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Advocating for Children and Families in CINA Proceedings 1991

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ADVOCATING FOR CHILDREN AND FAMILIES IN CINA PROCEEDINGS 1991

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The Court Services Survival Guide to CINA Litigation, Copyright 1980.
Authored by Marilyn Blimline, Esq.

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ACKNOWLEDGEMENTS & INTRODUCTION

This manual benefitted greatly from the help of Julie Drake, Germaine Haut, Susan Kramer, Sandra Barnes, Ray Butler, and Donna Heller. Thanks especially for the typing and assistance of Marsh Borisevic.

Thanks also for the materials supplied by William Grinn, Chief Attorney, Child Advocacy Unit, Legal Aid Bureau, Inc. In addition, the use of Diane Dodson's materials from "The Legal Framework for Ending Foster Care Drift: A Guide to Evaluating and Improving State Laws, Regulations and Court Rules" was invaluable.

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This manual is for the use of Maryland lawyers, judges, and masters who are involved with the Child in Need of Assistance cases. The first chapter of the manual is an overview of the federal Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272. The second chapter contains a description of the various judicial hearings involved in Child in Need of Assistance proceedings. These hearings are the Shelter Care, Adjudicatory and Disposition Hearing. The Third chapter contains a discussion of permanency planning for children and the various post dispositional procedures available such as foster care review boards and court dispositional review hearings. The fourth chapter contains a description of the role of counsel for the child and the parents.

The fifth chapter consists of a bibliography of legal and social work resources pertaining to child welfare. Finally, the 34 appendices contain sample motions and regulations which should aid in handling an abuse and neglect case.

Anyone who practices in this area should also read Foster Children In The Courts, edited by Mark Hardin (Butterworth Legal Publishers, 1983) which contains an excellent description of the foster care system and the courts.

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TABLE OF CONTENTS

I. THE FEDERAL AND STATE MANDATE: PERMANENCY PLANNING FOR CHILDREN

A. THE PROBLEM: FOSTER CARE DRIFT 1

B. PUBLIC LAW 96-272, THE ADOPTION ASSISTANCE & CHILD WELFARE ACT OF 1980 4

 1. Preventing Removal 5

 2. Reunifying the Family 6

 3. Permanency Planning 6

C. PREVENTIVE AND REUNIFICATION SERVICES 8

 1. Pre-placement prevention services 9

 2. Reunification Services 11

 3. Reasonable Efforts 11

D. CASE PLANS 25

E. CASE REVIEW 28

F. PROCEDURAL SAFEGUARDS 31

G. L.J. V. MASSINGA, C.A. No. JB84-4409 33

CONSENT DECREE 57

 I. Decree Provisions Effective Immediately 90

 II. Provisions To Be Implemented Within 6 Months 92

 III. Decree Provisions To Be Implemented Within One Year 92

 IV. Decree Provisions To Be Implemented Within Two Years 93

II. CHILD IN NEED OF ASSISTANCE (CINA): THE SHELTER CARE, ADJUDICATORY AND DISPOSITION HEARING

A. INTRODUCTION: THE DUAL ROLE OF THE CHILD IN NEED OF ASSISTANCE (CINA) PROCEEDING: PROTECTION OF THE CHILD AND OF THE RIGHTS OF FAMILY INTEGRITY 95

 1. Protection of The Child 95

 2. The Rights of Family Integrity: The Significance of Coercive State Intervention 97

B. MARYLAND LAWS CONCERNING CHILDREN 99

C. THE JUVENILE COURT PERSONNEL AND ORGANIZATION 100

JUVENILE COURT LISTINGS 102

D. CINA JURISDICTION AND VENUE 106

E. EMERGENCY REMOVAL: THE SHELTER CARE PROCEEDING 106

 1. The investigation of reports of child abuse and neglect 106

 2. The Procedure and Standard for Emergency Removal: The Shelter Care Hearing 110

| | | |
|---|--|------------|
| F. | PROCEDURES AND STANDARDS FOR NON-EMERGENCY HEARINGS | 117 |
| 1. | Authorizing the filing of a petition | 118 |
| 2. | Further inquiry | 118 |
| 3. | Informal adjustment | 118 |
| 4. | Refusing authorization to file a petition | 120 |
| G. | THE PETITION AND OTHER PLEADINGS | 120 |
| H. | STUDY AND EXAMINATION OF CHILD, ETC. | 122 |
| I. | DISCOVERY | 122 |
| J. | THE PRELIMINARY HEARING | 123 |
| K. | THE ADJUDICATORY HEARING | 123 |
| 1. | Maryland's Statutory CINA Standard | 124 |
| 2. | Speedy Trial | 127 |
| 3. | Notice of Hearing | 127 |
| 4. | Admissions | 128 |
| 5. | Jury Trial | 128 |
| 6. | Continuance and Postponements | 128 |
| 7. | Evidence | 129 |
| 8. | The Judge's Interview of a Child in Chambers | 144 |
| 9. | Burden of Proof and Sufficiency of Evidence | 145 |
| 10. | Presence of Respondent | 146 |
| 11. | Medical Care | 146 |
| 12. | Court's Witness | 147 |
| 13. | Settling the Case | 147 |
| L. | THE DISPOSITION HEARING | 147 |
| 1. | The Purpose of Disposition | 147 |
| 2. | Pre-Disposition Investigation and Report | 148 |
| 3. | Procedural Requirements of Disposition | 151 |
| 4. | Dispositional Alternatives | 154 |
| M. | INTERSTATE COMPACT ON PLACEMENT OF CHILDREN | 164 |
| N. | APPEALS AND COLLATERAL ATTACK | 165 |
| | THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM (CASA) | 168 |
| | PROGRAM ACTIVITIES | 169 |
| | CASE EXAMPLES TO SHOW THE WORK OF CASA VOLUNTEERS | 173 |
| III. REVIEW OF CHILDREN IN FOSTER CARE | | |
| A. | INTRODUCTION: THE NEED FOR PERMANENCY PLANNING | 175 |
| B. | CASE PLANS | 177 |
| 1. | Federal Requirements | 177 |
| 2. | Maryland's Case Plan | 177 |
| 3. | The Permanency Plan | 178 |
| 4. | The Service Agreement | 181 |
| C. | CASE REVIEW SYSTEMS | 185 |
| 1. | Administrative Reviews | 186 |
| 2. | Citizen Reviews | 187 |
| 3. | Judicial Review | 193 |

| | |
|---|------------|
| REASONABLE EFFORTS AS DEFINED IN CASELAW THROUGHOUT THE U.S. | 215 |
| ARIZONA | 216 |
| CALIFORNIA | 217 |
| CONNECTICUT | 219 |
| DELAWARE | 220 |
| FLORIDA | 221 |
| INDIANA | 222 |
| KANSAS | 223 |
| MAINE | 224 |
| MINNESOTA | 225 |
| MISSOURI | 225 |
| NEW YORK | 227 |
| NORTH CAROLINA | 232 |
| OREGON | 232 |
| PENNSYLVANIA | 234 |
| RHODE ISLAND | 235 |
| SOUTH DAKOTA | 237 |
| VIRGINIA | 237 |
| WASHINGTON | 238 |
| MODEL QUESTIONS FOR DEFINING REASONABLE EFFORTS | 239 |
| Questions Common to All Services | 241 |
| In-home Intensive Services | 249 |
| PARENTING EDUCATION | 251 |
| VISITATION | 252 |
| COUNSELING | 255 |
| DRUG ISSUES AND PARENTING | 256 |
| INCARCERATED PARENTS AND THEIR CHILDREN | 259 |
| ACKNOWLEDGMENTS | 260 |
| IV. THE RIGHT TO COUNSEL AND THE ROLE OF COUNSEL | |
| A. RIGHT TO COUNSEL | 261 |
| B. ROLE OF COUNSEL | 262 |
| 1. Representation of the Child | 263 |
| 2. Representation of the Parents, Guardians or Custodian | 272 |
| STANDARDS OF REPRESENTATION FOR ATTORNEYS PROVIDING LEGAL REPRESENTATION TO CHILDREN IN NEED OF ASSISTANCE | 279 |
| Bibliography | 293 |
| Appendices | 300 |

I. THE FEDERAL AND STATE MANDATE: PERMANENCY PLANNING FOR CHILDREN.

A. THE PROBLEM: FOSTER CARE DRIFT

Foster care is a supportive short term service for a child who requires placement outside of the home of his family or custodian because his physical or emotional well being is jeopardized by dependency, neglect or abuse. Supportive services are also to be provided to the child's family to facilitate the return home of the child.

This, however, was not always the role of foster care. The origins of the foster care system was the 19th century reform of the child welfare system known as "placing-out". Orphanages and almshouses were replaced by private homes; children were sent away to live with families.¹ This created a large population of helpless children adrift from their natural parents with no prospect of returning home.

The 1970's witnessed an awareness that this problem of "foster care drift" characterized the 20th century foster care system as well. In 1977, over half a million children nationally lived in foster care homes as wards of the state.² In 1976, fifty to eighty percent of the children in foster care were estimated to be drifting; they had little or no contact with their families and no plan for their eventual

¹Foster Children in the Courts, Foreword (M. Hardin ed 1983); M. Garrison, Why Terminate Parental Rights 35 Stan. L. Rev. 423, 431-442 (1983) (Garrison).

²H.E.W. Study, See S. Rep. No. 336, 96th Cong. 1st Sess. 10-11 reprinted in 1980 U.S. Code Cong. & Ad. News 1460. See also Children's Defense Fund, Children Without Homes 1-2 (1978) (C.D.F. Study).

return home or permanent placement outside the home.³ Many, having lost contact with their families had been shifted from home to home with no opportunity to develop lasting relationships in any one home.⁴ For example in 1977, 38% of children in foster care nationally had been moved once or twice, 18% had been moved more than twice.⁵ In addition, foster care was not a short term service. Rather, in Maryland in 1981 the average length of stay in foster care was 6.2 years.

In sum, the system created a group of children taken from their homes and abandoned by the state. They were often removed from their homes when it may have been possible to provide services to enable the family to stay together. Placements were made without consideration of the special needs of each child; and at times at an unnecessary distance from the natural parent(s). Children often were kept in foster care far beyond the duration of the problem that obviated their removal from the family. Children had become the victims of the system designed to help them.⁶

The causes of the problems with foster care also came into sharp focus in the 1970's. Systemic flaws were

³ Howe, Development of a Model Act to Free Children for Permanent Placement; A Case Study in Law & Social Planning 13 Fam. L. O. 257, 276 (1979).

⁴ M. Garrison, Why Terminate Parental Rights 35 Stan. L. Rev. 423, (1983).

⁵ Child Welfare Service FY 84, Intensive Permanency Planning, (Feb. 7, 1983), CDF Study at 187.

⁶ CDF Study, supra. note 2 (documents at length The treatment of Children in Foster Care). See also Garrison at 428-432, See also Background on Pub. L. 96-272 regulations 48 Fed. Reg. 23104 (1983), National Legal Resource Center for Child Advocacy and protection, The Adoption Assistance and Child Welfare Act of 1980, An Introduction for Juvenile Court Judges, 1-2 (1983) (HLRCCAP paper).

responsible for the irresponsible treatment of children as wards of the state. Case workers were overloaded with cases and turnover among workers was high. Financial resources for providing services to prevent foster care placements were extremely limited. There was no consistent federal or state policy regarding foster care, and therefore little or no emphasis was placed on reunifying children with their parents or providing permanent placements for children who could not be returned to their homes.⁷

The effects of this haphazard treatment of children became clearer as professionals began to focus on the foster care system. Studies regarding children who experienced the loss or absence of an ongoing permanent relationship with a parental figure revealed that such children were more apt to be psychologically disturbed and involved in criminal activity.⁸

In the last decade there have been two major developments in response to the reorganized problems in foster care. In 1980 Congress passed Public Law 96-272, the Adoption Assistance and Child Welfare Act. In 1984 the Legal Aid Bureau, the Children's Defense Fund, and the Baltimore law

⁷for an overview and discussion of the systemic causes of problems in Foster Care see CDF Study, 5-9.

⁸See e.g. J. Goldstein, A. Fraud and A. Bolnit, Beyond the Best Interest of the Child (2d ed. 1981), Garrison at 424; N. Littner Some Traumatic Effects of Separation and Placement (9th printing (1976)). See also An Informal study of Maryland Prison Population conducted by the staff of the Foster Care Review Board, Riskory of Foster Care In the Childhoods of Male Prison Inmates, A Survey, (1982) (on file with the Maryland Citizen Board for Review of Foster Care of Children).

Children who reside in long-term foster care placements are more frequently socially maladjusted than their peers, leaning toward delinquent behavior and mental illness. Kadushin, A follow-up study of Children Adopted when Older: Criteria of Success, American Journal of Orthopsychiatry 530 (1967).

firm of Whiteford, Taylor and Preston filed suit seeking 15 million dollars in damages from state and local foster care officials and case workers for abuse and neglect in Baltimore City foster homes. The suit also sought systemic changes in the City's foster care program. On September 27, 1988 the United States District Court for the District of Maryland approved a consent decree submitted by the parties on April 26, 1988 as fair, reasonable and adequate resolution of the suit.

B. PUBLIC LAW 96-272, THE ADOPTION ASSISTANCE & CHILD WELFARE ACT OF 1980

Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 (the Act), is remedial legislation designed to remedy specific problems existing in state foster care programs.⁹ This legislation was the product of many years of discussion by a broad range of professionals including judges, lawyers, social workers, mental health practitioners, child welfare officials, and foster care and adoptive parents.¹⁰ The Act has stimulated system wide reform of the

⁹The Act amends Title IV-B of the Social Security Act codified at Social Security Act §§420-428, 42 U.S.C.A. §§620-28 (West Supp. 1981) and establishes Title IV-E Foster Care and Adoption Assistance programs replacing Old Title IV-A foster care program. Social Security Act §§470-476, 42 U.S.C.A. §§670-676 (1983).

¹⁰See Hardin, supra note 1, at 575-578. (M. Allen, C. Golubock, L. Olson) A Guide to the Adoption Assistance and Child Welfare Act of 1980. Extensive consideration of the problems with foster care were addressed in a series of hearings beginning in 1975. See Adoption and Foster care 1975: Hearings before the Subcomm. on Children and Youth of the Senate Comm. on Labor and Public Welfare, 94th Cong., 1st Sess. (1975); Foster care: Problems and Issues, Part 1, Joint Hrg. before the Subcomm. on children and youth of the Senate Comm. on Labor and Public Welfare and the Subcomm. on Select Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975). Legislation was introduced initially by Congressman George Miller (O. Calif.) in 1977, H.R. 7200, 95th Cong., 1st Sess. (1977), H.R. 3434, 96th Cong., 1st Sess., (1979). Hearings held on these Bills were considerable: See Hearings on H.R. 7200, Senate Finance Comm., 95th Cong., 1st Sess. (1977). Hearings on H.R. 7200, Public Assistance and Unemployment Comp. Subcomm. of the House Ways and Means Comm. 95th Cong., 1st Sess. (1977). Hearings on 3434, Senate Finance Comm. 96th Cong. 1st Sess. (1979); Hearings on 3434, Public Assistance and Unemployment Com. Subcomm. of the House Ways and Means Comm., 96th Cong., 1st Sess. (1979). See also Content and Purposes of Pub. L. 96-272, 48 Fed. Reg. 23104 (1983).

foster care system by imposing conditions on all states receiving federal funds for child welfare programs and by reversing federal financial incentives which had encouraged the excessive use of foster care, rather than services to keep biological families intact or to find permanent homes for children in foster care.

The major goal of the Act is to reduce the number of children adrift in foster care.¹¹ This is achieved by encouraging, and in part mandating, the development of permanent family homes for children who have been abused, neglected or abandoned. Permanency is accomplished in any one of three ways:

1. Preventing Removal

Children, whenever possible, should be allowed to remain at home. Preventing unnecessary separation of the child from the family keeps the child out of the temporary foster care system and promotes the permanency of the natural family unit.

The Act stimulates the use and development of quality services useful in preventing a child's removal from the home.¹² The Act, also, compels courts to carefully scrutinize the entry of children into the foster care system by insuring that "reasonable efforts" were made to prevent removal.¹³

¹¹ See Content and Purpose of Pub. L. 96-272, 48 Fed. Reg. 23104.

¹² Social Security Act §§471 (a)(15), 42 U.S.C.A. §671 (a)(15) (1983).

¹³ Social Security Act §§471 (a)(15), 472 (a)(1), 42 U.S.C.A. §§671 (a)(15), 672 (a)(1) (1983).

2. Reunifying the Family

Reunification of a child with their natural parents also promotes permanency. The Act encourages early reunification of children with their parents in situations where removal is necessary. Planning for the return home and providing services to the family are the key to reunification once the problems that triggered removal have been identified. The Act requires states to develop a plan for providing reunification services.¹⁴ It also requires judicial scrutiny in each case of the efforts being made to reunify the family.¹⁵

3. Permanency Planning

Permanency planning means working to assure permanent family homes for children who have been abused, abandoned, or neglected. This process includes: preventing unnecessary removal from the original family unit; returning foster children to families within a reasonable time after removal; and securing permanent homes for foster children when they cannot be returned within a reasonable time. The goals of permanency planning are based on the assumption that children need a stable and predictable life situation taking into account the impermanence of foster care.

Permanency planning for children in foster care is a dynamic process which facilitates decision-making. Through this process, communication between the social worker and the

¹⁴Social Security Act §471 (a)(15), 42 U.S.C.A., §671 (a)(15) (1983).

¹⁵Social Security Act §§471 (a)(15), 472 (a)(1), 42 U.S.C.A. §§671 (a)(15), 672 (a)(1) (1983).

clients should be improved, expectations should be clarified and the direction of case planning should be understood by all parties concerned. The process begins when a decision is made that a child must be placed away from his/her birth parents or guardians. Within 90 days of placement, or sooner, a permanent plan must be formulated and clearly stated in the record. The plan is intended to provide permanence in a child's living arrangement and a continuity of significant relationships. It is, therefore, the goal to be achieved (subject to change when new information surfaces) in order to avoid foster care drift. A permanency plan has a number of component parts. The plan should include:

- identification of a permanent home
- an appropriate legal status (who will have rights to make decisions regarding various aspects of the child's life), and
- a clear time limit for achieving the plan.¹⁶

Permanency planning is assured for each child in foster care through the use of case plans and administrative and judicial reviews both of which are mandated by Pub.Law 96-272 §475.

In sum, the act specifically encourages permanency by establishing fiscal incentives and substantive requirements for each state administering a foster care system. States must develop and provide services which prevent or eliminate the

¹⁶Foster Care Review Board, "Key Concepts of Permanency Planning", May 20, 1981, Blue Sheet #1.

need for removal and which promote reunification.¹⁷ Local departments of social services must demonstrate to the court that in each case reasonable efforts were made to prevent removal and to reunify the family.¹⁸ Every child in foster care must have a case plan that is reviewed periodically.¹⁹ And lastly, parents and children must be afforded procedural safeguards when certain important determinations are made regarding a child in foster care.

The federal Act gives each state some discretion in interpreting and implementing these requirements.²⁰ Thus, it is important to understand how Maryland has chosen to comply with the Act's provisions.

C. PREVENTIVE AND REUNIFICATION SERVICES

States are required by the Act to create a program of preventive and reunification services as part of their foster care system.²¹ The Act, however, does not spell out the components of an adequate preventive or reunification service program.²²

Regulations accompanying the Federal Act list several

¹⁷ Social Security Act §471 (a)(15), 42 U.S.C.A. §671 (a)(15) (1983).

¹⁸ Social Security Act §§471 (a)(15), 472 (a)(1), 42 U.S.C.A. §§671 (a)(15), 672 (a)(1) (1983).

¹⁹ Social Security Act §§471 (a)(16), 472 (a)(2)(B), 475 (1), (5), 42 U.S.C.A. §§671 (a)(16), 672 (a)(2)(B); 675 (1), (5), (1983).

²⁰ Comments accompanying regulations implementing the Act note the extent of the discretion left to each state in areas where the Act and its regulations do not specify compliance.

²¹ Social Security Act §471 (a)(15), 42 U.S.C.A. §671 (a)(15) (1983).

²² Comments to regulations 48 Fed. Reg. 23112 (1983) ("To require states to implement a Federally selected list of specific services is not consistent with the discretion and flexibility necessary for the states to operate their Title IV-B program).

services which may be specified in a state package of services. These include:

twenty-four hour emergency caretaker and homemaker services; day care; crisis counseling; emergency shelters; procedures and arrangements for access to available emergency financial assistance; arrangements for the provision of temporary child care to provide respite to the family for a brief period, as part of a plan for preventing children's removal from the home; other services which the agency identifies as necessary and appropriate such as home-based family services, self-help groups, services to unmarried parents, provision of, or arrangements for mental health, drug and alcohol abuse counseling, vocational counseling or vocational rehabilitation; and post-adoption services.²³

Maryland's child welfare service plan also outlines programs which provide services to promote pre-placement prevention in emergency and non-emergency situations and reunification efforts.²⁴

The development and use of any preventive or reunification services must involve an identification of the particular problems and needs in the family constellation and a matching of services appropriate to remedying these particular problems and needs.

