Id.* at 25.

(12) "Social Services Block Grant[s] offer[] funds to states to provide social services that best [address] the needs of individuals in that state. Services typically include child day care, protective services for children and adults, and home care services for the elderly and handicapped": $1.9 billion, up from $1.7 billion in 2008. *Id.*


(14) "Temporary Assistance to Needy Families (TANF) . . . assists struggling families through direct cash payment[s], as well as work supports [such as] job training and child care assistance." *Id.* at 125. The program "created in 1996 . . . replaced Aid to Families with Dependent Children." *Id.* The program provides block grants to states receiving federal funds so that they may develop and implement their own family assistance initiatives. *Id.* States must supplement the federal contribution with state funds, and they are penalized if they do not. *Id.* "States are required to spend over $12 billion a year in Maintenance-of-Effort (MOE) funds to qualify for their share of the [federal funds]." AHA REUNIFICATION AND FUNDING REPORT, *supra* note 113, at 4. "Families may . . . receive direct assistance for up to 60 months and states are required to ensure that 50 percent of all families and 90 percent of two-parent families receiving cash assistance meet specific work participation standards." 2012 CHILDREN’S BUDGET, *supra* note 111, at 126. Nearly 4.5 million Americans are helped by TANF, and 75% of them have been children. *Id.* But in 2012, TANF served less than 10% of all Americans living in poverty: $16.5 billion, down from $17.1 billion in 2008. *Id.* at 125-26.
the child remains safe pending the expiration of the limit set by the ASFA. If the parent fails to meet standards set by the state within that time frame, then the parent’s rights may be terminated, and federal funds are available for adoption assistance for the child. Economically, the only significant cost to the state is in providing for reasonable efforts, but “[f]ederal financial reimbursement formulas made foster care placement more financially advantageous to states than providing preservation and reunification services.”

Likewise, “federal funding formulas continue to restrict funding for child welfare services while leaving foster care maintenance reimbursements uncapped.” As one study showed, “[b]y 1999, foster care still accounted for about seventy-three percent of all federal funding while the proportion of funding for adoption activities rose to approximately fifteen percent, but the proportion of funding covering child welfare services had fallen to only ten percent.”

Even in 2012:

the use of [federal child welfare] funds is limited to support for foster care, subsidized guardianship, and adoption services, as well as administrative costs and caseworker training. In comparison, funding for prevention and reunification services is primarily limited to the Child Welfare Services Program and the Promoting Safe and Stable Families Program funds available under SSA Title IV-B—a rather small pot in comparison to resources dedicated to foster care.

Specifically, 2012 federal budget allocations for non-foster care programs consist of: (1) Child Abuse Prevention and Treatment Act (CAPTA) fund-

217. Crossley, supra note 63, at 275-76. “Currently, the primary source of federal dollars dedicated to child welfare services, Social Security Act Title IV-E, provides little flexibility in the use of funds. Restrictions on this money mean a larger portion of federal funding is dedicated to foster care, leaving less for prevention and family support services.”
218. Crossley, supra note 63, at 276.
219. Id. at 277.
220. 2012 CHILDREN’S BUDGET, supra note 111, at 15.

Title IV-E foster care and kinship-guardianship assistance requires that the income of the family of the child . . . meet the income eligibility requirement for Aid to Families of Dependent Children (AFDC), based on the State AFDC standards that were in place on July 16, 1996 during the month a petition was filed to remove the child . . . or [in] the month a Voluntary Placement Agreement is signed. The child must have lived in the home of a specified relative within six months of the eligibility month and be deprived of parental support. In addition, there must be a court determination holding that: (1) [c]ontinuation in [the child’s] home would be contrary to the welfare of the child[,] and (2) reasonable efforts were made to prevent the removal of the child from his [or] her [home, or (3) that reasonable efforts had been made] to facilitate the return of the child who has [already] been removed.