1. Pre-placement prevention services

Services to families are the key to preventing the need to remove a child from his or her family.²⁵ Abuse and neglect, the two main factors precipitating removal of a child, can be effectively addressed by providing direct

²³45 C.F.R. §1357.15 (a)(1)(2).

²⁴See Maryland Child Welfare Services Plan, October 1, 1983-Sept. 30, 1985 (Plan).

²⁵See WDF Study pp. 26, 153-167.

services to the family.²⁶ Maryland is working now on creating comprehensive pre-placement preventive services in each of the local counties and Baltimore City.²⁷

Local Departments of Social Services have different pre-placement services available for families. Some examples include parent aides, respite care, homemakers, legal aid, emergency and temporary housing, day care, 24 hour crisis coverage, and transportation. Some localities have access to specialty services designed to deal with adolescents, sex abuse situations, or battered spouses. Services vary between different areas in the State.²⁸

Many of the services available for reunification would be equally useful for pre-placement prevention. Unfortunately, special projects and specific services are often available only for reunification. Maryland, to date, has advanced further in developing a program to reunify families once a child is removed.²⁹ This has led to the complaint that a family has to "give-up" its children in order to qualify for services that could have helped the family to stay together. In addition, the amount of money a natural family receives under AFDC to take care of their own child is less than the

²⁶ According to a fact sheet released by the Department of Human Resources/Social Services Administration on fostercare population in Maryland 1981-1983, abuse and neglect were the primary reasons for placement in 52.74% of the cases in 1981; 52.36 in 1983. Dept. of Human Resources, Soc. Services Adm., Research & Evaluation, Table X1, "Primary Reason for Placement" 10/13/83.

²⁷ Plan pp. 28, 41-45.

²⁸ Plan p. 62.

²⁹ Plan, see pp. 28, 29; Child Welfare Services FY-84 Intensive Permanency Planning. (Feb. 7, 1983).

amount of money a foster parent receives in foster care benefits.

2. Reunification Services

Special monies have been made available to facilitate the return of foster care children to their natural parent(s).³⁰ Maryland's Reunification Project gives each local department of social services discretion in using funds to reunify families.³¹ Resources potentially available include a combination of financial and social services: such as small cash grants for transportation, a deposit on a new apartment, psychological testing and treatment for parents and children, homemaker services, or day care and parent aides.³²

3. Reasonable Efforts

All the state plans in the world won't guarantee the appropriate provision of services in a specific case. Therefore, the Act requires more than a state plan. In each foster care case there must be a judicial determination that reasonable efforts were made to prevent removal and reunify the family. Without such a finding, the state is ineligible to claim federal funds for that child. Any court ordered foster care placement or service is then at the expense of the state.³³

³⁰ Plan pp. 29, 46-49.

³¹ Id.

³² Child Welfare Services FY 84, Intensive Permanency Planning. (Feb. 7, 1983).

³³ Social Security Act §§471 (a)(15), 472 (a)(1), 42 U.S.C.A. §§671 (a)(15), 672 (a)(1) (1983).

The intent of the reasonable efforts requirement is to provide a fiscal incentive for the development and improvement of services to prevent removal or reunify a family. This will impel courts to carefully scrutinize the entry of children into the foster care system, and ultimately will reduce the number of children in foster care.³⁴

Maryland has not been alone in wondering what constitutes reasonable efforts, when these efforts are necessary, when the judicial determination must be made that there were reasonable efforts, and whether the juvenile court has the authority to order that specific efforts be made.

a. Defining Reasonable Efforts

Title IV-E of the Social Security Act, which took effect on October 1, 1983, requires that for each child entering foster care to be eligible for federal matching funds there must be a judicial determination that:

(T)he removal of the child from the home was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of the child and (effective October 1, 1983) that reasonable efforts of the type described in section 471 (a)(15) have been made. Social Security Act §472 (a)(1), 42 U.S.C. §672.

...in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of a child from his home, and (B) to make it possible for the child to return to his home...

Social Security Act §471 (a)(15), 42 U.S.C. §671 (a)(15).

³⁴National Legal Resource Center for Child Advocacy & Protection, NLRCCAP paper p. 3; Memo from Marc Hardin, ABA Foster Care Project, Re: The Required Judicial Determination of Reasonable Efforts to Prevent Removal and Reunify The Family (ABA Memo) p. 3 q.5.

The federal act and its accompanying regulations specifically avoid defining what constitutes reasonable efforts. Similarly, Maryland has not established any regulatory or statutory definition of what constitutes reasonable efforts. Some commentators view the "reasonable efforts" requirement as meaning diligence, good judgment and an absence of negligence.³⁵ In practice it is a subjective decision that the court must make once they are satisfied that the local department of social services has articulated and documented;

(1) the specific problems in the home that created the need to remove the child;

(2) the services that were provided to address those particular problems;

(3) the reasons why these services either did not work to prevent a child's removal, or were determined to be inappropriate or impractical in the situation, and

(4) why further efforts would be impractical.

An evaluation of these factors is crucial to a determination regarding reasonable efforts. Consider, for example, how such a determination could be made in the following case. The Department of Social Services learns that a child is being neglected by a mother who has sole responsibility for four children, who has recently been

³⁵ ABA Memo p. 4, 0.8.

deserted by her husband, and who has ongoing problems with drug or alcohol addiction. The local department of social services and the mother agree that the department will provide a parent aide, day care for two of the children and the mother will enroll in a drug counseling program. By arranging for services for the mother and her children and providing access to drug or alcohol counseling, removal can thus be prevented. If, however, the mother was unwilling to use these services, documentation that these appropriate services were offered to the family and were unsuccessful would establish that reasonable efforts had been made.

Further examples of services that might be offered to prevent removal based on needs of families at risk of placement are set forth in the accompanying charts.

There is no standard regarding the number of services necessary to meet the requirement of "reasonable efforts". Rather, a court should focus on the quality of efforts made by the agency and the nature of services offered.³⁶ Moreover, there may be situations where it is reasonable to offer no services. Senator Cranston at the time the act was passed stated that services would be required whenever feasible.³⁷ In certain emergency situations nothing could possibly be done to prevent

³⁶ABA Memo p. 4, 9.8.

³⁷126 Cong. Rec. 14765, at 14767. (daily ed. June 13, 1980) (Statement of Sen. Cranston).

removal. Where nothing was possible a lack of preventive efforts would then become reasonable,³⁸ and this would not prevent a finding of reasonable efforts.

b. Documenting Reasonable Efforts

In Maryland, there are numerous places where documentation of reasonable efforts will be found. First in all cases where a family is receiving services from Child Protective Services, Services to Families with Children, Single Parent Services, In-Home Aid Services, and Day Care Services, there should be documentation of what services were being provided to a family in the department's case records. If later it is necessary to remove the child then this case documentation may form the basis for the information which would be contained in the petition seeking emergency removal and used at the shelter care hearing.

If the situation is not one requiring emergency removal, but rather one in which the determination regarding removal will occur at the disposition hearing, then documentation of reasonable efforts to prevent removal may be contained in a pre-dispositional report prepared by the local Department of Social Services and introduced at the disposition hearing. See Chapter II for a description of what a pre-disposition report should contain. This practice is not followed in all local

³⁸ABA Memo, pp. 3, 4, 9.7.

jurisdiction in the state.

For each child who is in foster care, there must be a case plan (DHR/SSA 830A) which includes a description of pre-placement prevention services that were offered or used by the family. The worker must comment on the effectiveness of these services and the reasons why a child's removal was necessary despite the provision of services.³⁹ When a child is placed in emergency foster care, reasonable efforts must have been made prior to that emergency action or the worker must specifically note why pre-placement prevention services would not have been appropriate.⁴⁰

In all cases, a worker must describe in the case plan those reunification services that will be offered to expedite reunification.⁴¹

When documenting reasonable efforts the case worker should include the efforts that were made to provide services, the specific services offered, whether services were actually rendered and the precise reasons why these services failed to prevent a child's removal.⁴²

Finally, the court's orders must address reasonable

³⁹See for example: Program Directive from Local Departments of Social Services, Circular Letter # SSA 84-7, Page 3 of 3. (Circ. Letter # S S A 84-7). See memo from Department of Human Resources to Local Departments of Social Services from Frank Farrow, Executive Director: re: Pre-placement Prevention-Judicial Review Reasonable Efforts, p.1 (March 10, 1984) (DHR Memo).

⁴⁰id.

⁴¹id.

⁴²id. p. 2.

efforts directly i.e., whether they were made or whether they could not reasonably have been made.⁴³

c. When Reasonable Efforts are Required

The "Reasonable efforts" requirement has been interpreted to apply in all foster care cases, including those in which the child is placed pursuant to a voluntary agreement or as a result of a judicial order.⁴⁴

In an emergency situation, where few or no services were offered prior to removing the child from the home, the case plan must include an explanation of the reasons why such services were not provided and a discussion of the reunification services offered and provided following placement. The court in this situation must make a finding as to whether or not the failure to provide prevention services was reasonable.

If a court finds that reasonable efforts have not been made to provide services to prevent removal, federal monies may not be claimed for that child.⁴⁵ When, however, reasonable efforts are made to reunify the family subsequent to the placement, a judicial determination to this effect will entitle the state to

⁴³U.S. Dept. of Health and Human Services Policy Announcement Log. No. ACYF-PA-84-1 (Jan. 18, 1984) (HHS Pol. Announcement at p. 4).

⁴⁴id. at 2.

⁴⁵Social Security Act §§471 (a)(15), 472 (a)(1), 42 U.S.C.A. §§671 (a)(15), 672 (a)(1) (1983).

claim reimbursement from the first day of that month.⁴⁶

d. At What Stages of the Judicial Proceeding Should the "Reasonable Efforts" Determination Be Made?

Federal law does not specify at what stage of the court procedure a determination of reasonable efforts must be made. Each state must establish the time frame and mechanism for this determination. Discretion is left to each state because of the variance in state juvenile court procedures.⁴⁷

In Maryland, as in many other states, there are numerous judicial stages involved in a foster care placement: the emergency removal or shelter care hearing, the adjudication, the disposition and the dispositional review hearing. Because Pub. Law 96-272 requires a judicial determination that reasonable efforts have occurred in cases involving removal of a child, it appears that the determination should be made during the original proceeding in which the removal of the child is approved. In Maryland, the original proceeding may be the shelter care hearing. If the Department of Social Services had been involved with the family prior to the emergency necessitating removal, then it should be possible to present evidence regarding reasonable efforts at the shelter care hearing. However, the first contact

⁴⁶ H.H.S. Policy Announcement pp. 4-5.

⁴⁷ See ABA Memo pp. 5-7 of 13 and 14.

between the Department of Social Services and the family may occur during an emergency in which the Department determines that the child can not safely remain at home. In order to determine that the requirement of reasonable efforts were met in this case, the court must find: 1) that there were no preventive services which could ensure the safety of the child, or 2) even with appropriate services being provided, the safety of the child could not be ensured.

Because the shelter care hearing will occur the next court day following removal, all parties may not be fully prepared to present evidence regarding "reasonable efforts" at that time.⁴⁸ The Court, however, must make a determination, at the shelter care hearing, as to whether or not reasonable efforts to prevent removal were made, or whether reasonable efforts could not be made due to the emergency circumstances.

The current practice is that a determination regarding reasonable efforts is made at every stage of the CINA proceeding. The Court continues to have an opportunity to examine the family and the case worker as to the nature and extent of the efforts made toward family unity, if placement of the child continues outside of the home.⁴⁹

⁴⁸MO. CFS. & JUD. PROC. CODE ANN. §3-815(c).

⁴⁹MO. FAM. LAW CODE ANN. §5-524.

A judicial determination that reasonable efforts have or have not been made to reunify the family should be made at the dispositional review hearing following placement. P.L. 96-272 requires this determination if the state continues to claim federal funds for the child. In fact, a major reason for requiring periodic reviews is to monitor exactly what services are being provided to the family in order to facilitate reunification.

- e. Does the Juvenile Court Have the Power to Order Specific Services to Ensure that Reasonable Efforts are Made to Prevent Removal or to Reunify the Family?

In light of the commitment expressed in the federal Adoption Assistance and Child Welfare Act of 1980 to improving preventive and reunification services, the question arises as to whether the Juvenile Court has the power to order local Departments of Social Services to provide services to prevent removal and to facilitate reunification. Arguments that juvenile courts do not have the power to control the circumstances of a child's placement, but only the power to commit a child to a specific agency are based on the dispositional section of Maryland's Juvenile Causes Act, MD. CTS. & JUD. PROC. CODE ANN. §3-820(c)(1) and (2), and, in cases of annual review hearings of children in placement, Rule 915(d).

To date, appellate decisions involving these issues have uniformly limited the power of the juvenile court to designation of "the type of facility where the child is

to be accommodated." MD. CTS. & JUD. PROC. CODE ANN. §3-820(c)(1)(ii). It is clear that the court may not designate the specific facility. See In Re: Demetrius J., 321 Md. 468, 583 A2d 258 (1991) and the cases cited therein. The Maryland appellate courts have not yet defined the issue any further, but, ultimately the question is one of separation of powers.

On the other hand, a number of arguments may be made to support the contention that Juvenile Courts can and should have the power to order specific services. First, the Adoption Assistance & Child Welfare Act of 1980, with its requirements of reasonable efforts,⁵⁰ a case plan,⁵¹ and an extensive review system for each child arguably creates a federal statutory right to specific services,⁵² which must be enforced by the courts. These services include:

- a right to reasonable efforts by the state to prevent the necessity for removal from their families;
- a right to reasonable efforts by the state to promote their reunification with their families after they are placed in foster care, 42 U.S.C.A. §672 (a)(1) (West. Supp. 1981) 42 U.S.C.A. §671 (a)(15);
- a right to periodic review at least every six

⁵⁰ Social Security Act §§427 (b)(3), 471 (a)(16), 472 (a)(1), 42 U.S.C.A. §§627 (b)(3), 671 (a)(16) 672 (a)(1) (1983).

⁵¹ Social Security Act §§427 (a)(2)(B), 471 (a)(16), 475 (1), 475 (5)(A)&(B), 42 U.S.C.A. §§627 (a)(2)(B), 671 (a)(16), 675 (1), 675 (5)(A)&(B), (1983).

⁵² Foster Children in the Courts (M. Hadden ed. 1983) pp. 630-631 (A. English, Litigating Under the Adoption Assistance and Child Welfare Act of 1980).

months of the necessity for foster care, of compliance with the case plan, including the provision of services specified in this plan, and of progress toward permanence, 42 U.S.C.A. §675 (5) (West Supp. 1981);

- a right to foster care maintenance payments;
- a right to adoption assistance payments;
- a right to a fair hearing to review denial of, or a delay in a request for benefits, 42 U.S.C.A. §671 (a)(12);
- a right to a case plan⁵³ which must include a description of:
 - (1) The type and appropriateness of a child's placement;
 - (2) The care and services that will and have been provided to the child, biological parents and foster parents;
 - (3) How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement;
 - (4) Plans for carrying out the voluntary placement agreement or judicial determination by which the child entered care; and
 - (5) The appropriateness of the services to be provided to the child under the plan.⁵⁴

Secondly, under Maryland law, a persuasive argument supporting the right of the Juvenile Court to order services, may be based upon an amendment to Rule 915⁵⁵ of the Juvenile Causes Rules governing dispositional review hearings. Under this rule, when a child is

⁵³ Hardin supra note 54, p. 615 (A. English Litigating Under the Adoption Assistance and Child Welfare Act of 1980).

⁵⁴ See Hardin supra note 54 p. 582 (M. Allen, C. Golubock, L. Olson, A Guide to the Adoption Assistance and Child Welfare Act of 1980); Social Security Act §§471 (a)(16), 427 (a)(2)(B), 475 (1)&(5); 42 U.S.C.A. §§671 (a)(16), 627 (a)(2)(B), 675 (1)&(5) (1983).

⁵⁵ Md. R.P. 915 (d).

committed to a local social service department for placement outside of the home, the court must review the child's progress at least every 18 months.⁵⁶ The most significant aspect of the amended rule is that it provides that it is the role of the court to determine "whether and under what circumstances"⁵⁷ the child's commitment should continue. Use of the phrase "under what circumstances" indicates not only that the court should have a continual supervisory role over a child, but that it may have the power to dictate to an agency the specific services necessary for a child's continued placement to enable eventual return to his family.

Several other Maryland statutes, rules and agency regulations support the contention that the juvenile court does have the power to order services. First, the purpose of the Juvenile Causes Act is to provide treatment and rehabilitative services, and to strengthen family ties.⁵⁸ The statute specifically states that the judiciary should carry out these provisions, and that they should be liberally construed.⁵⁹ This language suggests that the court is responsible for ensuring that such efforts and treatment do take place.

⁵⁶ id.

⁵⁷ id. (emphasis added).

⁵⁸ MD. CTS. & JUD. PROC. CODE ANN. §3-802 (a)(1) (1980 & Supp. 1982).

⁵⁹ MD. CTS. & JUD. PROC. CODE ANN. §3-802 (a)(5), (b). (1980 & SUPP. 1982).

Second, the court has jurisdiction over any child adjudicated to be a CINA until that child reaches 21 years of age, unless the jurisdiction is terminated earlier.⁶⁰ This continuing jurisdiction implies that the court retains supervisory and discretionary powers over the child's welfare. The court's supervisory power and control over the specific aspects of the child's welfare is further demonstrated by their power to (1) order periodic progress reports; (2) to enter an "order directing, restraining or otherwise controlling the conduct of a person" before the court; (3) to modify or vacate an order upon their own motion or on the petition of any party or custodian; and (4) their powers, as noted previously, at the dispositional review hearing.⁶¹

Moreover, the Department of Human Resources' own regulations state that the parents of children in foster care have the right to receive services from the department with the goal of enabling the natural parents to resume their parental responsibilities.⁶² (emphasis added)

Finally, in response to the contention that juvenile courts would bankrupt the state if they had the power to order services, one could argue that foster care is an

⁶⁰MD. CTS. & JUD. PROC. CODE ANN. §§ 3-806, (1980 & Supp. 1982).

⁶¹MD. CTS. & JUD. PROC. CODE ANN. §§ 3-826, §3-827, (1980 & Supp. 1982) and Rules 915 and 916.

⁶²COMAR 07.02.11.03.58(1).

expensive service and that to provide preventive and reunification services to families is a less expensive means of caring for children. This is especially true in Maryland, where the average length of stay in foster care in 1981 was 6.2 years. [For a further discussion of the various arguments that can be made to show that a court has the power to order services, see Foster Children in the Courts, (M. Harden Ed. 1983, p. 102-104, D. Dodson, Advocating at Periodic Review Proceedings)].

D. CASE PLANS

The Act requires that every child in state supervised foster care have a case plan within 60 days after an agency assumes responsibility for the child.⁶³ This requirement reflects the Act's policy that foster care is only a temporary arrangement and that case planning is a key element in ensuring that permanency planning occurs for each child in the foster care system. A written case plan must specifically describe:

1. The type and appropriateness of a child's placement;
2. The care and services that will and have been provided to the child, biological parents and foster parents;
3. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement;
4. Plans for carrying out the voluntary placement agreement or judicial determination by which the child entered care; and
5. The appropriateness of the services to be provided

⁶³ Social Security Act § 475 (5)(A), 42 U.S.C.A. § 675 (5)(A), 45 C.F.R. § 1356.21(d). See also, MD. CYS & JUD. PROC. CODE ANN. §3-815.

to the child under the plan.⁶⁴

Additionally, the plan must discuss how it is designed to achieve a placement in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) consistent with the best interest and special needs of the child.⁶⁵

In order for the case plan to serve its important function with regard to permanency planning it must also contain a well defined goal or objective for the child's future and a time line for achieving this goal. In order of optimum priority, Maryland's foster care regulations set forth the following possible objectives: 1) returning the child to the natural parents or guardians, (2) placing the child with relatives to whom long term custody, guardianship or adoption is granted, (3) adoption, (4) placing the child in an independent living arrangement, (5) permanent foster care, (6) granting guardianship of the person to the foster parents with agency involvement being limited to financial support, and, (7) Long term foster care. COMAR 07.02.11.01§D(1)-(7).

These case plans then are reviewed by Foster Care Review Boards and juvenile courts to ensure that permanency plans are constructed and implemented, so that children are not allowed to continue to drift in the foster care system.

⁶⁴ See Hardin supra note 1. p. 582 (M. Allen, C. Golubock, L. Olson, A Guide to The Adoption Assistance and Child Welfare Act of 1980) Social Security Act §§ 471 (a)(16), 427 (a)(2)(B), 475 (1), 42 U.S.C.A. §§ 671 (a)(16), 627 (a)(2)(B), 675 (1), (1983).

⁶⁵ 45 C.F.R. § 1356.21 (d)(3). Soc. Sec. Act §475 (5)(A), 42 U.S.C.A. §675 (5)(A).

In Maryland, as part of the case planning process, there should be a written service agreement developed between the agency and the birth parents.⁶⁶ This service agreement at a minimum should detail:

1. a statement of the problems which caused the present separation of the family;
2. a statement of the goal (i.e., return home);
3. the specific duties and expectations of both the Department of Social Services and the parents which must be performed in order to facilitate the goal of returning the child home;
4. specific tasks to be carried out by all parties and corresponding time tables;
5. visitation schedule which specifies time, duration, location, and specific restrictions, if any;
6. sibling visitation if children are not placed together; and
7. consequences of failure to carry out the plan.

The value of a well written service agreement is that it involves parents and agency representatives working collaboratively to plan for the best interests of the child.⁶⁷

A parent who is involved in the development of the service agreement will know the particular tasks that must be accomplished before his child can be returned home. He will be aware of the specific time frame in which certain actions are

⁶⁶Department of Human Resources - Social Services Administration Foster care - Policy Directive p.2 ("A Written Service Agreement shall be established between the birth parents, legal custodians, guardians and the agency which states the goals to be accomplished and the time-limitations for achievement"). See also Program Directive, Dept. of Human Resources Circular letter 82-21 re: Service Agreements.

⁶⁷in Maryland, parents have the right to participate in planning for the child's future with the department. COMAR 07.02.11.03 §§ A and B (3)(c).

to occur and will feel a greater commitment to work toward goals derived from a process in which he participated as a decision maker. Finally, well written service agreements which define the responsibilities of both parents and the agency provide for accountability and a mechanism for monitoring whether all parties have met their obligations when the cases are reviewed by the citizen review boards and the courts. See Appendix IV for a copy of a service agreement and materials on developing and using service agreements.

If there is a disagreement in regard to provisions of the service agreement then the parties may seek an administrative fair hearing⁶⁸ or seek resolution through the juvenile court's dispositional hearing or other review procedures.⁶⁹ For a detailed discussion of case plans see Chapter III, Review of Children in Foster Care.

In accordance with ¶15 C of the Consent Decree in L.J. v. Massinga accepted by Judge Joseph C. Howard, United States District Judge in the United States District Court for the District of Maryland (see fuller discussion *infra.*);

A case plan for each child for foster care shall set forth the services and assistance that have been provided to prevent or eliminate the need for removal from the home and the reason those efforts did not succeed.

E. CASE REVIEW

In order to ensure that children do not remain in foster

⁶⁸ BOMAR 07.02.11.03(3)(d).

⁶⁹ BOMAR 07.02.11.03 §B (3)(d) and MD. CTS. & JUD. PROC. CODE ANN. §3-820 and Rule 915, 916.

care longer than necessary, the Act requires states to develop two levels of case review.⁷⁰ The first involves a court or administrative agency review of the case plan every six months.⁷¹

The purpose of the six month review is to examine the child's case plan and gauge the progress that has been made on the problems that brought the child into the foster care system. The review focuses on the efforts of the Department of Social Services to implement a permanency plan for the child in his or her best interests, the extent to which the current placement meets the child's needs in the least restrictive (or most family-like) setting, and whether the child is placed in close proximity to the parents home.⁷² The four issues at this review are: a) the continuing need for and appropriateness of, the placement; b) compliance with the case plan, c) the progress which has been made toward alleviating the need for placement; and d) the likely date by which the child may be returned home or placed in a legally secure placement in an alternative home.⁷³

In Maryland, the Foster Care Review Boards (FCRB) are responsible for conducting the six month reviews.⁷⁴ Forty-

⁷⁰Social Security Act §§427 (a)(2)(B), 475 (5), 42 U.S.C.A. §627 (a)(2)(B), 675 (5), (1983).

⁷¹Social Security Act § 475 (8), 42 U.S.C.A. § 675 (5)(B) (1983).

⁷²Id.; Hardin *supra* note 1, pp. 633-634 (A. English Litigating under the Adoption Assistance and Child Welfare Act of 1980); See Foster Care Review Board Fact sheet.

⁷³Social Security Act § 475 (5)(b), 42 U.S.C.A. § 675 (5)(B) (1983).

⁷⁴Foster Care Review Boards are created by Md. Ann. Code, Family Law Article §§5-535, 5-540.

five Review Boards state-wide have been created to monitor the foster care system and work towards shortening the amount of time any child spends in foster care.⁷⁵ The local Department of Social Services supplies the FCRB in its area with the names of all children in foster care. The FCRB then schedules the review, gives notice to the parents, DSS, and other interested parties, and obtains the case plan.⁷⁶

At the review, the citizen FCRB examines the case plan, the service agreement, and the permanency plan for the child. They discuss the case with agency staff, natural and foster parents, children over 10 and others involved in planning for the child and determine whether the agency's permanency plan for the child is appropriate.⁷⁷ They also determine the appropriateness of the current placement.

Following the review hearing, the FCRB sends a case recommendation to DSS, the court, and all interested parties.⁷⁸ If the FCRB recommendation differs from that of DSS, the report is flagged for special attention by the Court.

The second level of review, mandated by the Act, is the 18 month dispositional hearing.⁷⁹ This hearing must be held

⁷⁵The goals of the Foster Care Review Boards are enumerated at Family Law Article §5-544.

⁷⁶Family Law Article §5-539 gives the State Foster Care Review Board the authority to promulgate policies and procedures for the local boards.

⁷⁷Family Law Article §§5-544 and 5-545.

⁷⁸id.

⁷⁹Social Security Act §§ 427 (a)(2)(B), 471 (a)(16), 475 (5)(c), 42 U.S.C.A. §§ 627 (a)(2)(B), 671 (a)(16), 675 (5)(c) (1983).

within 18 months after the original placement. This dispositional hearing, unlike the disposition hearing held immediately after adjudication, is to monitor the care of the child in foster care and to make a decision as to the future permanent legal status of the child.⁸⁰ The issues that need to be decided at this hearing are:

1. is the current placement in the least restrictive environment and does it meet the child's special needs;
2. is the current placement in close proximity to the natural parents;
3. have reasonable efforts been made to reunify the family;
4. are the child's psychological, medical, and physical needs being provided for; and
5. should the child be returned home, be continued in foster care for a specified period, be placed for adoption or because of the child's special needs or circumstances be continued in foster care on a permanent or long-term basis.⁸¹

For a detailed discussion of case review, see Chapter III.

F. PROCEDURAL SAFEGUARDS

In addition to requiring that a case plan be developed for each child in foster care and reviewed at 6 month and 18 month intervals, the Act also requires that parents and children be afforded "procedural safeguards" when decisions are made to remove the child from his or her home, to change

⁸⁰Social Security Act §675 (5)(C), 42 U.S.C.A. § 675 (5)(C) (1983); Md. Rule 915(d).

⁸¹Md. Rule 915(d).

a child's placement, or to effect parental visitation.⁸²

The Act does not specify what 'procedural safeguards' are required. Each state must develop its own procedures that address the concerns of the Act. Parents, at a minimum, must be afforded an opportunity to challenge ill-founded, biased, or arbitrary agency actions concerning their children when they relate to removal, placement, or visitation.⁸³

In cases involving emergency removal, Congress intended that parents have rapid access to a court to challenge the removal of their child. In Maryland, the emergency removal or shelter care hearing must be held on the next court day after removal to review the decision.⁸⁴ ⁸⁵ Procedures at these hearings are discussed in Chapter II. See also Chapter II, for a discussion of the procedures at adjudication, and a discussion of disposition, and Chapter III, for a discussion of dispositional review hearings.

Visitation has been recognized as an important ingredient of a successful reunification plan. Under Maryland law, visitation plans must be given to parents orally and in writing.⁸⁶ Parents have a right to visit their children.⁸⁷

⁸²Social Security Act §§ 475 (5)(c), 472 (e)-(g), 42 U.S.C.A. §§ 675 (5)(c), 672 (e)-(g) (1983).

⁸³Hardin supra note 1, 598; (M. Allen, C. Golubock, L. Olson. A Guide to the Adoption Assistance and Child Welfare Act of 1980).

⁸⁴Id. at 598.

⁸⁵MD. CTS. & JUD. PROC. CODE ANN. §3-815 (c).

⁸⁶COMAR 07.02.11.03 §8 (2)(b).

⁸⁷COMAR 07.02.11.03 §8 (2)(a).

Parents can challenge decisions concerning visitation in a State Social Services Administration proceeding and in court.⁸⁸

Parents also have a strong interest in where their child is placed. The proximity of the placement is important for visitation and eventual reunification.⁸⁹ Maryland law gives parents the right to be involved in changes in their child's placement plans. Parents may seek court review, if they disagree with changes in their child's placement.⁹⁰

G. L.J. V. MASSINGA, C.A. No. JH84-4409

L.J. v. Massinga was a class action by foster care children who alleged that the named defendants, by their administration of the foster care system in the City of Baltimore, violated plaintiffs' rights under federal statutory law, Titles IV-E and IV-B of the Social Security Act and the Fourteenth Amendment of the United States Constitution. This action was filed in 1984. On July 7, 1987 the United States District Court for the District of Maryland issued a preliminary injunction on motion of the plaintiffs. The court granted plaintiff's motion for a preliminary injunction, and ordered the defendants to submit to the Court within 20 days:

1. A plan for a review of each foster home in which a report of maltreatment has been made and in which foster children continue to reside to ensure that

⁸⁸COMAR 07.02.11.03 §B (3)(d) and Rule 915(d).

⁸⁹GDF Study supra note 2 at 21-23.

⁹⁰COMAR 07.02.11.03 §B (3)(d).

such home meets licensing standards reasonably in accord with those recommended by nationally recognized professional organizations.

The court further ordered:

1. That defendants shall monitor each child in a DSS foster family home by, at least, monthly visits to the child to ensure that the child is receiving proper care and the foster home continues to meet licensing standards. Where there has been a report of maltreatment of the child and the child remains in the home, the child shall be visited at least weekly.
2. That defendants shall assign sufficient staff and resources to ensure that available medical histories are obtained and provided to children's medical and other services providers, including foster parents, to ensure that appropriate medical preventive care, services, treatment and diagnoses and other care are promptly and appropriately provided in accord with approved medical standards.
3. That defendants shall provide a written copy of any complaint of maltreatment of a foster child to the juvenile court and the child's attorney within five days of its receipt and shall provide to the juvenile court and the child's attorney a written report of any action taken on the complaint within five days of its disposition by the agency.

As to the plaintiffs' motions for sanctions, the Court found that defendants failed to protect children in foster homes where there is reason to know that such children are at risk of harm to their physical and emotional well-being.

On September 27, 1988 Judge Joseph C. Howard signed the consent decree submitted by the parties on April 26, 1988 in settlement by the action.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

L.J., et al. :
Plaintiffs :
v. : Civil No. JH-84-4409
RUTH MASSINGA, et al. :
Defendants :

...000...

MEMORANDUM

Pending before the court is this civil rights class action brought by foster children in the care and custody of the Baltimore City Department of Social Services ("BCDSS"). Named as defendants are Ruth Massinga, Secretary of Maryland's Department of Human Resources, BCDSS, and various foster-care officials. These children allege that the defendants' administration of the foster care system in Baltimore City violates their rights under federal statutory law, Titles IV-E and IV-B of the Social Security Act, and the Fourteenth Amendment to the United States Constitution. The class seeks equitable relief in the form of an affirmative injunction that would require reforms of the foster care system. In addition to these equitable claims, some named class representatives seek monetary damages for harms allegedly suffered while in the defendants' care.

The immediate matter under consideration is whether a consent decree proposed by the parties as settlement of the equitable claims is fair and adequate and thereby merits the court's

approval.⁹¹ After the proposed decree was submitted on April 26, 1988, the court met with the parties, directed that notice be provided the class members and interested persons, held a hearing at which those provided notice were invited to present objections or comments, and met with foster care workers to learn their views of the decree. After completion of these measures and careful study of the decree, the court approves the decree for the reasons provided below.

I.

The history of this action is long and arduous. Since the complaint was filed in December, 1984, the court has issued over seventy orders and held a dozen status conferences with the parties. The docket, now seventeen pages long, lists over two hundred entries.

On January 2, 1987, the court granted a motion to intervene that had been filed the previous November by two additional proposed class representatives. That same day the court certified a class composed of all children who are, have been, or will be placed in foster homes by the BCDSS and are or will be placed in the custody of the BCDSS through voluntary placement or court order. On February 6, after conducting extensive discovery, including a random sampling of BCDSS foster care case records, the plaintiffs filed a motion for a preliminary injunction.

A hearing on the motion was held over a period of two weeks commencing on April 2, 1987. Some 91 separate items of evidence

⁹¹The full decree is attached as Addendum A to this Memorandum.

were introduced, and the court heard from 12 witnesses. Among the items of evidence were the preliminary results of plaintiffs' random sampling of case records, contained in several thick looseleaf binders. The witnesses included an expert on the research methodology used in conducting the plaintiffs' study.⁹² The court also heard the testimony of relatives and experts regarding the cases of sixteen children who had been severely neglected and abused while in defendants' care and custody.

The court found overwhelming evidence of serious systematic deficiencies in Baltimore's foster care program such that foster children would suffer irreparable harm if immediate injunctive relief were not granted and, in a Memorandum and Order issued July 27, 1987, granted plaintiffs' motion for a preliminary injunction.⁹³ Specifically, among its findings, the court determined that there was a lack of satisfactory foster homes; that the defendants failed to remove children from homes where physical and emotional abuse and neglect were threatened; that homes were licensed where foster parents were unable to care properly for the children; that "exceptions" were granted allowing clearly inadequate homes to remain open; that the system for providing

⁹²For a detailed review of the methodology used in plaintiffs' random sampling see the court's Memorandum and Order dated July 27, 1987, attached to this opinion as Addendum B.

⁹³The court also granted plaintiffs' motions for sanctions due to certain conduct of defendants' attorneys. Specifically, pursuant to Fed. R. Civ. P. 37(b)(2)(A) and 16(f), the court ordered it taken as established that defendants "fail to protect effectively children in foster homes where there is reason to know that such children are at risk of harm to their physical and emotional well-being." Having deemed these facts admitted, the court found plaintiffs also entitled to preliminary injunction on this alternative basis.

The court's Memorandum and Order dated July 27, 1987 has been attached to this memorandum as Addendum B. That memorandum has been edited to eliminate the court's detailed discussion of its basis for imposing sanctions because those facts do not serve as part of the basis for the court's determination of whether the decree is fair and adequate.

medical care to foster children was inadequate to ensure continuous and informed treatment; and that the defendants had substantially failed to undertake the improvements recommended by an internal study produced by the "Harris Task Force."

As preliminary injunctive relief, the defendants were ordered to (1) review the status of each foster home where there had been a report of maltreatment; (2) visit each child in a BCDSS foster home on a monthly basis; (3) visit each child who had been the subject of a report of maltreatment on a weekly basis; (4) assign sufficient staff and resources to ensure appropriate medical care was rendered and medical histories were obtained and provided to those rendering medical care to each child; and (5) provide a written copy of any complaint of maltreatment of a foster child to the juvenile court and the child's attorney.

On February 1, 1988, the Fourth Circuit affirmed this court's decision to grant plaintiffs a preliminary injunction. See L.J. By and Through Darr v. Massinga, 838 F.2d 118 (4th Cir. 1988).⁹⁶ Thereafter, the parties engaged in extensive settlement negotiations. On April 26, 1988, approximately two and a half months prior to trial, the parties submitted the proposed settlement of plaintiffs' equitable claims now before the court. The consent decree that embodies the settlement retains substantially those measures ordered by the court as preliminary injunctive relief. It also seeks to make substantial improvements

⁹⁶In the same opinion, the Fourth Circuit also affirmed this court's ruling that the defendants were not entitled to qualified immunity as to plaintiffs' claims for damages, 838 F.2d at 123-124. On that issue, defendants have petitioned the Supreme Court for a writ of certiorari.

in several aspects of the foster care system including placing limits on the number of cases a worker may be responsible for, improving the system for providing medical treatment to foster children, providing assistance to natural parents that would allow children to remain with them thereby avoiding foster care where possible, and providing for a continuum of appropriate foster care placements including the recruitment of new foster homes. Different improvements are to be implemented at different times; however, all improvements are to be made within two years.

After preliminary study of the decree and meeting with the parties, the court determined that the decree was within the range of reasonableness and approved a "Notice of Proposed Settlement of Class Action" on May 19, 1988.

II.

Under Fed. R. Civ. P. 23(e), notice of settlement of a class action "shall be given to all members of the class in such manner as the court directs." The court directed that the approved notice of settlement, which contained a detailed summary of the proposed decree, be sent to all foster parents, all relatives with whom children had been placed by BCDSS, and all biological parents of children who had been placed in foster homes or with relatives on or before June 8, 1988. The Court also ordered that the notice be posted at any BCDSS office frequented by foster parents or by the natural parents of foster children. The full notice of settlement also was mailed to the heads of organizations known to represent

foster children or known to have an interest in foster care issues.⁹⁵

In addition to the mailing and posting of the full notice, a court-approved abbreviated notice was published five times in four daily newspapers.⁹⁶

The notices informed interested parties that they could object to the decree at a hearing held on July 18, 1988. Those interested in testifying at the hearing were told to submit written statements to the court by July 8; however, at the hearing all were invited to testify regardless of whether that requirement had been met.

At the hearing, a total of ten people testified. These included foster parents, natural parents, a spokesman for a union which represents some foster care workers, a former foster child, and the husband of a foster care worker. None of those who testified objected to the decree. The foster parents expressed concern about the system for providing medical services to foster children. The former foster child told the court that she had been abused and molested while she was in the defendants' care, and she asked the court to implement the decree as soon as possible. The union representative expressed concern with some provisions and omissions of the decree; however, he said that the union's foster care worker members generally supported the decree.

⁹⁵The Legal Aid Bureau of Maryland, whose lawyers serve as lead counsel to the class plaintiffs in this action, provides legal services to and represents the great majority of Baltimore's foster children in the juvenile court. The notice also was mailed to the Office of the Superintendent of the Baltimore City Public School, the State's Attorney for Baltimore City, the Baltimore City Juvenile Court judge and masters and to organizations that provide medical care to foster children.

⁹⁶The Baltimore Sun, The Baltimore Evening Sun, The Afro-American and The Daily Record.

Both the union representative and the foster care worker's husband urged the court to meet privately with the foster care workers, who did not wish to express any criticisms publicly. So that the court could hear the views of the people who would implement the decree on a day-to-day basis, an off the record meeting with foster care workers was held on August 3, 1988, with counsel present.

During that meeting, the workers expressed several concerns. In particular, the foster care workers stated that they often travel hundreds of miles per month and asked that transportation aides be employed by BCDSS to assist them. They also said that a pool of temporary foster care workers should be available to assist when a worker is ill or on vacation. The foster care workers also asked that they be assured a role in the implementation and monitoring of the decree.

III.

The court's approval of a proposed settlement is required in order to protect the interest of absent class members. Piambino v. Bailey, 610 F.2d 1306, 1327 (5th Cir.), cert. denied, 449 U.S. 1011 (1980); Grunin v. International House of Pancakes, 513 F.2d 114, 123 (8th Cir.), cert. denied, 423 U.S. 864 (1975). Accordingly, the Fourth Circuit has admonished that the district court is not "to give the settlement 'mere boilerplate approval'" that is "'unsupported by evaluation of the facts or analysis of the law.'" Flinn v. FMC Corporation, 528 F.2d 1169, 1173 (4th Cir. 1975), cert. denied, 424 U.S. 967 (1976) (quoting, Protective Committee

For Independent Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 434, reh. denied, 391 U.S. 909 (1968)). The court "must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interest of those whose claims will be extinguished." 2 H. Newberg, Newberg on Class Actions, §11.40 at 451 (2nd ed. 1985).

Approval will be given only where a proposed settlement is determined to be "fair, reasonable and adequate." In re Mid-Atlantic Toyota Antitrust Litigation, 605 F. Supp. 440, 442 (D. Md. 1984) (quoting, Manual on Complex Litigation, §1.46 at 56-57 (5th ed. 1982)); Washington v. Keller, 479 F. Supp. 569, 572 (D. Md. 1979). In making that determination, this court has followed the bifurcated analysis set forth by Judge C. Stanley Blair in re Montgomery County Real Estate Antitrust Litigation, 83 F.R.D. 305, 315-317, (D. Md. 1975). See also In re Mid-Atlantic Toyota Antitrust Litigation, supra, 605 F. Supp. at 442-43. "That analysis includes separate inquiries on the 'fairness' and the 'adequacy' of the proposed settlement." Id. at 443. Regarding fairness, Judge Blair stated:

The factors tending to reveal the 'fairness' of a settlement are those which indicate the presence or absence of collusion among the parties. Because of the danger of counsel's compromising a suit for an inadequate amount for the sake of insuring a fee, the court is obliged to ascertain that the settlement was reached as a result of good-faith bargaining at arm's length. The good faith of the parties is reflected in such factors as the posture of the case at the time settlement is proposed, the extent of discovery that has been conducted, the circumstances surrounding the negotiations and the experience of counsel. (citations omitted).