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$27 million allocated for state grants, $29 million for discretionary grants, and $42 million for Community Based Grants for the Prevention of Child Abuse and Neglect; (2) Child Welfare Services funding at $282 million, and the state may use the money to address overall abuse and neglect problems. States may also use these funds to provide services that will keep families together and restore children to their parents or provide for adoption if this is more appropriate. There is no federal income eligibility criterion to receive these state services; Social Services Block Grants were allocated $1.7 billion, an amount that has remained the same since 2000. These Social Service Block Grants enable the states to provide an array of twenty-nine services to children, youth, and families. In 2008, twenty-two states used $35 million to assist in the adoption of children, and thirty-six states allocated $377 million for foster care services, but only $142 million was used by thirty-two states for prevention and intervention services in that same year. Additionally, $368 million has been reauthorized for the Promoting Safe and Stable Families program so as “to fund four categories of service: family preservation, community-based family support services, time-limited reunification services and adoption promotion and support services.”

Current 2012 and projected 2013 federal budgets indicate there may be an innovation in child welfare. “Of the total budget for child welfare in FY 2012, the expected outlay of $4.1 billion will support the foster care program . . . .” But the 2013 budget includes a modest incentive program. The program “provides an increase of $252 million in mandatory funds in FY 2013 to support a reform agenda focused on providing incentives to states to improve outcomes for children in foster care and those who are

221. 2012 BUDGET ANALYSIS, supra note 18, at 3. There has been no increase in funding of CAPTA since 2005. Id. States receive CAPTA grants to improve the state’s Child Protective Services system. Id. The Department of Health and Human Services is tasked with addressing “best practices in differential response through dissemination of information, research, [and] training of personnel.” Id.

222. Id. The Community Based Grants seek to foster community programs designed to strengthen and support families at the local level. Id. at 3-4. Organizations that would benefit include family resource and support programs, “voluntary home visiting programs, respite care programs, parenting education,” and community activities that seek “to prevent or respond to child abuse and neglect.” Id. at 4.

223. Id.
224. Id.
225. Id.
226. Id. at 6.
227. Id.
228. Id. at 7.
229. Id. at 4.
230. 2012 CHILDREN’S BUDGET, supra note 111, at 15.
receiving in-home services from the child welfare system.”

Overall, the program “could help states begin to address the unmet needs of children and provide a range of services targeted to fostering resiliency and helping children heal from the impacts of trauma and abuse.” But the incentives are broad in scope, and it appears that they are “designed to reward states that achieve improved outcomes for children in foster care and those at risk of entering or re-entering foster care.”

Increasing numbers of children in foster care led to enactment of the AACWA of 1980 and the ASFA Act in 1997. We are approaching the same levels of children in foster care today. The 2012 federal budget allocated $4.5 billion in Title IV-E Foster Care spending—$571 million more than in 2011. Approximately 420,000 children are in foster care, and the money that the states receive is spent on maintenance payments, administration costs, and maintaining a data system.

It follows that, as Fred Wulczyn argues:

If a child is discharged from foster care, the basis for making a federal claim disappears, along with the associated revenue. . . . [T]he harder child welfare service providers try to reduce foster care utilization from current levels—either by lowering admission rates (placement prevention), reducing time in care (earlier permanency for children), utilizing less-restrictive settings, or lowering the rate of