In re Montgomery County Real Estate Antitrust Litigation, supra, 83 F.R.D. at 315. When inquiring into adequacy, "the court must weigh the likelihood of the plaintiffs' recovery on the merits against the amount offered in settlement." Id. at 315-316. Specifically, Judge Blair noted that:

[C]ourts should weigh the amount tendered to the plaintiffs against such factors as (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendants and the likelihood of recovering on a litigated judgment; and (5) the degree of opposition to the settlement. (citations omitted).

Id. at 316. In Flinn v. FMC Corporation, supra, the Fourth Circuit further noted that "[t]he fact that all discovery has been completed and the cause is ready for trial is important, since it ordinarily assures sufficient development of the facts to permit a reasonable judgment on the possible merits of the case." (footnote omitted). 528 F.2d at 1173.

IV.

This case represents perhaps the most hotly and thoroughly contested litigation the undersigned has experienced in twenty years as a judge. Exhaustive discovery efforts were undertaken by both sides. As described earlier, the court has entered over seventy orders in this case and there are over two hundred entries on the docket.

The court concludes that the settlement reached in this action was the result of good faith bargaining at arms' length. Serious settlement negotiations commenced only after plaintiffs had

completed a substantial random sampling of defendants' case files as the major item of their discovery; after the court had granted a preliminary injunction following an evidentiary hearing that lasted twelve days; and after the Fourth Circuit had affirmed the injunction. See L.J. by and through Darr v. Massinga, supra, 838 F.2d at 122. Discovery as to plaintiffs' equitable claims is now complete.

Settlement negotiations took place over a period of six weeks and included several half-day and full-day sessions. During these negotiations and throughout this litigation, plaintiffs have been represented by a dedicated, highly skilled, and very experienced team of attorneys. Two members of this team, including William L. Grimm, Esquire, who served as lead counsel, came from the Baltimore office of the Legal Aid Bureau, which represents the great majority of Baltimore's foster children in the juvenile courts. Carol R. Golubock, Esquire, of the Children's Defense Fund, has extensive experience in class litigation concerning child welfare law in federal courts. In addition, Nevett Steele, Jr., Esquire, and Ward B. Coe, III, Esquire, partners in the firm of Whiteford, Taylor and Preston, participated in representing the plaintiffs. Both have excellent qualifications and extensive experience in federal litigation, including class action litigation, before this court.

Finally, the question of attorneys' fees was addressed separately from the negotiations concerning the terms of the decree. The discussion of fees was undertaken by a different group of lawyers and concluded well after the submission of the proposed

consent decree. Under these circumstances, the court concludes that the settlement was reached in an appropriate manner and is the product of arms'-length bargaining.

V.

Had this action gone to trial, it is very likely that the plaintiffs would have succeeded. For the reasons stated in its Memorandum and Order of July 27, 1987, this court already has determined that success by the plaintiffs would be the likely outcome of a trial on the merits. No viable defenses to plaintiffs' claims for equitable relief are apparent. In deciding whether the proposed consent decree is adequate, the court must weigh this likelihood of plaintiffs' success on the merits against the quality of the relief afforded by the decree. In re Montgomery County Real Estate Antitrust Litigation, supra, 83 F.R.D. at 316. Any settlement of this action must afford the plaintiffs relief that is at least comparable to what they could have received following trial on the merits.

The court's ability to make an independent assessment of the adequacy of the settlement in this case rests on substantial knowledge of the problems facing Baltimore's foster care system. This knowledge was acquired through study of the pleadings, meetings with the parties, conducting the settlement hearing, meeting with case workers, and, primarily, through the twelve day long preliminary injunction hearing at which hundreds of pages of documents were entered into evidence.

Evidence presented during the preliminary injunction hearing

revealed that many current foster homes are inadequate, and that there is a severe shortage of foster parents. As a result of the shortage of foster homes, defendants have been willing to grant exceptions allowing homes that should have been closed to remain open; have allowed some people to become or remain foster parents who should not have been; and have appeared reluctant to remove children from homes even when there should have been concern for their safety. Accordingly, had judgment on the merits been rendered and the court been charged with fashioning appropriate relief, it would have insisted that a diligent effort be made to recruit new homes. Specific numbers of new foster homes might have been ordered opened by specific dates.

Paragraph 11 of the proposed consent decree addresses recruitment of new foster homes. It does not state specifically what efforts will be made nor estimate how many homes will be opened. Paragraph 11 provides:

Defendants shall maintain a foster home recruitment unit in Baltimore City Department of Social Services. The unit shall develop and implement a sustained recruitment plan, and shall issue periodic reports on the status of its recruitment efforts.

The court's concern regarding paragraph 11 were heightened by published news accounts of the decree in which defendant Ruth Massinga, Secretary of the Department of Human Resources, was quoted as suggesting that, under the terms of the decree, children could be left in the homes of their natural parents if space in the foster care system was not available.

Naturally, the criteria for deciding when a child is to be

removed from the home should focus on the well-being of the child. If the safety of the child requires that a child be removed from the natural parents, space must be available in foster care. Any settlement that provides otherwise is simply inadequate to protect these children and unworthy of the court's approval.

Read in its entirety the proposed decree does appear to provide that foster care placements will be made available for all children who need them. Indeed, paragraph 9 provides in part, that "defendants shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into foster care."

During two conferences and in a lengthy letter, the court sought clarification and interpretation of the decree from the parties as to these issues. Defendants responded in their memorandum in support of the decree submitted on July 11, 1988 and at the settlement hearing held on July 18, 1988. In their memorandum and at the hearing, defendants stressed that the decree represents a balance between efforts toward family preservation (aimed at keeping children with their natural parents where possible) and efforts to provide additional foster care placements. Specifically, defendants' memorandum declares that:

...[F]ederal law mandates equivalent efforts in family preservation and foster care initiatives and defendants believe that these programs complement each other.

Thus, the decree contains provisions with respect to each of these complementary programs. Foster home recruitment and services will be enhanced significantly under the decree. Specifically, recruitment efforts have been and continue to be

extensive, similarly, significant funding has been obtained to provide intensive family services to prevent children from coming into foster care. Reunification services are also recognized under the decree.

In sum, the Consent Decree adequately addresses the need to provide for foster care placements along a continuum of appropriate placements, including the recruitment of regular foster homes, and simultaneously addresses the need to keep, where appropriate, children from entering the foster care system. ...

Defendants' Memorandum in Support of defendants' Motion for Approval of the Consent Decree, pages 9 and 10 (citations omitted). See also transcripts of settlement hearing held July 18, 1988, page 88. Defendants' memorandum relies on the accompanying affidavits of Philip C. Holmes, Director of the Office of Child Welfare Services of the Social Services Administration of the Maryland Department of Human Resources, and Regina M. Bernard, Director of the Office of Family and Child Development of the Social Services Administration of the Maryland Department of Human Resources. Mr. Holmes avers that the Department of Human Resources "will continue to intensify efforts to recruit foster parents," and that the Department of Human Resources and the Baltimore City Department of Social Services "both have aggressive campaigns to solicit applications from new families." Efforts to recruit new foster homes include increases in the board rates paid to foster parents and an aggressive public relations campaign.⁹⁷

⁹⁷Specifically, in this regard, Mr. Holmes states in his affidavit that:

I am aware of the Court's special concerns about foster home recruitment. It must be remembered that family foster care is not the only, and often not even most appropriate, out-of-home placement for children, particularly those increasing numbers with severe emotional and behavioral problems. DHR has and will continue to intensify efforts to recruit foster parents. Providing child care for working foster parents is an effective recruitment tool. DHR and BCDSS both have aggressive campaigns to solicit applications from new families. DHR has contracted with Vanita Enterprises, Inc., a media consulting firm, to devise and implement a recruitment campaign, which began April 15, 1988, and

With these clarifications in mind, it is the opinion of the court that, if properly implemented, the consent decree will result in substantial and needed improvements in Baltimore's foster care system, and is adequate to protect the interests of these plaintiffs.⁹⁸ Indeed, the decree appears to represent an innovative approach aimed at keeping children with their parents, where possible, coupled with efforts to provide additional and varied placement where placement in foster care is required. Under the "Intensive Family Services" program provided for by the decree a social worker is made available during a period of ninety days for as many hours as necessary to alleviate a family crisis threatening removal of a child from the parents' home. See Affidavit of Regina M. Bernard; Consent Decree, par. 15. During this period, a variety of services are made available to the parents that will help them to better care for the child. Consent Decree, par. 15. A similar program is also to be initiated to facilitate quick reunification

includes: regular and frequent public service announcements on 12 television and 32 radio stations with Tim and Daphne Reid, Brooks Robinson, John Minor, Rev. Sidney Daniels and Alex Williams; two foster/adoptive care olympic events scheduled in August, 1988; direct mail to Maryland teachers and ministers; and corporate sponsorship of paid network spots. Preliminary results include 195 inquiries from parents interested in becoming foster or adoptive parents.

BCDSS' own efforts have resulted in 43 new foster homes from January 1 through May 31, 1988 out of a total of 168 applications. Recruitment activities have included: paid ads on WGR-AM, public service announcements on the major television stations, recruitment booths at city fairs, hospitals, the Social Security Administration and the General Motor plant, subway posters, articles in selected employee newsletters and a speaker's bureau to community groups and churches.

⁹⁸The defendants' memorandum furnished in support of the decree, the affidavits of Mr. Holmes and Ms. Bernard, and the presentation of defendants' counsel made during the settlement hearing of July 18, 1988, provide valuable details as to what measures defendants will undertake in order to meet the requirements set forth in the decree. The court has not asked that the decree be amended to recite specific efforts that will be made by defendants to meet the requirements of the decree. It was the intent of the parties to allow the defendants flexibility in implementation of the decree's provisions.

Nevertheless, in evaluating the decree, the court relies on the parties' representations as to specific measures that will be undertaken and may later utilize those representations as a standard through which good faith in carrying out the terms of the decree will be measured. Accordingly, the court fully expects the defendants to undertake those specific measures revealed to the court or to undertake measures comparable to them. The court is confident that defendants will make every effort to do so.

in some cases where the child is removed from the home. Id. par. 17. Among the variety of placements that will be provided, in addition to the recruitment of new regular foster homes, are emergency shelter care placements and specialized foster care placements for children with specialized needs. Id. par. 9.

In its order of July 27, 1987 granting preliminary injunctive relief, the court included various remedial measures intended to provide increased protection to foster children until a full hearing on the merits could be held. The court's confidence in the settlement is strengthened by the inclusion of several of these measures as part of the decree. These include requirements that each foster home be visited once a month; that, if an abuse or neglect complaint is received regarding a home, visits be made once a week, id., par. 22-24; copies of the abuse or neglect report be provided to the child's attorney, id., par. 30; and that some major improvements be made in the system for providing health care to foster children. Id., par. 21A-F.

Most important in assessing the adequacy of the settlement proposed in this action is the great degree to which the decree provides plaintiffs with substantially all the equitable relief they requested from the court in their complaint. The relief provided under the terms of the decree is comprehensive in scope and includes provisions that strengthen requirements for education of foster children, id., par. 19; require certain information about foster children to be provided to their foster parents, id., par. 14; increases foster care stipends, id., par. 10; and provides for

training of foster parents and foster care workers, id., par. 6, 7, and 13. Importantly, the decree requires substantial decreases in the work load of foster care workers by providing low maximum case loads for workers, id., par. 5.

The preliminary injunction hearing revealed serious deficiencies in the system for providing health care to foster children. Specifically, the court found that incomplete medical histories were provided to medical care professionals and that treatment rendered to foster children was episodic rather than continuous. Accordingly, as preliminary injunctive relief, the court required defendants to assign sufficient staff and resources to ensure that proper medical histories are obtained and that appropriate medical care is provided foster children. The decree amplifies and expands on the court's preliminary injunctive relief, id., par. 21. It requires that an initial health care screening take place within twenty-four hours of the child's placement in foster care; that a comprehensive health assessment be completed within sixty days of placement; and that complete medical histories containing specific information be obtained and provided to physicians. Defendants are responsible for ensuring that treatment for any diagnosed problems is promptly provided.

Foster children placed in the homes of relative are not expressly mentioned in the plaintiffs' prayers for relief. At the time plaintiffs' amended complaint was filed with the court, plaintiffs' counsel were unaware that this group of foster children was treated far differently from other foster children. Indeed, at

the time of the preliminary injunction hearing, it appeared that foster children placed with relatives were not considered nor included as part of the foster care system. Children placed with relatives were not counted in the foster care system inventory and their caretakers did not receive foster care benefits.

According to defendants, approximately 1,100 children are placed with their relatives.⁹⁹ At this time, most of the provisions of the decree will not be applied to them; instead a study by an impartial consultant will be undertaken in which the status of each child placed with a relative will be assessed. Id., Par. 27A. The plaintiffs may request additional relief for these children when the impartial assessment is completed. Id., par. 28. The decree, however, does provide for the immediate implementation of certain basic protections for children placed with relatives, including the development of case plans; six and eighteen-month reviews by persons outside the BCDSS, and bi-monthly home visits to ensure compliance with health and safety standards. Id., Par. 25-28. In addition, relatives providing care to foster children will be encouraged to apply for licensure as foster parents. Id., Par. 25D. Care being provided to these children also will be evaluated by means of contacts with their teachers and medical case providers. Id., Par. 27B.

Although the court required a thorough notice to the class, there were no outright objections lodged against the decree. Both

⁹⁹In a letter to the court dated July 14, 1983, the Foster Care Review Board estimated that as many as 2,000 children are placed with relatives.

the Foster Care Review Board and foster care workers, however, did express some reservations. In a letter to the court dated July 14, 1988, the chairperson of the State Foster Care Review Board¹⁰⁰ expressed particular concern about the lack of foster homes. Joan L. Graham wrote that the lack of homes "keeps the placement of children at a crisis level, results in inappropriate, short term placements and multiple placements for some children." As noted earlier, the court shares the Board's concern that more be done to recruit adequate foster homes. In deciding that the decree adequately protects this class of children, the court relies on defendants' assurances and interpretation of the decree as requiring vigorous efforts to recruit new homes.¹⁰¹

At the settlement hearing addressing the adequacy of the consent decree and later during a conference with the court, foster care workers expressed strong reservations about whether the terms of the decree could be implemented from a practical standpoint. They emphasized that they will be charged with the responsibility of implementing the decree on a day-to-day basis, and, without the benefit of additional resources, they doubted they could carry out the decree's terms. Specifically, the foster care workers noted that they are often required to travel hundreds of miles in a month

¹⁰⁰There are 24 citizen Foster Care Review Boards in Baltimore City with seven members each. The Boards provide independent citizen input as to whether BCDSS plans for each child in foster care is appropriate.

¹⁰¹The Board also expressed concern about proper training of foster care workers; that provisions be made for children placed with relatives; and that visits to foster homes be meaningful. The court believes the decree's provisions for training of foster care workers are adequate. The provisions implemented immediately for children placed with relatives are also adequate pending the earlier described independent assessment of the status of those children. Lastly, if the visits to homes cannot be carried out with the maximum ratios of children-to-workers provided by the decree, the defendants will be required to reduce the workers' case loads below the maximum ratios.

in order to meet their obligations. They also must take on additional obligations when a co-worker is sick or on vacation. It is the apparent consensus among foster care workers that they will be unable to make the additional visits to foster homes and foster children required by the decree without additional resources. Accordingly, the workers asked the court to amend the decree to require their superiors to provide transportation aides and a pool of temporary substitute workers. The transportation aides could assist workers in meeting requirements to visit foster homes and also assist in transporting children and foster parents to medical and other appointments. A pool of temporary or substitute case workers could take over cases assigned to workers who are unable to be at work without the necessity of over-burdening other regular workers.

Noting that the suggestions of the foster care workers had substantial practical merits, the court wrote the parties and asked if transportation aides and a pool of temporary workers might be agreed upon as a means of properly implementing the decree. In response, both parties informed the court that these measures had been a subject of the negotiations that produced the decree. It was determined in those negotiations, however, that the specific measures adopted in order to achieve the requirements of the decree were to be left to the judgment of the defendants, at least at this early stage.

Furthermore, during the meeting with foster care workers, counsel for the plaintiffs emphasized that, if the requirements of

the decree could not be met by case workers, the defendants would be required to reduce the case load ratios of children to foster care workers below the maximum ratios allowed by the decree. In this way, the work load would be lessened to allow the foster care workers to better meet their obligations under the decree.

The foster care workers also asked that they be allowed to participate in the implementation and monitoring of the decree. Specifically, they requested to receive the reports required every six months from the BCDSS and the Department of Human Resources that set forth the steps taken to achieve compliance with the decree, and requested that they be given an opportunity to be heard. During its August 3rd meeting with foster care workers, the court was impressed by their commitment to foster children and their strong desire that the foster care system be improved. Moreover, since these workers will implement the decree on a day-to-day basis, their views may be worth hearing in the future. Accordingly, as part of its enforcement powers, the court will order that defendants deliver the six month reports to the foster care workers. Should they wish to be heard after receiving a report, the court would seriously consider such a request at that time.

VI.

For the reasons stated above, the court finds that the consent decree submitted by the parties on April 26, 1988 is fair, reasonable, adequate and deserving of approval.

The court closes with a personal note and word of caution. I

have now been a judge for twenty years. During this time much human tragedy has passed before me; however, none has so deeply touched me as the plight of these children. I believe that vigorous enforcement of this decree is essential, and I will do all within my power to see that its provisions are fully implemented.

Joseph C. Howard
United States District Judge

Date: _____

The consent decree is a lengthy and detailed document which should be read in its entirety. The full text is included.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

L.J., et al.,
Plaintiffs,

v.

RUTH MASSINGA, et al.,
Defendants.

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Civil Action No.
JH-84-4409

CONSENT DECREE

This Decree is made and entered into by and between all of the named plaintiffs, L.J., O.S., M.S., C.S., P.G., R.K., and S.J., and the certified class of persons whom plaintiffs represent as set forth in the January 16, 1987 Order of this Court (hereinafter described in Attachment A and collectively referred to as "plaintiffs") and all defendants.

WHEREAS, on or about December 5, 1984, plaintiffs commenced an action in the United States District Court for the District of Maryland (hereinafter "the Court" or "this Court") and thereafter filed a first amended complaint, and plaintiffs R.K. and S.J. filed a motion to intervene, which was granted herein on or about January 21, 1987;

WHEREAS, plaintiffs' complaint, amended complaint, and complaint in intervention make certain allegations and seek certain relief with respect to the foster family care program administered by the State of Maryland, particularly as that program is administered by the Baltimore City Department of Social Services.

WHEREAS, defendants deny all of the allegations of the complaint, amended complaint, and complaint in intervention, particularly all legal contentions that any defendant has ever violated any State or federal law in the conduct of the family foster care program;

WHEREAS, plaintiffs allege that children who are committed by the juvenile court to the defendants' care and custody and who are placed with their relatives are entitled to the same protections as children placed with non-relatives, and defendants dispute that the same protections apply to these children;

WHEREAS, defendants have taken and continue to take substantial positive actions to improve the quality of care and services provided to foster care children; and

WHEREAS, in an effort to avoid further litigation, plaintiffs and defendants believe that settlement of this matter and entry of this Consent Decree is in the public interest, without any admission of liability by any defendant for any purpose, to settle and resolve all claims for declaratory relief and equitable relief, including injunctive relief, raised in the complaint, amended complaint, and complaint in intervention, and all matters addressed in this Decree.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION

1. This Court has jurisdiction of the subject matter of this Consent Decree. In the event of subsequent litigation relating to

the matters in this litigation other than in an action to enforce this Decree, defendants retain and have the right to contest jurisdiction, venue, and/or assert any other defenses.

PARTIES

2. The provisions of this Consent Decree shall apply to and be binding upon the parties to this civil action, and upon their employees, heirs, successors-in-interest, and assigns.

3. The undersigned representatives of the plaintiffs and defendants certify that they are fully authorized subject to the Federal Rules of Civil Procedure to enter into and to execute the terms and conditions of this Consent Decree and to legally bind the parties, including all members of the certified plaintiff class.

4. The parties agree that the defendants' obligation to give notice of this Consent Decree to the plaintiff class is restricted to giving notice to their undersigned counsel by their signing and receipt of this Decree, receipt of which is hereby acknowledged. In addition, defendants will send out notice of this Consent Decree to all foster parents, to all relatives with whom DSS has placed children, to all parents known to defendants as having children in foster care or placed with relatives and to the organizations listed in Attachment B.