231. Id.
232. Id. at 16.
236. 2012 BUDGET ANALYSIS, supra note 18, at 7. The goal remains, however, to find the children permanent homes. See id. The Foster Care Maintenance Payments Program assists states in caring for foster care children by funding the costs of providing for such children, including food, clothes, and school supplies. See id. But the Adoption Assistance Program provides financial assistance to states to promote adoption of hard-to-place children, including children with special needs. Id. at 8. The 2012 federal budget allocates $2.5 billion for the Adoption Assistance program to pay for payments to adoptive families, placement costs, and the training of professionals and adoptive parents. Id. In addition, a similar program, Adoption Incentive, has increased revenues in the 2012 federal budget: $39 million in 2010, $42 million in 2011, and $50 million in 2012. Id. These efforts have been successful. Id. at 5. There has been a dramatic increase in the number of children adopted since the enactment of the Adoption and Safe Families Act and adoption financial incentives were provided. Id. “In 2009, 57,466 children were adopted from foster care.” Id. The states receiving the most money were Texas at $7.4 million, $5.7 million for Florida, $3.5 million for Michigan, and $2.1 million for Pennsylvania. Id.
237. Id. at 7.
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reentry—the less federal revenue will be available to provide services, even if the changes in service utilization are predicated on the judgments of professionals who choose alternatives to foster care as a way to meet client needs.  

Foster care is a federally funded resource for states unable to meet service demands. Eligibility to receive federal funds under the Title IV-E program is reviewed under the Code of Federal Regulations. Title IV agencies will be reviewed in accordance with the following:

1. The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)-(4) of the Act) to include:
   
   i. Judicial determinations regarding “reasonable efforts” and “contrary to the welfare” in accordance with § 1356.21(b) and (c),240 respectively;
   
   ii. Voluntary placement agreements in accordance with § 1356.22;
   
   iii. Responsibility for placement and care vested with the Title IV-E or other public agency per section 472(a)(2)(B) of the Act;
   
   iv. Placement in a licensed foster family home or child care institution; and,
   
   v. Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

2. Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.71(d).

Each state with an approved plan may disburse foster care maintenance payments on behalf of each child removed from the family home if “(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and (B) the child, while in the home, would have met the AFDC eligibility requirement[s] of [the Code].” And removal and foster care placement of the child are in accord-

238. Wulczyn, supra note 197, at 95, 108.
240. The reasonable efforts requirement specifies: (1) the agency must first seek to “maintain the family unit and prevent the unnecessary removal of [the] child from [the child’s] home”; (2) then to provide for “the safe reunification of the child and [the] family”; and (3) if unable to do either of the first two, then “to make and finalize alternate permanency plans in a timely manner.” Id. § 1356.21(b). Throughout, the health and safety of the child “must be the paramount concern.” Id. A judicial determination of whether reasonable efforts were made or found to be unnecessary must be made within sixty days from the date the child is removed from the home. Id. § 1356.21(b)(1)(i). And within twelve months of the date the child is considered to have entered foster care, a “[T]itle IV-E agency must obtain a judicial determination that it has made reasonable efforts to finalize [a] permanency plan” for each child. Id. § 1356.21(b)(2)(i). Finally, a Title IV-E agency will not have to provide reasonable efforts for family reunification if “[a] court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances.” Id. § 1356.21(b)(3)(i).
241. Id. § 1356.71(d).
ance with the Act if there is "(i) a voluntary placement agreement entered into by a parent or [a] legal guardian of the child who is the relative" from whose home the child is removed or "(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in [the Act] for a child have been made."243

Long-term foster care for children expanded in scope with passage of legislation in 2008, the Fostering Connections Act.244 Gradually the following is occurring: (1) the eligibility link to Aid to Families of Dependent Children is being phased out over time; (2) starting in 2010, special needs adoptive children age sixteen and older are eligible for federal coverage without regard to income levels, and the age threshold will be lowered by two years every year until all special needs adoptions are covered by federal Title IV-E funding; (3) all siblings placed with an eligible child are covered; (4) beginning in 2011, states have an option of extending care in kinship-guardianship cases and special needs adoptions beyond the age of eighteen; and (5) any child who has been in foster care for five consecutive years will be eligible for coverage if he or she is a special needs adoption placement.