ASSIGNMENT OF CASEWORKERS AND CASES

5. Within two years of the date of the entry of this Decree:
(a) continuing care caseworkers in the Baltimore City Department of Social Services (hereinafter "DSS") who are responsible for children in foster care, other than those aftercare

workers responsible for children for whom a rescission order has been requested, shall have average caseloads of no more than 20 children and their biological families;

(b) intake caseworkers in DSS who are responsible for a caseload of children in foster care shall have average caseloads of no more than 14 children and their biological families;

(c) DSS caseworkers who are responsible for the supervision of foster family homes shall have an average caseload of no more than 40 foster families;

(d) immediate supervisors of DSS foster family care workers shall have an average of no more than six caseworkers under their supervision; and

(e) the standard with respect to the transfer of cases when a worker leaves DSS or transfers to another unit shall be as follows: When a worker leaves or transfers to another unit, the supervisor shall reassign cases, except for priority cases, to other workers within five working days. The supervisor may, based on the needs of the unit, retain a priority case or reassign it. Priority cases will include those in which a child (1) requires a new placement; (2) a child has medical needs or imminent appointments; (3) a child has impending juvenile court or administrative review; (4) or a child is the subject of a report of maltreatment. There shall be a conference between the supervisor and the new worker within 10 working days of reassignment. If possible, the former worker shall attend the conference. The topics to be discussed at this conference shall include, among other

things, a discussion of any immediate unmet needs of the child, therapy and evaluations in progress, and existing service agreements.

CREDENTIALS AND TRAINING OF CASEWORKERS

6. Defendants shall continue their current policy that no DSS caseworker without at least a B.S. or a B.A. degree shall have responsibility for supervising the continuing care of children in foster family homes.

7. A. Within two years of the date of entry of this Decree, all caseworkers shall receive at least four days of orientation and training relating to the substantive aspects of the caseworker's responsibilities within 60 days of beginning employment as a DSS caseworker. Such training will take into account the level of prior child welfare experience and the need for additional training for those with limited or no prior training. Such training will include casework skills; interviewing; developing service agreements and case plans; working with families; and the structure and law governing child welfare.

B. Within two years of the date of entry of this Decree, all caseworkers shall receive annually 20 hours of training relating to the substantive aspects of the caseworker's responsibilities. This training shall begin for each caseworker during his or her second year of employment.

SPECIALIZED SUPPORT UNIT

8. Within six months of the entry of this Decree, defendants shall establish within DSS a specialized unit to assist caseworkers

and supervisors to manage effectively cases that required specialized experience and/or knowledge in areas such as assisting children or parents who need services for (1) drug and alcohol abuse; (2) special educational needs; (3) developmental disabilities; (4) mental health or other specialized health care needs; or the development of independent living skills. This unit shall assist workers in identifying, locating and obtaining resources or services for (1) drug and alcohol abuse; (2) special educational needs; (3) developmental disabilities; mental health or other specialized health care needs; (4) or the development of independent living skills. This unit shall assist workers in identifying, locating, and obtaining resources or services for drug and alcohol abuse; special educational needs, developmental disabilities; mental health or other specialized health care needs; or the development of independent living skills. The responsibilities of this unit do not include direct case responsibility or the providing of direct services.

FOSTER PLACEMENT RESOURCES

9. Within two years of the entry of this Decree and to the extent within their control, defendants shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care. The continuum shall include regular foster homes, specialized homes, emergency shelter homes, emergency shelters, group homes and therapeutic foster homes as defined in COMAR. (Therapeutic foster homes are homes in which

foster parents receive a salary and other services in addition to the foster care board rate.) In addition, defendants shall seek annually sufficient funds through their budget requests or elsewhere (i) to purchase special services for children in foster care needed to prevent their institutionalization, and (ii) to assure stipends to emergency shelter care homes even in months in which no children are being cared for.

10. Defendants shall continue their past practice of seeking through the budget process increases in the rate of reimbursement paid to foster families by including such increases in their budget requests and advocating for their appropriation with the goal of reaching by State Fiscal Year 1991 a rate of no less than the amount determined by the United States Department of Agriculture as necessary to care adequately for children in urban areas of the southern region of the country.

11. Defendants shall maintain a foster home recruitment unit in DSS. The unit shall develop and implement a sustained recruitment plan, and shall issue periodic reports on the status of its recruitment efforts.

12. Within one year of entry of this Decree, defendants shall require as a condition of licensure that all new foster parents complete a course of pre-service training of at least 12 hours. The training shall cover an appropriate curriculum, including applicable DSS regulations; the role of the foster parents and the child's caseworkers; the special needs of foster children; the need to work with natural parents; appropriate disciplining methods and

alternatives to corporal punishment; the importance of utilizing medical, dental, educational, and other community services; and the legal rights of foster parents, children and natural parents.

13. Defendants shall require foster parents to participate in at least six hours of foster parent training a year. One year after entry of this Decree, no foster parent's license may be renewed unless one of the foster parents in the home has received the required training. Defendants shall seek through the budget process and advocate for their appropriation funds to pay foster parents a reasonable sum in consideration of their attendance at required training including reasonable transportation and child care expenses.

INFORMATION ON FOSTER CHILDREN

14. Before a child is placed in a foster home, DSS shall provide the foster parents necessary information about the child including the reason for the child's coming into care initially and, if applicable, the reason for current placement; medical, psychological or behavioral problems that the child may have of which the agency has knowledge and any on-going treatment the child is receiving for any such problems of which the agency has knowledge. In addition, DSS shall make reasonable efforts to provide foster parents with the child's recent grade and attendance record in school. If an emergency placement is necessary, defendants shall provide the information to the foster parent within ten working days of placement.

PERMANENCY AND INTENSIVE FAMILY SERVICES

15. A. Except in emergency situations where a child faces a substantial risk of harm and where services cannot prevent the removal of the child, reasonable efforts will be made by the appropriate DSS personnel prior to placement of a child in foster care to prevent or eliminate the need for removal of the child from his or her home. Such reasonable efforts to prevent or eliminate the need for placement or to reunify a child who has been placed shall include, where appropriate in the worker's professional judgment, the provision or securing of family counseling services, drugs and alcohol abuse services, day care, parenting education services and assistance provided under the federal Emergency Assistance to Families with Children program to the extent allowed by law. Services and assistance shall be provided in a duration and intensity reasonably assured of meeting their goal.

B. Defendants shall seek through the budget process and advocate for their appropriation sufficient funds to provide a program of intensive family services the goal of which shall be to reduce the number of children who need to be removed from their biological homes.

C. A case plan for each child in foster care shall set forth the services and assistance that have been provided to prevent or eliminate the need for removal from the home and the reasons those efforts did not succeed.

16. In all cases in which the goal is to return a foster child to his or her biological home, defendants shall make reasonable efforts to facilitate weekly visits between the parent

and child, unless the juvenile court orders otherwise, or DSS finds that such visits are not in the child's best interest. Before permanent reunification, overnight and weekend visits should be provided if appropriate.

17. A. In each case in which the case plan is the child's return home, DSS shall enter into a service agreement with the biological parent of the child within 60 days of the child's placement unless the parent is unavailable or unwilling to agree. The agreement shall set forth the current barriers to the child's return home, the steps the parent must take in order to have the child returned to him or her, the timeliness for completion of these steps, the services, if any, the caseworker and DSS will provide to the parent (for example, referral to alcohol abuse counseling) and the timeliness within which any services will be provided.

B. Defendants shall continue to follow the guidelines for workers on when a permanency plan shall be changed from return home. Such guidelines require that the case plan goal be changed promptly when the parent fails continuously to fulfill terms agreed to in the service agreement and/or when the parent has not maintained regular visitation or other contact with the child.

18. A petition for termination of parental rights shall be filed on behalf of each child for whom the goal is adoption within 120 days of the DSS establishing such a goal.

EDUCATION

19. A. Within five working days of being placed in non-emergency foster care, a child of school age shall be attending school (if school is in session), unless school attendance within five working days is unattainable for reasons outside the control of DSS. In such cases, DSS will make all reasonable efforts to obtain school attendance as soon as practicable.

B. If a child's caseworker has reason to believe that a foster child may be educationally handicapped and is not receiving special educational services, the worker shall promptly notify the local educational agency and request a screening for that child in writing. The child's caseworker shall be responsible for:

(1) providing, when requested, all evaluations of the child contained in DSS files;

(2) attending meetings on behalf of the foster child relating to identification, evaluation and placement of the child in a special educational program, where possible;

(3) providing the address of the biological parents to the local education agency if contained in DSS files; and

(4) facilitating appointments for evaluation of the child relating to the special educational decision-making process.

C. Within two years of the entry of the Decree, all caseworkers shall receive training with respect to the special education screening, evaluation, assessment and individualized education plan process. Thereafter, the worker shall notify the

child's attorney if these services are not provided in a timely fashion.

D. If DSS holds guardianship with the right to consent to adoption or long-term care short of adoption of a child and that child is educationally handicapped or is suspected of being educationally handicapped, the child's caseworker shall provide the local education agency with appropriate documentation of the child's legal status so that the school can apply for the appointment of a parent surrogate.

EXPLANATION OF RIGHTS

20. Within six months of entry of this Decree, defendants shall prepare a handbook describing the rights and responsibilities of foster children, biological parents and foster parents. Defendants shall provide a draft of the handbook to plaintiffs' counsel. Defendants shall consider, but need not adopt, any suggestions plaintiffs' counsel report to defendants within 30 days of receipt of the draft handbook. Thereafter, the defendants shall cause the handbook to be reproduced and distributed to all current foster children, where age appropriate, their biological parents and all current foster parents. The handbook shall be provided to all new foster children, where age appropriate, their biological parents, and all new foster parents.

HEALTH CARE

21. A. Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating

manner in accordance with their needs.

B. All foster children shall have an initial health care screening if possible before placement in an out-of-home care setting, but in any event, no later than 24 hours following placement.

C. All foster children shall be referred for a comprehensive health assessment within 30 days of entering placement. The assessment shall be completed within 60 days of entering placement. This assessment shall address the child's medical, emotional and developmental needs. The results of this assessment will be made available to the child's health care provider(s). The provider(s) selected by DSS to provide health care for the child shall be reasonably calculated to meet the child's specific needs identified by the assessment.

D. All foster children shall have periodic medical, dental and developmental examinations in accordance with the schedules or protocols of the EPSDT. If needs are identified at the periodic examinations that were not identified previously, the provider(s) selected by DSS shall be reasonably calculated to meet these additional needs.

E. For each child in foster care the defendants shall develop and use an abbreviated health care record (e.g., medical passport), which shall accompany the child through the out-of-home care system and upon his or her return home, adoption or emancipation. An abbreviated health care record shall require the following information: the medical facilities where the child

usually receives care, the child's condition at placement as documented by his or her physician, and the child's immunization record, allergies/adverse reactions, chronic health problems and present medications. The foster parents of the child shall be provided with the health passport completed to the extent possible at the time of a child's replacement or if an initial placement within five days of placement. Copies of the forms contained in the passport shall be included in the child's case record and shall be reviewed by a supervisor at least every six months.

F. Within two years of entry of this Decree, defendants shall establish and maintain a health services management unit within DSS. This unit shall be staffed by one or more health professionals who are trained and experienced in child health care.

CASEWORKER VISITS WITH FOSTER CHILDREN

22. Each child in a foster family home shall be visited by their assigned caseworker or his or her substitute at least once every month. The purpose of the visit is to assess the quality of care being provided to the child and the child's adjustment to the foster home, foster parents, other persons present in the home, and school. The interview shall be of sufficient duration and privacy to evaluate the child's adjustment to placement in the foster home. The caseworker shall indicate the date and summarize the results of each visit in the child's case record. Where indicated, the caseworker, based on his or her professional judgment, shall visit or contact the child more frequently. During the first three months a child is placed or replaced, the caseworker shall visit or

contact the child more frequently when in his or her professional judgment such is appropriate.

23. If an abuse or neglect complaint is filed pertaining to a foster family home, the assigned caseworker(s) shall visit the home at least once a week until the complaint is ruled out.

24. If an abuse or neglect complaint is not ruled out, the caseworkers shall visit the home at least once a week until the children are removed from the home or until the juvenile court orders otherwise or the child's attorney and DSS agree otherwise.

PLACEMENT WITH RELATIVES

25. A. A child committed by the juvenile court to DSS may be placed with his or her relative(s).

B. Such a child shall be provided a case plan and 6-month administrative and 18-month juvenile court reviews of his or her placement. DSS shall request that the Foster Care Review Board conduct the 6-month administrative reviews.

C. Within six months of the date of entry of this Decree, each child placed with a relative shall be visited by a caseworker no less frequently than once every two months.

D. A relative with whom a child committed to DSS has been placed may apply for a license as a foster family home. DSS shall inform the relative of the benefits of and requirements for licensure.

26. A. Within one year of the date of the entry of this Decree, DSS shall complete an inventory of each relative placement to determine whether each home meets basic health and sanitary

standards such as the existence of adequate heat, light, water, cooking and refrigeration facilities, toilet facilities and smoke detectors, and the absence of exposed wiring, rodent or insect infestation, broken windows, doors or steps, and holes in walls or ceilings. If the DSS employee or agent conducting the inventory observes evidence of any threat to the child's health or safety, the DSS employee or agent, if other than the child's worker, shall report that evidence to the child's worker. The results of the inventory shall be made available to plaintiffs' attorneys upon the issuance of a protective order.

B. In addition, defendants will seek the necessary statutory authority to conduct criminal background investigations for relative caretakers and others known to be in the household. After such approval is obtained, DSS shall conduct such investigations for existing and prospective caretakers and others known to be in the household.

C. Within six months of the entry of this Decree, DSS shall determine if a home meets basic health and sanitary standards within 30 days of placement.

27. A. Within one year of this Decree, an assessment shall be made of the health and educational status of each child placed with a relative. The assessment shall be completed by an impartial consultant selected through the State procurement process. The selection of the consultant shall be made by an evaluation committee or review panel. One member of the committee or panel shall be mutually acceptable to the parties.

B. The consultant shall oversee the gathering of data for the assessment. The assessment shall include contacts with the child's education provider and medical provider. The consultant shall determine generally the child's educational and medical status and the existence, if any, of unmet needs of the child. The child's caseworker shall make reasonable efforts to facilitate the child's obtaining educational and medical services sufficient to address the identified unmet needs. A report of the assessment result in regard to each child shall be made available on a quarterly basis to plaintiffs' attorneys upon the issuance of a protective order.

28. Within 30 days of receipt of the final consultant's report, plaintiffs may file objections pursuant to ¶35 of this Decree, including a statement of why children placed with relatives are entitled to additional protections.

REPORTS OF ABUSE AND NEGLECT

29. Whenever a DSS employee has reason to suspect that the abuse or neglect of a child in foster care or a child placed with a relative has occurred, the DSS employee shall notify the protective service unit of DSS. Children who are the subject of an abuse report shall be visited within 24 hours of the receipt of a complaint by either a protective services worker or staff of the police department. Children who are the subject of a neglect report shall be visited within five days.

30. Whenever there is a report of abuse or neglect of a child in a foster family home or a child placed with a relative, DSS

shall notify the attorney for the child in a foster family home and, within six months of the entry of this Decree, the attorney for the child placed with a relative, if it knows of any, the child's biological parents unless psychologically contraindicated or their whereabouts or identify is unknown, and such other persons as are required to be notified by State law. Notification to the child's attorney and/or biological parents shall be within five working days of receipt of a report. A copy of the report shall be provided to the child's attorney. The completed disposition of the complaint shall be submitted to the child's attorney within five working days of its completion.

SCOPE AND APPLICATION OF DECREE

31. This Decree shall apply only to those children certified as members of the plaintiff class. This Decree creates no rights in favor of any other person and creates no obligations or duties on the part of defendants with respect to any programs other than the DSS foster family care program and the DSS services to extended families with children program. A violation of this Consent Decree shall not create a new, independent private cause of action for damages for anyone. Nothing set forth in this paragraph shall bar the Court's contempt power for violation of the Decree.

REPORTING, MONITORING AND ENFORCEMENT

32. If the Court ever finds that any defendant, or any successor of any defendant, has failed to satisfy his, her or its obligation under this Decree, the Court shall not order any extraordinary relief (including the imposition of a fine or

imprisonment) against or respecting that defendant or against any defendant (either to punish a defendant for alleged non-compliance or to stimulate future compliance) unless the Court first finds by a preponderance of the evidence that the defendant(s) failed to meet his, her, their or its obligations due to some fault or lack of good faith on the part of the defendant(s).

33. Beginning six months following the entry of this Decree and at six-month intervals thereafter, defendants shall file with the Court a report setting forth the steps they have taken to achieve compliance with this Decree. A copy of the report shall be served on plaintiffs' attorneys of record.

The report shall include the following data from a six month period ending no earlier than two months before the date of the report:

a. the number of DSS foster care, continuing care and intake caseworkers; the number of immediate supervisors of such caseworkers; and the number of average cases for continuing care workers and for intake workers;

b. the number of DSS foster home caseworkers, the number of immediate supervisors of such caseworkers; and the number of average cases;

c. the number of restricted and general foster homes approved;

d. the number of children's and home caseworkers who have been hired;

e. schedule of the rates of reimbursement available to

foster parents;

f. the number of emergency foster homes and the number of children who can be served by each home;

g. effective July 1, 1988, the number of current foster parents who have completed the requisite pre-service and/or continuing training;

h. the number of foster children receiving aftercare services who are placed with a relative, the number of foster children who are placed with a relative in a restricted foster home, and the number of children who are committed by the juvenile court to DSS and who are placed in a relative home, which home is not a licensed foster care home;

i. the number of complaints of abuse and/or neglect of children in foster homes received and the disposition of such complaints;

j. commencing with the second semiannual report, the number of complaints of abuse and/or neglect of children placed with relatives received and the disposition of such complaints;

k. the number of children entering foster care and the date of his or her first medical assessment in regard to each such child;

l. the number of children for whom a goal of return home has been established; the number for whom a plan of adoption has been established; the number for whom a petition to terminate parental rights has been filed; and the number for whom such petitions have been granted;

m. a report on expenditures for support services and reunification funds as of the most recent end of fiscal year or mid-fiscal year;

n. the number of foster homes reassessed;

o. a summary of the quality assurance forms used by DSS as described in a letter dated April 5, 1988 from Mark J. Davis to William L. Grimm attached hereto as Attachment C; and

p. the number of workers who have attended training and the nature of the training provided.

34. A. Any time after the expiration of two years following the entry of this Decree, defendants may file a final report showing implementation of and compliance with this Decree.

B. Until the defendants file their final report, defendants shall file a semiannual report in the format set forth in paragraph 33. Defendants' obligation to report to the Court shall conclude once the final report has been filed with the Court.

35. Plaintiffs may file any objections to defendants' reports within 30 days of the filing of the report, after which the Court may decide to hold a hearing on the matter, assuming strict compliance with the terms of ¶36, infra.

RESOLUTION OF DISPUTES

36. A. Before any party may bring any matter before the Court with respect to any problem arising under this Decree, including any alleged non-compliance, the parties must confer and attempt to resolve the problem. If plaintiffs' attorneys present a dispute arising under this Decree involving an individual class

member, plaintiffs' attorneys may inspect the file of that child, the child's parents, and the child's foster parent(s) upon obtaining a protective order. The parties agree to cooperate in obtaining a protective order. Nothing set forth in this paragraph shall limit the rights of discovery of an attorney appointed for a child by the juvenile court in that proceeding.

B. The Court shall not entertain any alleged dispute in which the movant does not certify that good faith efforts have been made to attempt to resolve the dispute. This certificate shall include the date, place, time and participants in any conference to resolve the matter.

CLAIMS OF INDIVIDUAL PLAINTIFFS

37. The claims of plaintiff R.R. are hereby dismissed with full prejudice.

38. With respect to the individual damage claims of the other individual plaintiffs, with the exception of plaintiffs-intervenors R.K. and S.J. for whom no individual damage claims have been made, this Decree does not resolve these individual damage claims.

ATTORNEYS' FEES AND COSTS

39. The parties agree to continue to negotiate in good faith the settlement of plaintiffs' claims for attorneys' fees and costs until October 30, 1988. If settlement is not reached by that date, the plaintiffs may file a petition for an award of attorneys' fees and costs with the Court for its consideration or for referral to a magistrate. Plaintiffs agree not to file any such petition during the negotiations up to and including October 30, 1988.

CONTINUING JURISDICTION

40. The parties agree that the Court shall retain jurisdiction over this case until the terms of this Consent Decree are fully implemented for the purposes of (i) assuring implementation and (ii) allowing any party to apply at any time for an order seeking interpretation, implementation, enforcement, or modification of this Decree.

THE PLAINTIFFS, BY THEIR COUNSEL, AND THE DEFENDANTS BY SECRETARY MASSINGA AND THEIR COUNSEL ENTER INTO THIS CONSENT DECREE AND SUBMIT IT TO THE COURT THAT IT MAY BE APPROVED AND ENTERED AS AN ORDER OF COURT.

For the Plaintiffs:

For the Defendants:

RUTH MASSINGA
Secretary, Department of
Human Resources

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

WILLIAM L. GRIMM
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Children's Defense Fund
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MARK J. DAVIS
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Baltimore, Maryland 21201
(301) 333-0019
Counsel for defendants.

NEVETT STEELE, JR.
Whiteford, Taylor & Preston
7 St. Paul Street, Suite 1400
Baltimore, Maryland 21202
(301) 347-8700

APPROVED AND ENTERED on this _____ day of

_____, 19____.

UNITED STATES DISTRICT JUDGE

ATTACHMENT A

L.J. v. Massinga Class Members

All children who are, have been and may possible again, or will be placed in foster homes by the Baltimore City Department of Social Services and are or will be placed in the custody of the Baltimore City Department of Social Services pursuant to:

(a) an authorization or order of emergency shelter care granted to the Baltimore City Department of Social Services by an intake officer or by the Circuit Court for Baltimore City, Division of Juvenile Causes, under the provisions of MD. CTS. & JUD. PROC. CODE ANN. §3-815, or

(b) in order of commitment, care, or custody granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City, Division for Juvenile Causes, under MD. CTS. & JUD. PROC. CODE ANN. §3-820, or

(c) an order of guardianship with the right to consent to adoption or long-term care short of adoption granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City under MD. FAM. LAW CODE ANN. §5-301 et seq., or former MD. ANN. CODE art. 6 §§67 et seq., or

(d) a voluntary foster care agreement between their natural parents or legal guardians and the Baltimore City Department of Social Services.

ATTACHMENT B

L.J. v. Massinga Consent Decree
List of Organizations to Receive Notice

Clinton Bamberger, Esq.
University of Maryland School of Law
Clinical Law Office
510 West Baltimore Street
Baltimore, Maryland 21202-1786

Stephen Ney, Esq.
Maryland Disability Law Center
2510 St. Paul Street
Baltimore, Maryland 21218

Sheila K. Sachs, President
Bar Association of Baltimore City
111 North Calvert Street
Room 627, Courthouse East
Baltimore, Maryland 21202

James Wiggins, President
Monumental City Bar Association
Clarence M. Mitchell Jr. Courthouse
Room 401
Baltimore, Maryland 21202

Pamela Anne Bresnahan, President
Women's Bar Association of Maryland
28th Floor
401 East Pratt Street
Baltimore, Maryland 21202

Anne Pecora, Esq.
University of Baltimore School of Law
Clinical Law Office
Suite 101
1420 North Charles Street
Baltimore, Maryland 21201

John Michener
Maryland Volunteer Lawyer Services
520 West Fayette Street
Suite 130
Baltimore, Maryland 21201

ATTACHMENT C

OFFICES OF

THE ATTORNEY GENERAL
Saratoga State Center
Suite 1015
311 W. Saratoga Street
Baltimore, Maryland 21201
(301) 333-0019

April 5, 1988

William L. Grimm, Esq.
Legal Aid Bureau, Inc.
7th Floor
714 E. Pratt Street
Baltimore, Maryland 21202-3105

Re: L.J. v. Massinga
Quality Assurance Report Summaries

Dear Bill:

This letter supersedes my letter to you of March 29, 1988 on the contents of Quality Assurance Report Summaries to be provided to plaintiffs in accordance with paragraph 32(o) of the Consent Decree.

DSS continues to use forms D-885 and D-887 to review a child's case record and a foster home record, respectively. Monthly summaries of the information gathered from the files will be provided to plaintiffs from these forms or forms reasonably in accordance with them.

DSS has yet to modify the form to reflect the Health Care provisions of the Consent Decree. However, it expects to do so and will track compliance with the following requirements:

1. That foster children have an initial screening no later than 24 hours following a placement;
2. That foster children be referred for a comprehensive health assessment within 30 days of entering placement and that the assessment be completed within 60 days;
3. That foster parents be provided with a child's health passport within five days of initial placement or at the time of a child's placement;

William L. Grimm, Esq.
April 5, 1988
Page 2

4. That copies of forms contained in the passport be included in the child's case records and be reviewed by a supervisor every six months; and

5. That foster children have periodic medical, dental and developmental examinations in accordance with the schedules or protocols of the EPSDT.

Very truly yours,

Mark J. Davis
Assistant Attorney General

MJD089:jas

cc: Carol R. Golubock, Esq.
Jeanne D. Hitchcock, Esq.
Catherine M. Shultz, Esq.
Nevett Steele, Jr., Esq.
Ethel Zelenske, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

L.J., et al.
On behalf of themselves and
all others similarly situ-
ated

Plaintiffs

-vs-

RUTH MASSINGA, et al.

Defendants

* * * * *

Civil Action No.: JH84-4409

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

- TO:
- (1) ALL FOSTER PARENTS OF CHILDREN PLACED BY THE BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES;
 - (2) ALL PARENTS OF CHILDREN KNOWN TO THE BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES WHO ARE PLACED FOR FOSTER CARE WITH THE BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES;
 - (3) ALL RELATIVES KNOWN TO THE BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES PROVIDING CARE FOR CHILDREN PLACED WITH THEM BY OR THROUGH THE BALTIMORE CITY DEPARTMENT OF SOCIAL SERVICES; AND
 - (4) THE FOLLOWING ATTORNEYS: CLINTON BAMBERGER, STEPHEN NEY, SHEILA SACHS, JAMES WIGGINS, PAMELA BRESNAHAN, ANNE PECORA AND JOHN MICHENER.

PLEASE TAKE NOTICE that a proposed settlement of this action has been submitted to this Court for approval. A hearing will be held in Room _____ of the United States Courthouse at 101 W. Lombard Street at 9:30 a.m. on _____, 1988 to determine whether the proposed settlement of the above action should be approved and confirmed by this Court as fair, reasonable and adequate. The hearing may be adjourned from time to time by the

Court at the hearing or at an adjourned session thereafter without further notice.

Any person listed above or any member of the plaintiff class as described in the next section who desires to do so may appear at such a hearing in person or by counsel and show cause, if any, why the settlement described below should not be approved. However, no person shall be heard unless notice of intent to appear and copies of any statements or evidence to be presented are sent to the Clerk, United States District for the District of Maryland, 101 West Lombard Street, Baltimore, Maryland 21201-2678 on or before _____, 1988. Furthermore, copies of any statements or evidence to be presented must be provided on or before _____, 1988 to the following individuals in order for the Court to review and consider them:

William L. Grimm, Esq.
Legal Aid Bureau, Inc.
714 East Pratt Street
Baltimore, Maryland 21201

Catherine M. Shultz, Esq.
Assistant Attorney General
Munsey Building
Baltimore, Maryland 21202

THE PLAINTIFF CLASS

Pursuant to an order of this Court of January 21, 1987, this action has been maintained as a class action on behalf of all foster children in foster care with the Baltimore City Department of Social Services (hereinafter "BCDSS"), Maryland, specifically including:

All children who are, have been and may possibly again or will be placed in foster homes by the Baltimore City Department of Social Services and are or will be placed in the custody of the Baltimore City Department of Social Services pursuant to:

- (a) An authorization or order of emergency shelter care granted to the Baltimore City Department of Social Services by an intake officer or by the Circuit Court for Baltimore City, Division for Juvenile Causes;
- (b) An order of commitment, care or custody granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City;
- (c) An order of guardianship with the right to consent to adoption or long term care short of adoption (i.e. termination of parental rights order) granted to the Baltimore City Department of Social Services by the Circuit Court for Baltimore City; or
- (d) A voluntary foster care agreement between the

natural parents or legal guardians and the Baltimore City Department of Social Services.

It is for the benefit of these children that the proposed settlement is being considered for approval.

SUMMARY OF LITIGATION ISSUES AND HISTORY

This action was filed in the Court on December 5, 1984 by L.J. and five other children who were in foster care with BCDSS at the time. They represent the class of plaintiffs who are children in foster care with BCDSS. The defendants include state officials, case workers, and supervisors who are responsible for the operation and administration of the Foster Care Program in Baltimore City.

The original Complaint filed in this action alleged various violations of provisions of the Constitution of the United States and federal statutes and regulations relating to foster care, child welfare, and child abuse prevention and treatment. Since the filing of the original Complaint, this Court has approved the filing of two amended Complaints which added federal statutory claims and state law claims.

A complaint in intervention was subsequently filed on behalf of two other children who, after having been committed to the Baltimore City Department of Social Services, were placed by that agency with relatives who are not licensed as BCDSS foster homes. On January 21, 1987, these children were granted the right to intervene in this action.

The Complaint sought to obtain for the named plaintiffs and all foster children in the class both declaratory and injunctive

relief. In addition to seeking this equitable relief, the five original individually named plaintiffs have also alleged that they were entitled to damages for the alleged abuse and neglect which they suffered while in BCDSS foster care. The proposed settlement does not resolve the entitlement of these named plaintiffs to monetary damages. No claim for damages has been made on behalf of any other class member. The proposed settlement does not foreclose any class member from making such a claim in the future in another action.

The Defendants have filed an answer denying all the allegations of the Complaint, Amended Complaint and Complaint In Intervention and contending that no defendant has ever violated any state or federal law in the operation of the Foster Care Program in Baltimore City and the proposed settlement does not change defendants' position.

On July 27, 1987, the Court granted a preliminary injunction on behalf of the plaintiff class which included provisions requiring the reassessment of foster homes which had been the subject of an abuse or neglect reports, mandating case workers visits to foster homes, ensuring the provision of adequate medical care to foster children, and requiring the notification of the Juvenile Court and of foster children's attorneys of suspected neglect or abuse of children in foster care. On February 1, 1988, the United States Circuit Court of Appeals for the Fourth Circuit Court upheld this Court's order of July 27, 1987.

Counsel for the plaintiffs have conducted extensive discovery

into the practices and policies of the BCDSS Foster Care Program. This discovery has included a case reading of several hundred files from the BCDSS Foster Care Program which was conducted with the approval of this Court pursuant to a protective order and under the supervision of experts in the field of foster care and child welfare. Counsel for all parties have submitted this proposed consent decree after intensive arms-length negotiations. Counsel for the plaintiffs have concluded that it would be in the best interests of children in foster care to approve this settlement.

This Notice is not to be understood as an expression of any opinion by this Court as to the merits of any of the claims or defenses asserted by either side in this litigation or as to any benefits that any claimant would receive on settlement. This Notice is sent for the sole purpose of informing you of the status of this action and the proposed settlement so that you may decide for yourself what action, if any, you may wish to take.

SUMMARY OF PROPOSED SETTLEMENT

The proposed Consent Decree provides for changes in the operation of the BCDSS Foster Care Program in many areas. Provisions for changes in the foster care system and the implementation schedule for each are described below.

I. Decree Provisions Effective Immediately:

- (A) **REPORTS OF ABUSE OR NEGLECT OF CHILDREN IN BCDSS CUSTODY**
-- The Decree requires that BCDSS employees report suspected abuse and neglect, establishes time frames for response to the receipt of those reports; requires notification of the child's attorney, the biological parent under certain circumstances, and the Juvenile Court.

- (B) HEALTH CARE -- The Decree requires that the Defendant's develop and maintain a medical system that provides health care services to foster children; and specifies certain components of that system, among other things, an initial health screening at the time of placement, a comprehensive health assessment completed within 60 days of placement, the use of an abbreviated health care record (health passport) and the distribution of that health passport to the child's foster care provider.
- (C) CASE WORKER VISITS WITH CHILDREN IN BCDSS CUSTODY -- The Decree requires that the case worker visit each foster child at least once every month, describes the purpose of the visit, mandates documentation in the child's case record and increases the frequency of visits if an abuse or neglect complaint is pending. It also requires that children placed with relatives be visited every two months.
- (D) INFORMATION PROVIDED TO FOSTER PARENTS -- The Decree requires that the foster parent shall be provided with certain information about the child or children for whom they are being asked to care.
- (E) FOSTER CHILD EDUCATION -- The Decree establishes deadlines for the prompt enrollment of a foster child in school and specifies additional case worker responsibilities whenever a foster child is suspected of having an educational handicap.
- (F) INTENSIVE FAMILY SERVICES -- The Decree describes the goal of intensive family services and requires that the Defendants seek funding to provide such a program in Baltimore City.
- (G) CHILDREN PLACED WITH RELATIVES -- The Decree permits the Defendants to continue their practice of placing children committed to BCDSS in the home of relatives who do not meet foster care standards, but requires that BCDSS inform the relative of the benefits and requirements of foster parent licensure. In addition the Defendants are required to provide these children with a case plan, a 6-month review and periodic reviews by the Juvenile Court of their placement. Finally, Defendants will seek statutory authority to conduct criminal background investigation of all relative caretakers and other adults in the home, and upon receiving such authority, will conduct those investigations for existing and prospective relative caretakers.

SEE SUBSEQUENT SECTIONS FOR OTHER PROVISIONS RELATED TO RELATIVE PLACEMENTS.

- (H) PERMANENT PLACEMENT PLANNING AND IMPLEMENTATION -- The Decree requires, with some exceptions, that DSS personnel make reasonable efforts to prevent or eliminate a child's needs for out of home placement and defines some of the services to be included in reasonable efforts. It mandates components of the child's case plan and the parent's service agreement. It requires under certain circumstances weekly visits between parent and child, incorporates guidelines for modifying permanent plans and requires the filing of termination of parental rights petitions within 120 days of establishing a goal of adoption for a child.
- (I) FOSTER PARENT EXPENSES/STIPENDS -- The Decree requires the Defendants to seek through the budget process funds to pay foster parents stipends and expenses for attending foster parent training, to seek funds for paying stipends to shelter care parents and to purchase special services for children to prevent their placement in institutional settings.

II. Provisions To Be Implemented Within 6 Months:

- (A) SPECIALIZED SUPPORT UNIT FOR CASE WORKERS -- The Decree requires the creation and maintenance of a specialized support unit within BCDSS to be staffed by persons who do not have case work responsibility. The support unit shall include persons specially trained to assist case workers in identifying, locating and obtaining services for substance abusers, special education needs, mental health and developmental disability needs and independent living.
- (B) HANDBOOK OF RIGHTS -- The Decree requires that the Defendant prepare, submit to Plaintiff's counsel and, thereafter, print and distribute a handbook explaining the rights of parents, foster parents, and foster children.
- (C) REPORTING AND MONITORING OF DECREE IMPLEMENTATION -- The Decree requires for a minimum of two years after the entry of the decree and at 6 month intervals that Defendant shall file a report which sets forth the steps Defendants have taken to achieve compliance with the provisions of the decree.

III. Decree Provisions To Be Implemented Within One Year:

- (A) FOSTER PARENT TRAINING -- The Decree requires that foster parents' applicants must complete a minimum of 12 hours of training in a variety of subjects prior to licensure as a foster home. A foster parents' license will not be

renewed if foster parents do not attend 6 hours of supplemental training each year thereafter.

- (B) CHILDREN PLACED WITH RELATIVES -- The Decree requires an inspection of relative homes for compliance with basic health and sanitary standards, the report of threats to the child's health and safety to the case worker, and the provision of the results of this inspection to Plaintiff's counsel. The Decree further requires that an assessment of each child in a relative's home be made to determine the medical and educational status of that child and to identify any unmet needs. Such assessment is to be conducted under an impartial consultant in whose selection Plaintiffs' counsel will participate and quarterly reports of the assessment are to be submitted to Plaintiffs' counsel throughout the assessment process.

IV. Decree Provisions To Be Implemented Within Two Years:

- (A) CASELOAD LIMITS -- The Decree requires that foster care case workers have maximum average caseloads not exceeding certain ratios. These ratios vary based upon the worker's classification as a intake, continuing or after care worker.
- (B) TRANSFER OF CHILDRENS' CASES -- The Decree requires implementation of certain procedures for the transfer of a foster child's case so as to insure continuity of casework.
- (C) FOSTER CARE WORKER TRAINING -- The Decree requires that all new foster care workers complete certain training within 60 days of employment and a minimum number of hours of training annually thereafter. The subject areas for such training are specified including mandated training in the area of special educational screening, evaluation and planning.
- (D) MAINTENANCE OF FOSTER CARE PLACEMENT CONTINUUM -- The Decree requires that Defendants establish and maintain a continuum of foster care placements in Baltimore City -- e.g. regular, specialized, emergency, therapeutic foster family homes and group homes. This continuum must be reasonably calculated to insure that there are appropriate foster care placements for all children who come into care. Defendants are required to maintain a foster home recruitment unit within BCDSS and continue their past practice of seeking increases in the rate of reimbursement paid to foster families.
- (E) HEALTH SERVICES MANAGEMENT UNIT -- The Decree requires the creation and maintenance of this unit staffed by at

least one health professional who is also trained and experience in child welfare.

If you wish to ask questions about the proposed settlement or if you wish to obtain a copy of the Consent Decree, please address your questions or requests to the parties' counsel who are listed below:

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Counsel for Defendants

THE HONORABLE JOSEPH C. HOWARD
District Judge
United States District Court
for Maryland

DATED: _____

II. CHILD IN NEED OF ASSISTANCE (CINA): THE SHELTER CARE, ADJUDICATORY AND DISPOSITION HEARING

A. INTRODUCTION: THE DUAL ROLE OF THE CHILD IN NEED OF ASSISTANCE (CINA) PROCEEDING: PROTECTION OF THE CHILD AND OF THE RIGHTS OF FAMILY INTEGRITY

1. Protection of The Child

The judicial protection of children is rooted in the 1874 case of Mary Ellen. An illegitimate child, placed by the New York City Department of Charities in the care of adoptive parents, Maryland Ellen was beaten regularly and was seriously malnourished. A mission worker who discovered Mary Ellen's condition attempted to have legal action taken on her behalf. However, there was no law at the time which made such maltreatment a crime or an appropriate subject for civil court intervention. A desperate appeal was made to the founder and president of the Society for the Prevention of Cruelty to Animals. Believing that Mary Ellen was entitled to at least to court and had her removed from her home on the basis that she was a member of the animal kingdom. This permitted her case to be heard under the cruelty to animal laws. Within the next few years. the public awareness of the problems of children like Mary Ellen increased, and societies for the prevention of cruelty to children were created throughout the world.

In 1899 the first juvenile court was created. The primary purpose of the early juvenile court was to handle cases involving maltreated children. Unfortunately, the young people brought before these courts were most likely to be placed in

homes for wayward children or reform schools.

Under its parens patriae authority, the state began to assume the role of substitute parent. In the landmark child protective court decision of this century, Prince v. Massachusetts, 321 U.S. 158, ~~30~~ (1944), Mr. Justice Rutledge stated that:

[t]he family itself is not beyond regulation in the public interest...Acting to guard the general interest in youth's well-being, the state as parens patriae may restrict the parent's control...The state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare...

In the 1940's and 1950's physicians began to note a recurrence of certain injuries in children which were inadequately explained and it was speculated that these injuries might have been intentionally inflicted. In 1961, Dr. C. Henry Kempe gave this condition the medical name of "the battered child syndrome". It was described as follows:

The battered child syndrome...is a frequent cause of permanent injury or death. The syndrome should be considered in any child exhibiting evidence of fracture of any bone, subdural hematoma, failure to thrive, soft tissue swellings or skin bruising, in any child who dies suddenly, or where the degree and type of injury is at variance with the history given regarding the occurrence of the trauma.

Kempe, Silverman, Steele, Droegemueller and Steele, "The Battered Child Syndrome," 13 J.A.M.A. 105 (1962).

In 1963 legislation which would mandate reports of suspected child abuse was proposed. That same year, the American Humane Society estimated that there were ten thousand battered child cases annually. By 1967 all fifty states had

enacted child abuse reporting laws. Estimates of child abuse have also risen dramatically, ranging now from 500,000 to 2,000,000 cases per year. Today there are statutes in every state which give juvenile courts jurisdiction in abuse and neglect cases. As the number of child maltreatment reports increased since the early 1960's, so did the number of these cases reaching the juvenile courts. It is now estimated that 150,000 - 200,000 abuse and neglect cases are brought into the judicial process each year.

2. The Rights of Family Integrity: The Significance of Coercive State Intervention

The decision to take a child away from a parent is certainly one of the most difficult that judges are called upon to make. Indeed, the very fact that the state is intruding into the family is a matter many would agree warrants close judicial scrutiny.¹ "The rights of the family to privacy and integrity have been recognized as fundamental and of constitutional significance." See e.g. Quilloin v. Walcott, 434 U.S. 246, (1978); Moore v. City of East Cleveland, 431 U.S. 494 (1977). This right of family integrity has been codified in the purpose clause of the Maryland Juvenile Causes Act which states:

The purpose of the Juvenile Causes Act are:

(c) [t]o conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;

(d) [i]f necessary to remove a child from his home, to secure for him custody, care and

discipline as nearly as possible equivalent to that which should have been given by his parents...

C.J.P. §3-802

The Court of Special Appeals has amplified this statement of purpose in the case of Matter of McNeil, 21 Md. App. 484, 497 (1974), by stating that:

The Maryland General Assembly has clearly expressed its recognition of the principle that the primary right to rear and nurture a child rests in its parents and not in the state, and it is only under the most extraordinary circumstances that a parent may be divested of that right and custody of a child placed in the hands of others.

Consequently, when the state coercively intervenes in the lives of children and parents, we rely upon our judicial system to assure that forcible action is taken only after due process of law is provided. Noted authorities in the field of child development have argued that parents should be allowed to raise their children as they think best, absent a clear showing that their conduct has endangered their children. See e.g., Goldstein, Freud, Solnit, Before the Best Interests of the Child, (The Free Press, New York, 1979). Reports have documented the grievous harm done to thousands of children and families as a result of forcible state intervention and out-of-home child placement. Children's Defense Fund, Children Without Homes (1979); National Commission on Children in Need of Parents, Who Knows? Who Cares? Forgotten Children in Foster Care (1979).