Federal funding of foster care placements, long-term foster care, and adoption assistance work in tandem with state budgetary constraints. The problem is that "[f]ederal financial reimbursement formulas made foster care placement more financially advantageous to states than providing preservation and reunification services."245 This is especially true when

243.  Id. § 672(a)(2)(A).

Some [children] are in foster care for only a brief period of days or weeks before being returned to their families. But almost a quarter of a million will remain in foster care for a year or more. Nearly 50,000 will stay in foster care five years or more, while 30,000 will remain there until they reach adulthood. . . . Although children in long-term foster care represent only a small fraction of the total child population of the United States, they represent a much bigger portion of the young people who go on to create serious disciplinary problems in schools, drop out of high school, become unemployed and homeless, bear children as unmarried teenagers, abuse drugs and alcohol, and commit crimes. A recent study of a Midwest sample of young adults aged twenty-three or twenty-four who had aged out of foster care found that they had extremely high rates of arrest and incarceration. 81 percent of the long-term foster care males had been arrested at some point, and 59 percent had been convicted of at least one crime. This compares with 17 percent of all young men in the U.S. who had been arrested, and 10 percent who had been convicted of a crime. Likewise, 57 percent of the long-term foster care females had been arrested and 28 percent had been convicted of a crime. The comparative figures for all female young adults in the U.S. are 4 percent and 2 percent, respectively.

ZILL, supra note 89, at 2.

245.  Crossley, supra note 63, at 275-76.
there are no enforceable federal guidelines as to what constitutes reasonable efforts. State courts and legislatures comment on the reasonableness of decreasing efforts to correspond with decreasing state revenues; foster care provides for a safe alternative for the child.

Parents who are poor, medically and mentally challenged, marginalized because of language or background, and single are often victimized by such a system. Any response must include more effective utilization of existing efforts to keep a child in the home and should focus on rectifying those conditions that have resulted in removal of the child. Furthermore, any response should continue efforts to reduce reentry into the dependency and, overall, provide a better argument for what efforts are needed and deserved. CASAs contribute to this response.

IV. COURT APPOINTED SPECIAL ADVOCATES

A. Program Overview

The practice of using CASAs began in the courtroom of a superior court in Seattle, Washington. To ensure that he was getting all of the facts to provide for the long-term welfare of the children appearing before him, the judge “obtained funding to recruit and train community volunteers [to speak] on behalf of the[se] children.” The pilot program began in 1977, and after, it was replicated throughout the country. An association was formed in 1982, entitled the National Court Appointed Special Advocate Association. There has been steady recognition and expansion of the program with the American Bar Association officially endorsing the use of CASA volunteers in 1989 to work alongside attorneys representing abused and neglected children. Later, “in 1996, Congress authorized the expansion of the CASA program by amending CAPTA to include CASA volunteers as [permissible] guardians ad litem.”

Today, the National Court Appointed Special Advocate Association reports that in 2011 there were forty-six statewide CASA/GAL organiza-
The 2010 CASA summary report on the various state organizations reports that "[s]tate programs range from state-funded, state-administered programs to nonprofit organizations that grew from informal networks of CASA program directors." The summary report provides information on each of the states that provides CASA services, together with links to state statutes, court rules, and state organization webpages. Detailed information is provided pertaining to the structure of each state office, the number of children served, the number of volunteers, the amount of funding revenues, and the amount of office expenditures. Statistics provided indicate that Florida had the largest number of children being served by CASA volunteers, 55,764 children served in 2010; there were 6,670 volunteers. Utah had the fewest number of children served, 269, but the state CASA program had 280 volunteers.

Analyzed in the context of what best serves the interest of children involved in dependency proceedings, commentators lament the absence of strong empirical evidence as to the efficacy of CASA volunteers, but their assessments taken from interviews are generally positive. One 2004 study reported the following: (1) that the CASA volunteers are [far] more likely to have face-to-face contact with the children and their care providers . . . to file written reports with the court . . . [and] continuity of representation and documentation . . . when one considers the high turnover of county social workers and the rotation of private attorneys through the dependency court; (2) "that children represented by a CASA advocate had more services ordered and more actually implemented and . . . they tended to have slightly fewer placements"; (3) "children with CASA support are more likely to...

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254. See id.