Thus, lawyers for both parents and children in child maltreatment proceedings have a common stake in assuring that

the state is not overreaching, despite the benevolent motives of its child protective social workers. Procedural safeguards exist to protect the family members from unwarranted intrusion into their private lives. It is important that counsel fully understand the nature of the juvenile court proceedings, the rights afforded to the respective parties, the impact of these judicial proceedings on the children and their parents, and the lawyer's role in abuse and neglect cases.

B. MARYLAND LAWS CONCERNING CHILDREN

1. Art. 27 §35A is the criminal statute which defines and proscribes penalties for child abuse.

2. For purposes of CINA litigation, Family Law Art. 5-701-5-715 is the statute that defines child abuse and neglect and mandates who must report it. The statute also provides immunity from liability those reporting in good faith.

3. Maryland Rules of Procedure, Juvenile Causes, Rule 901 et. seq. are the only rules of procedure which apply to proceedings in the juvenile court.

4. The Maryland Juvenile Causes Act, C.J.P. §3-801 et. seq., is the statute which created the rubric "child in need of assistance" and defines this term.

,"Child in need of assistance is a child who requires the assistance of the court because

- a. He is mentally handicapped or is not receiving ordinary and proper care and attention, and
- b. His parents, guardian or custodian are unable or unwilling to give proper care and attention to the child and his problems provided, however, a child shall not be deemed to be in

need of assistance for the sole reason he is being furnished nonmedical remedial care and treatment recognized by State law."

C.J.P. §3-801 (e)

The purposes of the Juvenile Causes Act are

- a. [t]o provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this subtitle; and to provide for a program of treatment, training and rehabilitation consistent with the child's best interests and the protection of the public interest;
- b. [t]o remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior;
- c. [t]o conserve and strengthen the child's family ties and to separate a child from his parents only when necessary for his welfare or in the interest of public safety;
- d. [i]f necessary to remove a child from his home, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents.
- e. To provide judicial procedures for carrying out the provisions of this subtitle.

C.J.P. §3-802

Thus, the focus in the juvenile court is on the best interests and welfare of the child.

C. THE JUVENILE COURT PERSONNEL AND ORGANIZATION

The juvenile court in most counties is a division of the Circuit Court. In some counties along with actually hearing juvenile proceedings, the juvenile court judge has the additional responsibility of overseeing the duties of several masters-in-chancery.

For example, masters are still used in Baltimore City to

hear most of the proceedings in juvenile court. A master is authorized to order shelter care and to hear any cases and matters assigned by the court. A master's findings, conclusions and recommendations do not constitute orders or final action until they are submitted to, signed and adopted by the judge. However, the recommendations may be implemented in advance of the court's approval.

Although the judge generally adopts the master's findings and recommendations, the judge may, instead, remand the case to the master for further hearing or the judge may conduct a further hearing himself.

If any party to the case objects to a master's recommendation, he may file a written Exception with the Court Clerk within five days. Upon the filing of an Exception, a prompt hearing is scheduled before the judge. See Appendix I for Sample Exception.

The juvenile court, is provided with a specialized support staff to deal with the case load and children before the court. Health-General §6-109 provides for the creation of a Juvenile Services Administration to staff the intake and probation functions of the court, as well as to assist with other functions of the juvenile court. Different counties have developed informal arrangements between the Department of Social Services staff and the Juvenile Services staff to carry out these functions.

JUVENILE COURT LISTINGS

Alleghany County

Juvenile Clerk: Sue Sivic
(301) 777-5922

No Masters, case is assigned to the sitting Judge who may hear the case from the Shelter-care hearing onward.

Anne Arundel County

Juvenile Clerk: Mary Renshaw
(301) 222-1427

3 Masters, 1 Juvenile Judge. Masters hear all juvenile matters on a rotation basis.

Baltimore City

Juvenile Clerk: James L. Benton
(301- 333-4278

8 Masters, 1 Juvenile Judge sitting, 1 Juvenile Judge Administrative, all Masters hear Sheltercare, 1 Master for CINA Adjudicatory Disposition and 1 Master for CIP Reviews, Administrative Judge hears most postponements.

Baltimore County

Juvenile Clerk: Richard D. Arnold, Jr. (301) 887-3836

1 part-time Master; 1 Juvenile Judge. The Master hears all juvenile matters - CINA once a in p.m., sometimes additional 1 day per month.

Calvert County

Juvenile Clerk: Carla Jones
(301) 535-1600 ext. 404

No Masters, 1 Judge hears all CINA matters; in a conflict a visiting Judge will be used.

Caroline County

Juvenile Clerk: Dot Blazejak
(301) 479-1811

No Masters, 1 Judge hears all CINA matters.

Carroll County

Juvenile Clerk: Pamela L. Masimore (301) 857-2985

1 Master hears all cases, typically the same Judge reviews and signs orders although Judges may also do so on a rotating basis.

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| <p>Cecil County</p> <p>Juvenile Clerk: Gail M. Purnell (301) 398-0200 Ext. 174</p> | <p>No Masters, Judges on rotation hear CINA cases the 1st and 3rd Wednesday of the month.</p> |
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| <p>Charles County</p> <p>Juvenile Clerk: Betty Radcliff (301) 932-3230</p> | <p>No Masters, 3 Judges hear all CINA matters on a six month rotation.</p> |
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| <p>Dorchester County</p> <p>Juvenile Clerk: JoAnn Nickerson (301) 228-0481</p> | <p>No Masters, 1 full-time Judge, 1 part-time Judge. CINA matters are assigned on a rotation.</p> |
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| <p>Frederick County</p> <p>Juvenile Clerk: Charles C. Keller (301) 694-1976</p> | <p>No Master, 3 Judges hear all cases on a rotating basis.</p> |
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| <p>Garrett County</p> <p>Juvenile Clerk: Paul Frantz (301) 334-1944</p> | <p>No Masters, Judge hears the case from Sheltercare Hearing onward.</p> |
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| <p>Harford County</p> <p>Juvenile Clerk: Kim Warneke (301) 838-6000 ext. 469</p> | <p>1 part-time Master, who hears all cases, 2 days per week plus 1 additional day per month. 4 Judges on a rotating basis.</p> |
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| <p>Howard County</p> <p>Juvenile Clerk: Esther Wall, Mareta Cornwell (301) 313-3826, 27</p> | <p>2 Masters hear all cases, Judges rotating for order, etc.</p> |
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| <p>Kent County</p> <p>Juvenile Clerk: Amy Nicherson (301) 778-7477</p> | <p>1 Judge hears all CINA matters.</p> |
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Montgomery County - Juvenile
Court is on the District Level

2 Judges hear all CINA matters.

Juvenile Clerk: Betty Ruth Hogan
(301) 279-1447

Prince George's County

1 Master hears all CINA matters,
1 Juvenile Administrative Judge,
other Judges on a rotational
basis.

Juvenile Clerk: Mary Davis
(301) 952-3995

Queen Anne's County

No Master, 1 Judge hears all
CINA matters.

Juvenile Clerk: Beverly Peters
(301) 758-1773

St. Mary's County

No Master, 1 Judge generally
hears CINA cases from Shelter-
care Hearings onward.

Juvenile Clerk: Sherri Blais
(301) 475-4560

Somerset County

No Master, 1 Judge hears CINA
cases.

Juvenile Clerk: Faith James
(301) 651-1555

Talbot County

No Master, 1 District Court
Judge sitting as Juvenile
Judge.

Juvenile Clerk: Connie Cole
(301) 822-2611

Washington County

No Master, typically a Judge
who has specialized in Juvenile
matters hears all cases.

Juvenile Clerk: Nancy DeVault
(301) 733-8660

Wicomico County

No Master, Judges hear all cases
on a rotating basis, they may
follow-through on a case from
the Sheltercare Hearing onward.

Juvenile Clerk: Delores Wright
(301) 543-6551

Worcester County

No Master, 2 Judges who hear
CINA cases on a rotation
schedule.

Juvenile Clerk: Sherri Harrington
(301) 632-1222

D. CINA JURISDICTION AND VENUE

The juvenile court has exclusive, original jurisdiction over a child alleged to be in need of assistance. C.J.P. §3-804. A child is defined as a person under the age of eighteen years. C.J.P. §3-801(d). The age of the child at the time the petition is filed controls the determination of the jurisdiction. C.J.P. §3-805(b). Once obtained, the juvenile court retains its jurisdiction until the person reaches twenty-one years of age, unless the jurisdiction is terminated earlier. The decision whether to terminate jurisdiction is within the discretion of the Juvenile Court. C.J.P. §3-806(a) and (c). See In re: Arlene G., Rhonad G., Teresa G., Md. (Nov. 1, 1984) which held that the Juvenile Court may retain jurisdiction even in situations where an equity court has granted the Department of Social Services guardianship with the right to consent to adoption or long-term care short of adoption. Only a final decree of adoption would automatically terminate the jurisdiction of the Juvenile Court. §5-308(b) of the Family Law Article.

C.J.P. §3-808. Determination of venue is left to the sound discretion of the court. In re Carter, 20 Md. App. 633, 318 A.2d 269 (1974), aff'd 273 Md. 690, 332 A.2d 246 (1975).

E. EMERGENCY REMOVAL: THE SHELTER CARE PROCEEDING

1. The investigation of reports of child abuse and neglect.

The Protective Services Unit of each local Department of Social Services (DSS) is responsible for investigating

reported incidents of child abuse and neglect.

a. Child abuse is defined by regulations as:

(1) An abused child is a person under the age of 18 years who has sustained any physical injury as a result of cruel or inhumane treatment or as a result of malicious act or acts, or any sexual abuse, meaning an act or acts involving sexual molestation or exploitation, whether physical injuries are sustained or not, by a parent, adoptive parent, or other person who has the permanent or temporary care or custody or responsibility for supervision of a minor child under circumstances that indicate that the child's health or welfare is harmed or threatened thereby.

(2) The two factors that determine whether child abuse has occurred are:

(a) The child suffered physical injury or sexual abuse or exploitation with or without injury; and

(b) The injury was caused non-accidentally by, or the sexual abuse was perpetrated by, a person who had care, custody, or supervision of the child at the time.

(3) An injury is any bodily damage, ranging from a bruise or bruises to bone fractures and burns, and is not always readily apparent, as in some internal injuries.

(4) Sexual abuse may range from nude photography and fondling for sexual gratification to incest, rape, sexual offense in any degree, sodomy, sexual practices prohibited by law or prostitution, or allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming or depicting of a child for commercial purposes as prohibited by law.

COMAR 07.02.07.025A (1), (2), (3), (4).

b. Child neglect is defined by regulation as:

(1) [A neglected child is a] person under 18

years old who has suffered or is suffering significant physical or mental harm or injury, or who is living under conditions hazardous to the child's physical or emotional health, well being, and development as a result of conditions created by the absence of the parent, guardian, or custodian, or by the failure of that person to give proper care and attention to the child and the child's problems under circumstances that indicate that the child's health or welfare is harmed or threatened thereby.

(2) A child may not be considered neglected solely because the child is receiving nonmedical care and treatment recognized by State law instead of medical treatment if parents or guardians are legitimately practicing their religious beliefs.

COMAR 07.02.07.02 §C (1) and (2).

Each local DSS agency must screen reports of child abuse seven days a week, twenty-four hours a day.¹ Every local DSS must initiate an investigation of a report of child abuse within 24 hours of the receipt of the complaint. The investigation must include an on-site visit by a DSS protective social worker.² Reports of child neglect must be investigated within 5 days of the receipt of the initial complaint.³

The major responsibility of a DSS protective service worker is to determine which cases require (1) emergency removal of the child, (2) protective supervision or services to the family, or (3) no action. Attached as Appendix I at p.

¹ COMAR 08.02.07.05 § A(4).

² COMAR 07.02.07.05 § A(4).

³ COMAR 07.02.07.05 § B(1).

A-1 are charts showing some of the various factors which the Department of Social Services uses when making the decision as to whether or not Court action in an abuse or neglect case is necessary. Only a small proportion of DSS cases are treated as requiring emergency removal of a child. In investigating a case of suspected child abuse, a protective service worker visits the child's home, inspects the child's body for signs of abuse, and talks with the child, the child's caretaker, and when appropriate other knowledgeable individuals.⁴ If the child is injured, the parent is questioned regarding the cause of the injury. The lack of a plausible explanation is given great weight in determining whether the child should be removed.

The protective service worker also relies upon the information provided by the person reporting the abuse, especially if the reporter is a physician, teacher, or other adult who saw the child regularly. In Maryland, certain health care professionals have a statutory duty to report incidents of suspected child abuse.⁵

According to the Department of Human Resources Protective Service Manual, the situations in which emergency removal should be taken as follows:

1. Children are in a life threatening environment which would cause serious physical harm if they are not removed from the situation.

⁴COMAR 07.02.07.05 § A(5).

⁵FL § 5-704(a).

2. Children are abandoned and have no adult providing food, clothing, or shelter for them at this time.
3. Child(ren) has sustained life threatening or serious injuries requiring medical treatment and his immediate safety can not be assured in his home of origin.
4. Child(ren) has undergone a seriously traumatic incident in his family or origin, and refuses to return after assurances of protection.
5. Child(ren) has been sexually abused and the likelihood of reoccurrence or violence being done to the child(ren) as punishment for the revelation is extremely high.
6. The regular custodian of the child is not competent to care for the child as a result of intoxication, emotional disturbance, or other debilitating factors, and the authority of the court is necessary to ensure the immediate protection of the child.

Emergency removal must be distinguished from certain forms of voluntary placements. For example, a parent who is experiencing difficulties, such as hospitalization for psychiatric disorders, may request that DSS take custody of the children, or a social worker may warn that the children are about to be removed, and the parent may consent to the removal. In these cases the child would be voluntarily placed.

2. The Procedure and Standard for Emergency Removal: The Shelter Care Hearing.

C.J.P. §3-814 provides the authority for taking a child into custody on an emergency basis under certain circumstances. The methods available which are relevant to CINA cases are:

- a. By law enforcement officer, or other person authorized by the court, having reasonable grounds to believe that the child is in immediate danger from his surroundings and that his removal is necessary for his protection (C.J.P. §3-814 (a)(3)).

This is the most frequently used authority for taking a child in need of assistance into custody so long as both of the requirements are met, i.e.,:

- (1) the child is in immediate danger from his surroundings; and
- (2) the child's removal is necessary for his protection.

b. By a law enforcement officer, or other person authorized by the court, having reasonable grounds to believe that the child has run away from his parents, guardian, or legal custodian (C.J.P. §3-814 (a)(4)).

Once the child has been taken into custody the individual exercising the custodial power must immediately notify, or cause to be notified, the child's parents, guardian, or custodian of the action taken. After every reasonable effort has been made to give the mandata notice, the individual who took custody of the child must do one of two things:

a. release the child to his parents, guardian, or custodian, or to any other person designated by the court, upon their written promise to bring the child before the court when requested, along with such security as may be required by the court; (unless placement in shelter care is permitted and appears required by C.J.P. §3-814 (infra.)) or

b. Deliver the child to the court, or to a place of shelter care designated by the court. C.J.P. §3-814 (b) (1) and (2).

A child may be immediately placed into shelter care, prior to any hearing, if the local department determines that:

a. this action is required to protect the child, or the person and/or property of others; or

b. the child is likely to leave the jurisdiction of the court; or

c. there is no parent, guardian, custodian, or other person able to provide supervision and care for the child and return him to the court when required.

C.J.P. §3-815 (b); Rule 912 (a)(2).

If shelter care is authorized, the local department granting such authority must report this fact and the reasons for the authorization to the court on the next court day. If continued shelter care is sought, the local department must immediately file a petition to authorize continued shelter care, setting forth facts showing cause for such continuation.

C.J.P. §3-815 (c); Rule 912 (a). Upon the commencement of shelter care, the local department must give reasonable oral or written notice of the hearing on continued shelter care to the juvenile and to his parents, guardian, or custodian, if they can be found, stating the time, place and purpose of the hearing. C.J.P. §3-815 (c). The local department must also give written notice of the authorization for shelter care to the child's parents, guardian or custodian, and to the court. A statement of the reasons for taking the child into custody and placing him into shelter care should be included, although this notice may be combined with a notice under §3-815 (c). C.J.P. §3-815 (f).

The hearing for continued shelter care must be held no later than the day after the shelter care is commenced, unless extended by the court for good cause. C.J.P. §3-815 (c). The continuation of shelter care may not be authorized unless the court finds that such is required for any of the three reasons

described above which give rise to authority for placement in shelter care. Rule 912 (b)(1).

✓ The court, in determining whether emergency removal is necessary to protect the child, should consider the following factors:

1. age of child (younger the child, greater the need for protection);
2. physical and mental ability of child (i.e. whether the child is able to care and protect self);
3. level of cooperation of caretaker;
4. history and present status of parents' physical, mental, and emotional abilities (is there a history of mental illness, substance abuse?);
5. circumstances surrounding maltreatment;
6. seriousness of current incident;
7. whether a single incident or pattern;
8. whether child has been hospitalized;
9. abuser's access to child (can the caretaker give assurances re: protect child from abuser?);
10. condition in the home of the child (e.g. no heat; no supervision of the child);
11. presence or lack of external support system for caretaker;
12. prior agency history;
13. stress in family (pattern of violence in family; criminal records re: spouse or child abuse, violence, etc.); and
14. whether the child could be protected within the home with supportive services. [See Chapter II for a detailed discussion of the standards for removal. See In re: Rachel S., 60 Md. App. 147 (1984), which discusses the different determinations made at a shelter care hearing as opposed to a CINA adjudicatory hearing.]

In addition, under federal law, there now must be a judicial determination that reasonable efforts have been made to prevent or eliminate the need for removal of a child from his home...in order to obtain federal funding for his placement. 42 U.S.C.A. §672 (a)(1). Consequently, at the shelter care hearing the court should determine whether the child would be able to remain in the home if appropriate services were provided. If so, then the services should be provided and the child should not be removed from the home. If not, then shelter care should be continued. If shelter care is continued, the court should note explicitly in its findings that there have or have not been reasonable efforts to prevent or eliminate the need for removal of the child. In some emergency situations nothing can be done to prevent removal, and thus the court should find that a lack of preventive efforts is reasonable. Specifically in that situation the court should make findings that:

1. there were no preventive services which could ensure the safety of the child; or
2. even with appropriate services being provided, the safety of the child could not be ensured.

In other emergency situations the requirement of reasonable efforts may not have been met, e.g. where the agency was involved with the family earlier, and the emergency arose because of the failure of the agency to provide appropriate services. See Chapter I for a more detailed discussion of Reasonable Efforts.

Finally, because the shelter care hearing occurs with such short notice, all parties may not be prepared to argue the "reasonable efforts" requirements. In this situation, the determination can be made at the adjudication hearing, and thus all parties will have time to adequately prepare.

Procedurally, the hearing may be postponed, for good cause shown for not more than eight days following the commencement of the shelter care. If possible, reasonable notice of the hearing must be given to the child and to his parents and counsel. Rule 912 (a)(3). Continued shelter care pending the adjudicatory hearing may not exceed thirty days, and it may be continued for not more than thirty days following the adjudicatory hearing and pending the disposition hearing. Rule 912 (b)(2); Rule 912 (c). A juvenile court master has the power to order shelter care pending court review of his findings, conclusions and recommendations. C.J.P. §3-813 (d). Any order of a Master which grants continual shelter care is immediately appealable to the Judge. Rule 911. See Appendix I for sample Exceptions to the Master's Recommendation.

If shelter care is used for a child alleged to be a CINA by reason of a mental handicap, the child may be placed in facilities maintained or licensed by the Department of Health and Mental Hygiene. If those facilities are not available, then he may be placed in a private home or facility approved by the court. C.J.P. §3-815 (e). If a child is alleged to be

a CINA for any other reason, then he may be placed in a shelter care facility maintained or approved by either the Social Services Administration or the Juvenile Services Administration, or in a private home or shelter care facility approved by the court. C.J.P. §3-815 (e). However, the child may not be placed in detention (e.g., physically restricting facilities) or in a state mental health facility. C.J.P. §3-815 (e), 3-801 (m).

The shelter care hearing is probably the most crucial part of the entire CINA process. For example, from July 1, 1980 - June 30, 1981, sixty-seven percent of the CINA cases in the Baltimore City Court originated as a shelter care hearing. The "temporary nature" of the shelter care order belies its importance. Although shelter care can only be ordered for a period of 30 days before the adjudicatory hearing must be conducted, an unwarranted extension of shelter care, and the unnecessary separation of the child from his family even for 30 days may be extremely traumatic for the child and his parent. A child placed in shelter care is removed from all that is familiar; his life is suddenly unstable and loses continuity. The child is placed in a home of strangers and may lose contact with siblings as well as parents. He may be placed in another section of the city or even in another county, which results in the child either missing school completely or having to transfer to a strange school. Parents who do not regain custody at the shelter care hearing stand a

much greater risk that the CINA petition will be sustained at adjudication and that a severe disposition - e.g. commitment of a child to foster care - will be ordered.