255. See, e.g., id. at 9-10.

256. See id. at 25.

257. See id. at 94.


259. Id.
be adopted than those with other representation";260 (4) "children with CASA support appear to be less likely to reenter the foster-care system once their cases are dismissed",261 and (5):

[p]reliminary findings [citing Child Advocates, Inc.] suggest that CASA volunteers positively affect children's self-esteem, their attitudes about the future, and their ability to work with others, as well as help control deviant behavior. The children's caregivers also appear to benefit in the areas of communication and family rituals. Patterns of communication and rituals in families are general markers for the overall health of the family system.262

CASA volunteers do not have to be attorneys, and they often work in tandem with attorneys, appointed as GAL advocates for children.263 In 2009, the National Association of Counsel for Children issued a report evaluating the GAL system in Nebraska.264 The report was written in response to request by the state legislature to evaluate the GAL system on fifteen different measures.265 The report was critical of the state’s system of child representation, finding that “significant reform is needed to bring Nebraska’s child representation system into line with national standards.”266 But in reference to CASA, the report concluded that “having a CASA assigned to a case expanded the breadth and depth of information provided to the court, that CASA reports were more helpful to judges than those of caseworkers and GALs, and that CASAs are more likely to visit the child in the home.”267

Strikingly, throughout the report, comments from caseworkers, CASA volunteers, and Foster Care Review Board Members revealed the depth of interaction between the CASA and the child; this was in contrast to the GAL and the child. In interviews with CASAs the Association reported that “GALs develop a very poor relationship with their clients[,]” they “absolutely do not” develop relationships with their clients, and sometimes they develop a relationship and sometimes they do not. One CASA explained that in one case, the GAL only sees the child right before the court hearing and in another case, the GAL attends meetings and conferences and listens to the CASA. One CASA commented, “GALs probably understand the children’s needs in general. But unless the children are brought to the GAL, GALs would never check up on them.”268

260. Id.
261. Id. The study later reports that “[p]erhaps the only outcome with clear external relevance is reentry into the court system; and, notably, each of the studies that explored reentry reported that children who had been assigned to CASA volunteers were approximately 50 percent less likely to reenter the dependency system.” Id. at 122.
262. Id. at 123 (footnotes omitted).
263. Id. at 109-12.
264. NACC NEBRASKA GAL REPORT, supra note 21, at vi.
265. Id.
266. Id. at xi.
267. Id. at 14-15.
268. Id. at 107.
The theme of personal interaction between child and child advocate forms one of the recommendations of the Association’s report: “Recommendation 3: The relationship between the GAL and the child must be changed to become client-focused, not adult-focused. . . . Attorneys should be required to provide their contact information (telephone and e-mail address) to clients age 10 and older, and to caretakers for all of their clients.”

When CASAs commented on the advocacy skills of GALs, the National Association of Counsel for Children reported that some of the CASAs stated, “[I]t is difficult to advocate for someone whom the GALs have never met or spent any time with.” CASAs also commented that the GALs “rely too much on [agency] reports and what they assume the court will do.” And when GALs were asked about working with CASA volunteers, one said that “it was ‘rough’ working with them because they ‘overstep their bounds in making legal determinations that they’re not qualified to do.’” But most of the comments from GALs reported in the Association study were consistent in describing the CASAs as “‘uniquely dedicated to children and very caring and devoted people[,]’ . . . [they provide] ‘another set of eyes and ears’ . . . [and] day-to-day updates on children’s lives.”

B. Effective Utilization

In assessing the effectiveness of advocating for the best interests of a child in a dependency case, there is no single approach. Individual circumstances abound and the most common denominator is poverty, a poverty exacerbated by the recession beginning in 2008. As a consequence, an increasing number of children are entering the child welfare system and, correspondingly, foster care. And while “[f]ederal financial reimbursement formulas made foster care placement more financially advantageous to [the] states than providing preservation and reunification services,” these services—reasonable efforts—are needed more than ever. Decreasing state revenues are resulting in decreasing state efforts to reunify families. It is arguable that the federal support of foster care and adoption, plus federal statutory time frames for compliance, creates the milieu that results in termination of parental rights of those most vulnerable.

But what can be done? First, federal priorities could shift and state reasonable efforts at reunification could receive additional federal support.

269. Id. at 193 (emphasis omitted).
270. Id. at 123.
271. Id. at 127.
272. Id. at 136.
273. Id.
274. Crossley, supra note 63, at 275-76.
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There is some indication of this in the most recent budget, but the monetary support is still insufficient to term this a solution. Second, attorneys appointed as GALs could be more accountable. This is a part of an overall response recommended by many child advocacy reports, suggesting that any child advocate must interact with the child, and the “weight of academic and practitioner opinion suggests that without the legal representation, a child has little prospect of successfully navigating the complexities of dependency proceedings.”

The advocate’s interaction with the child and the necessity of legal representation are included in the following recommendations:

1. Attorneys must develop a bond with their client[,] ... engage more with children by having frequent and more meaningful contact[,] ... [and] understand the child’s living situation, school, and home life[.]

2. Effective representation includes a thorough investigation in order to develop a clear theory of the case and effectively advocate in court[.]

3. Attorneys effectively solve problems for their clients by engaging in active out-of-court advocacy . . . seeking solutions on behalf of the child[.]

4. Attorneys should take a holistic view of the child’s needs . . . [and] monitor a vast array of services, as well as coordinate other legal issues, such as financial assistance or educational programs[.]

5. Practice in this area requires comprehensive training, which includes child and family issues[,] . . . [and the] need to understand . . . agency policies and procedures[,] . . . courtroom skills and a grounding in children’s law[.]

6. Attorneys must meet initial and ongoing qualifications standards[.]

7. Additional support can help attorneys accomplish the multiple tasks that allow them to be successful advocates[, and] [attorneys need . . . assistance [from] investigators [and] social workers, and strong supervising skills[, and]

8. Caseloads must be reasonable so that attorneys can accomplish their essential duties.

During better economic times, it is feasible that the goals for attorney advocacy just listed could be accomplished. But this is a debate that is best left for when those times occur. In the meantime, the number of children in foster care increases, there is an inadequate standard as to what constitutes reasonable services, private action to enforce states to provide reasonable efforts is lacking, and judicial and legislative comments ratify reductions in efforts presently offered by states to reunify families where cause exists. Prudence dictates that more immediate responses should be fostered. Based on what empirical evidence exists, CASA volunteers working with attor-

275. See Duquette with Darwall, supra note 20, at 90. The article reports that the “team [providing data for the conclusions] talked with judges, attorneys, caseworkers, CASAs, state regional office directors, tribes, and children themselves.” Id. at 120.

276. Id. at 120-21.
neys can effectively advocate for children, their families, the process of dependency, and greater pursuit of equality for those who are the most victimized during the worst of times.

CONCLUSION

Providing adequate child protective service is a complex endeavor. The 2008 economic recession has had a profound impact on the ability of government—state and federal—to respond to what always occurs during recession: greater child dependency. Moreover, the inability to respond adequately is not recent or sudden; rather, foster care drift, inadequate reasonable efforts to keep families together, federal monetary policies, and refusal of parents to rectify abhorrent behaviors is perennial. But this Article advocates that something be done now to respond to the present dilemma. Admittedly, long-term solutions must be set in place. But immediately, greater attention must be paid to CASAs. There is sufficient evidence that they are effective advocates for children and parents. CASAs are educated enough to participate in the child-protective system, they take advantage of community resources, and they are volunteers, not constrained by salary or time clocks. These CASA volunteers should not act alone, but rather in tandem with attorneys. This model is recommended by sufficient commentators to warrant its implementation. But the time to begin is now, before what is an unreasonable usurpation of equality becomes reasonable.