To avoid the trauma of removing the child from his home, counsel for the child and the non abusing parent should attempt to have the abusing parent leave the home. This may be accomplished by getting a protective order requiring the abuser to vacate the family home. Family Law Article §4-506. In addition, if the alleged abuser has also been criminally charged, a condition of his bond should be that he "stay away" from the child. See also, Family Law Article §7-102 which creates a new ground for a limited divorce based on mistreatment of a child.

F. PROCEDURES AND STANDARDS FOR NON-EMERGENCY HEARINGS

Any person or agency having knowledge of facts which may qualify a child as one in need of assistance may file a complaint with the local department having proper venue. C.J.P. §3-810 (a); Rule 902 (a). Upon the initiation of the complaint, the local department must conduct a preliminary inquiry within 15 days to determine: (1) whether the court has jurisdiction; and (2) whether judicial action is in the best interests of the public or the child. C.J.P. §3-810 (b). Upon completion of the preliminary inquiry, the local department may do one of four things: (1) authorize the filing of a petition; (2) conduct a further investigation or inquiry into the complaint; (3) propose an informal adjustment of the

matter, or (4) refuse authorization to file a petition. C.J.P. §3-810 (b)(1). If the complaint alleging CINA is brought by the local DSS, the local department shall file the petition without further investigation. C.J.P. §3-810(b)(2).

1. Authorizing the filing of a petition - If the local department concludes that the court has jurisdiction and that the best interests of the public or the child dictate that a petition should be filed, the local department must inform the parties of his decision and of the reasons for his decision, preferably in person. The petition form is set forth in Rule 903. In a CINA case, the petition must allege that the child is a CINA and it should "set forth in clear and simple language the alleged facts supporting that allegation." C.J.P. §3-812 (a). The petition in a CINA case should be prepared and filed by the local department, C.J.P. §3-812 (b), although such petitions are usually prepared by the local Department of Social Services.

2. Further inquiry - If the local department concludes that a further investigation is necessary in order to make the decision whether to authorize the filing of a petition, such further inquiry may be conducted; however, a decision must be made within ten days, unless the court extends the time further. C.J.P. §3-810 (d).

3. Informal adjustment - A third alternative open to the local department is to propose an informal

adjustment. This is utilized when the officer concludes that action short of formal judicial intervention is in the best interest of the child and the public. Of course, a necessary pre-requisite to informal adjustment is the conclusion that the court has jurisdiction. Although informal adjustment, as an alternative intake action, appears to be tailored to delinquency complaints, no such limitation is contained in the Code. If informal adjustment is the proposed alternative, the local department should inform all parties of the nature of the complaint, the objectives of the adjustment process, the conditions and procedures of informal adjustment, and the fact that it is not obligatory. All parties to the proceeding must consent to informal adjustment before the local department can proceed. C.J.P. §3-810 (e). The period of informal adjustment may not exceed ninety days without court extension and, during that period, the child is subject to such supervision as is deemed appropriate by the local department; however, no party can be compelled to attend any conference, produce any paper, or visit any place. C.J.P. §3-810 (f). Informal adjustment is rarely used in CINA matters as the local department must file a CINA petition brought by the local DSS. C.J.P. §3-810(b(2)). Any action short of filing a CINA petition would be taken by the local DSS prior to filing.

4. Refusing authorization to file a petition - If the local department concludes that the court has no jurisdiction, or that neither an informal adjustment nor judicial action is appropriate, he may deny authorization to file a petition. He must inform the complainant of this decision, in writing, using the form contained in C.J.P. §3-810.1, stating the reasons for the decision and the procedures to be followed in seeking a review of the decision. C.J.P. §3-810. In a CINA case, within fifteen days of the denial of authorization, the complainant may submit the complaint to the local department's regional supervisor for review. The supervisor may, within fifteen days after review of the complaint, either support the conclusion of the local department or direct the filing of a petition. C.J.P. §3-810 (i).

The Code is silent regarding the right of counsel for the parties during intake, although C.J.P. §3-821, and Rule 906 (a), establish a right to counsel "at every stage of any proceeding."

G. THE PETITION AND OTHER PLEADINGS

The juvenile court has traditionally operated on a very informal procedural basis with a limited number of pleadings. Most of these pleadings are prescribed by statute and rule, and printed forms are available from the Court. The most critical pleading in the juvenile court is the petition - the charging document of the juvenile justice process - which

signals the formal initiation of proceedings of the court. Rule 903 prescribes that the petition must be in writing and must contain specific information. The petition must allege that the child is in need of assistance and should set forth in clear and simple language the alleged facts supporting the petition. Rule 903, C.J.P. §3-812 (a). The petition should also note services provided by the agency to address the problems alleged. The petition is filed with the clerk of the court and the clerk must maintain a separate docket of juvenile proceedings. Rule 903 (b); Rule 904 (a). The clerk must promptly set the time and place for a hearing before a judge or master. Rule 904 (b).

Unless the court directs otherwise, after the petition is filed the clerk must promptly issue a summons, along with a copy of the petition, to each party except the petitioner and the respondent child alleged to be in need of assistance. Any summons addressed to a parent of a respondent child must require the parent to produce the respondent child on the date and time named in the summons. Rule 904 (c). Delay in effecting services upon, or in giving notice to any parent does not prevent the court from taking any action that justice may require, pending service or notice. Rule 904 (c).

The clerk must also issue a summons for each witness requested by any party following the procedures under Rules 2-510. Rule 904 (d).

H. STUDY AND EXAMINATION OF CHILD, ETC.

Once a petition has been filed, the court may direct the Juvenile Services Administration, or some other designated agency, such as the Department of Social Services, to make a study of the child, his family and environment, and other relevant matters. As part of the study, the child or any parent, guardian or custodian may be required to be examined by a physician, psychologist or other professionally qualified person. C.J.P. §3-818. Rule 905 (a). The report of such a study is admissible at a disposition hearing, but not usually at an adjudicatory hearing. C.J.P. §3-818 (c); Rule 905 (b); but see Rule 905 (c)(2). All counsel have an absolute right to inspect the report prior to its presentation to the court and not later than two days before any hearing at which the results of the examination will be offered into evidence. C.J.P. §3-818 (c); Rule 905 (a)(2). See also, Chapter II for a discussion of pre-disposition reports.

I. DISCOVERY

Although Rule 909 provides for extensive and specific type of discovery in delinquency cases, Rule 909 (b) provides that in CINA cases "the court may, upon good cause shown, pass such orders in aid of discovery, and inspection of evidence as justice may require." There is a continuing duty to make required discovery disclosures and the court has the power to enter any necessary protective orders and to order sanctions for noncompliance with discovery obligations. Rule 909 (a)(8);

Rule 909 (a)(9). As a practical matter, in some jurisdictions compliance with Rule 909 has been obtained through the introduction of an open file policy by attorneys practicing in the juvenile court. This pragmatic result was motivated by the fact that courts liberally direct the provision of reasonable discovery, and by the informality of juvenile court proceedings.

J. THE PRELIMINARY HEARING

Although there is neither statutory nor rule authority for a preliminary hearing in the juvenile court, such a procedure is utilized in various courts throughout the State. For example, the Baltimore City Juvenile Court has declared the purposes of this preadjudication hearing to be:

1. To insure that the parties have notice of the allegations;
2. To advise the parties of their right to counsel and to make any necessary arrangements for legal representation for the respondent/children and the respondent/parents;
3. To insure that the respondents understand their trial rights and the hearing procedure, including the possible consequences of a CINA finding in the event that the case reaches the dispositional stage;
4. To correct any errors in the petition;
5. To prepare the case for trial and to obtain an estimate of the time required for hearing;
6. To schedule the case for hearing within the legally prescribed time limits and to give the parties personal notice of the hearing date.

K. THE ADJUDICATORY HEARING

During the adjudicatory hearing (which is a trial on the

merits), a juvenile judge or master is responsible for determining whether there exists sufficient evidence to find the child is a "Child In Need of Assistance" (CINA).

Since the 1966 Supreme Court case of In Re Gault, 387 U.S. 1 (1967), there has been increased emphasis on assuring procedural due process in the adjudicatory hearing in juvenile court. Responding to the Supreme Court's initiative, the Maryland Code and Rules provide for adjudicatory hearings as the sole means of determining the merits of the allegations included in the (CINA) petition. C.J.P. §3-819 (a); Rule 914 (a). The adjudicatory hearing is distinct (bifurcated) from the disposition hearing. Matter of Roberts, 13 Md. App. 644, 649, 248 A.2d 621 (1971). The CINA adjudicatory hearing is recorded. Rule 910. The juvenile judge or master may exclude the general public and admit only those whose presence is necessary or desirable. C.J.P. §3-812 (e). The relevant aspects of the adjudicatory hearing will be discussed below.

1. Maryland's Statutory CINA Standard

The juvenile court has exclusive original jurisdiction over all children alleged to be a CINA. C.J.P. §3-804 (a). Maryland statutes defines a CINA as one who needs the assistance of the juvenile court because: 1) he is mentally handicapped or is not receiving ordinary and proper care and attention; and 2) his parents, guardians or custodians are unable or unwilling to give proper care and attention to the child and his problems. C.J.P. §3-801 (e). Section 3-801 (e)

further states that a child will not be considered a CINA solely because he is being furnished nonmedical remedial care and treatment recognized by the State law. The term "mentally handicapped child" is defined to include a child who is or may be mentally retarded or mentally ill. C.J.P. §3-801 (p).

Maryland's CINA statute closely resembles that used in the majority of states. The CINA rubric is a recent functional category developed to replace the former specific categories of "dependency," "neglect," and "mental retardation". The legislation is based on the parens patriae doctrine originating in the early English courts of chancery. In the often cited cases of Wellesley v. The Duke of Beaufort, 38 Eng. Rep. 236 (ch. 1827), and Wellesley v. Wellesley, 4 Eng. Rep. 1078 (H.L. 1828), the parens patriae powers gives the court the power to separate a child from a morally unfit parent on the ground that it is the duty of the Crown to see that the child is properly taken care of. Maryland's CINA category was developed on this same premise, and has as its purpose the goal of protecting children. It is exclusively civil. Cf. Woods v. Department of Social Services, 11 Md. App. 10, 272 A.2d 92 (1971), In Re Cager, 251 Md. 473, 248 A.2d 384 (1967).

The adjudicatory stage of the CINA proceeding can serve two valuable functions aside from protecting the child. First, it should act as a screening device for those cases where State intervention is inappropriate. Second, where the

intervention is appropriate, the fact finder should delineate limits on the scope of the intervention through the formulation of clear and specific criteria or standards. For example, the fact finder should clearly define the specific harm to the child and set forth what the parents must do to eliminate that harm.

Many commentators have criticized the broad State standards - Maryland's included - as defining abuse and neglect in vague and general ways. The result of these imprecise standards is an absence of guidance for masters and judges in the adjudicatory hearing, for child welfare employees and attorneys in case investigations and presentations and for the lawyers in defending the child's family.

Various commentators have proposed specific criteria for statutory standards which would clarify and thus limit the circumstances where state intervention is proper. Although not presently contained in Maryland law, this specific criteria which is set forth below may be useful as guidelines in working with abuse and neglect cases. For example, Michael Wald in State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985 (1975), outlined the following specific criteria: 1) requiring a showing of specific harm to a child rather than merely focusing on the condition or situation of a parent; 2) defining the harm with specificity; 3) requiring a showing

that the harm is serious; 4) demonstrating that it is a type of harm for which, in general, the remedy of coercive intervention will do more good than harm, 5) requiring a showing that a harm has already occurred or there is substantial likelihood that it will occur imminently; 6) prohibiting intervention where environmental conditions outside the control of the parents are causing danger to the child; 7) prohibiting intervention based merely on different cultural standards of childrearing; 8) prohibiting intervention where parents take voluntary action to correct a situation of danger to the child; and 9) permitting intervention only after services to correct a danger or situation have been tried and are inadequate or have been offered and refused.

2. Speedy Trial

The adjudicatory hearing must be held within sixty days after the petition has been served on the respondent unless the respondent is in shelter care. In the latter event, the adjudicatory hearing must be held within thirty days from the date on which continued shelter care was ordered, or the respondent must be released. Rule 914 (b). However this time may be extended by the court for extraordinary cause shown. Rule 914(b).

3. Notice of Hearing

Rule 904 (c) provides for the issuances of a summons upon the filing of a petition, in the form prescribed by Form 904-

S. Notice of the time, place, and purpose of any hearing must be given at least five days prior to a hearing, in compliance with Rule 910 (c).

4. Admissions

Rule 907 (a) provides that the "respondent may file a pleading denying or admitting all or any facts alleged in the juvenile petition" and Rule 907 (b) mandates that the court advise the child of the nature and possible consequences of his action if he files a pleading either admitting the petition allegations or indicating an intention not to deny those allegations. These provisions are most relevant in delinquency matters but it would appear that any admission, even in a CINA case, should trigger a specific inquiry by the court into whether such action is knowingly and voluntarily undertaken.

5. Jury Trial

The Supreme Court of the United States, in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), concluded that the due process clause of the Fourteenth Amendment does not constitutionally mandate the right to a jury trial in the adjudicative phase of a state juvenile proceeding. In Maryland, C.J.P. §3-812 (f) and Rule 910 (a) provide that proceedings in the juvenile court shall be tried without a jury.

6. } Continuance and Postponements

The Maryland Rules specifically provide for a continuance

or postponement in two specific situations: first, Rule 908 (c) provides that the court must "grant the parties such continuance as justice may require" if a juvenile petition or other pleading is amended. Second, Rule 909 (a)(9) allows the court to "grant a reasonable continuance," among other options, in a situation where discovery required by Rule 909 has not been afforded. As a general rule, courts are quite lenient in granting continuances in the juvenile court, unless the child is in shelter care. The Court of Special Appeals has reversed the judgments of two juvenile courts due to the improper denial of motions of continuances. In Re Appeal No. 1124 (1974), 27 Md. App. 468, 340 A.2d 338 (1975); Matter of McNeil, 21 Md. App. 484, 320 A.2d 57 (1974).

Generally, when an attorney requests a postponement, it is his responsibility to contact all parties as soon as possible and to call the clerk of the court to arrange the matter be brought to Postponement Court. If necessary, an agreement as to continued shelter care must also be reached. In addition, the clerk should be contacted in order to obtain a new hearing date.

7. Evidence

The Code and rules are silent as to the applicable evidentiary standards in the juvenile court. CINA proceedings are civil in nature and the rules of evidence applicable to civil cases generally would appear to be appropriate. The Code does provide that all hearing shall be conducted in an

informal manner, although there is no specific statement that the rules of evidence will not apply. C.J.P. §3-812 (e).

A complete analysis of the evidentiary problems presented by CINA cases would be unduly lengthy for the purposes of this manual. However, the more persistent problems will be discussed below and counsel is especially directed to the excellent articles contained in the publication Proof of Facts for a discussion of some of these issues with regard to both child abuse and Child of Facts 2d 365; Child Neglect, 3 Proof of Facts 2d 265. See also Note, Evidentiary Problems of Proof in Child Abuse Cases: Why Family and Juvenile Courts Fail, 13 J. Fam. L. 819 (1974).

CINA cases, especially those involving abuse or neglect, present many unique evidentiary problems. For example, the abused or neglected child may be too young or immature to testify or, even if of sufficient age, he may be susceptible to the influence of the abusing or neglecting custodian prior to trial. Also, the child may prefer to remain in his or her home, despite the presence of the abusing or neglecting parent. Siblings of the abused or neglected child may witness the act but be reluctant to testify. Consequently, the trial of an abuse or neglect case will generally involve reliance on three principal sources of evidence: (a) expert testimony of physicians or social workers, (b) demonstrative or physical evidence, and (c) testimonial evidence, frequently of a hearsay nature that can be admitted only through some

exception to the hearsay rule:

The first evidentiary problem that will commonly arise in a CINA case will be the admissibility of the testimony of an expert. The general rule is effectively stated in McCormick's treatise on evidence.

To warrant the use of expert testimony, then, two elements are required. First, the subject of the inference must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman. Some courts emphasize that the judge has discretion in administering this aspect of the rule, and other courts will admit expert opinion concerning matters about which the jurors may have general knowledge if the expert opinion would still aid their understanding of the fact issue. This latter approach emphasizes the true function of expert testimony. Second, the witness must have sufficient skill, knowledge, or experience in the field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth.

McCormick, Evidence, §13 (2d ed. 1972); See also Fabritz v. State, 30 Md. App. 1, 351 A.2d 477 (1976).

Three professional groups most frequently contribute expert testimony in CINA cases. Physicians serve as medical and psychiatric experts, while psychologists interpret psychological test results and provide information regarding emotional adjustment. Depending on his educational background and experience, the social worker may be qualified to testify as an expert regarding sexual abuse, developmental issues in families, psychological correlates of physical abuse and neglect, alcoholism, and mental health. The experienced social worker with a specialized caseload is a particularly valuable source of expert testimony regarding the abused or neglected

child.

A question is often raised concerning the admissibility of expert testimony that results in the statement of an opinion on what is characterized as an "ultimate issue of fact." In a CINA case, this question will mark frequently arise in connection with the contention that a child's injuries or condition resulted from accidental means. The issue becomes whether the medical expert may express his opinion regarding whether such injuries or condition occurred accidentally. The nearly universal trend around the country, and in Maryland, is to permit this type of testimony by a medical witness. Terry v. State, 34 Md. App. 99, 366 A.2d 65 (1976); Mulligan v. State, 6 Md. App. 600, 607, 252 A.2d 476 (1968). A further step has been taken in several jurisdictions in order to allow a medical expert to provide an opinion at trial concerning whether an allegedly abused child was suffering from the so-called "battered child syndrome." An extensive discussion of this problem may be found in the cases of People v. Henson, 33 N.Y. 2d 63, 304 N.E. 2d 358 (1973), People v. Jackson, 95 Cal. Repr. 919, 18 Cal. App. 3d 504 (1971) and State v. Loss, 295 Minn. 271, 204 N.W. 2d. 404 (1973). Maryland courts have admitted testimony on this issue in two cases but without substantial discussion comparable to that found in Henson, Jackson and Loss. See Mulligan v. State, supra; James v. State, 5 Md. App. 647, 650, 248 A.2d 910 (1968). But see Duley v. State of Maryland, 56 Md. App. 275,

1983, where the court held in a criminal child abuse case that an expert pathologist's testimony concerning "Child Battering Profile" (i.e., the type of individual who is more prone to ~~commit~~ child abuse) was erroneously admitted into evidence.

A further question that arises in connection with the testimony by a medical expert concerns the physician-patient privilege. There is no true physician-patient privilege Maryland, although the Maryland Code provides for a privilege regarding communications between patients and psychiatrists/psychologists. C.J.P. §9-109. Interestingly, Maryland is one of the few states with child abuse reporting legislation which not abrogated this privilege as a part of that statute.

Another problem involving the testimony of medical concerns the admissibility of statements made by an abused or

neglected child to an examining physician concerning both present pain the child may feel and the source of any * difficulties the child might have. The causative factor * injuries may have occurred sometime previously and, then * statements regarding such factors would not be admissible * the "excited utterance" exception to the hearsay rule. * admissibility of such statements may be particularly * when, as frequently occurs, the child changes his or * to the causes of the injuries or illness. Consequently, * examining physician's testimony may be the only direct * of the source of the injuries from the child who is in * position to know the truth. McCormick has indicated *

[s]tatements of a presently existing * condition made by a patient to a doctor * treatment are almost universally admitted as * the facts stated, and even courts greatly * admissibility of declarations of bodily * generally will admit statements made under the circumstances. Although statements made to physicians are not likely to be spontaneous, since they are usually made in response to questions, the reliability is assured by the likelihood that the patient believes that the effectiveness of the treatment he receives may depend largely upon the accuracy of the information he provides the physician.

McCormick, Evidence, §292 (2d ed. 1972). See also Comment, Evidentiary Problems in Criminal Child Abuse Prosecutions, 63 Geo. L.J. 257, 269 (1974); Yellow Cab Co. v. Hicks, 224 Md. 563, 168 A.2d 501 (1961); B.T.C. v. Pruitt, 223 Md. 440, 164 A.2d 882 (1960).

McCormick states further:

[t]he exception might be taken one step further to encompass statements made to a physician concerning the cause or the external source of the condition to be treated. In some cases a special assurance of reliability - the patient's belief that accuracy is essential to effective treatment -

also applies to statements concerning the cause, and a physician who view this as related to diagnosis and treatment might reasonably be expected to communicate this to the patient and perhaps take other steps to assure a reliable response On the other hand, when statements as to causation enter the realm of fixing fault it is unlikely that the patient or physician regarded them as related to diagnosis or treatment the greater number of courts probably still adhere to a position requiring the exclusion of any statements related to cause, although the better view would seem to be that statements as to the inception or general nature of the cause should be admissible insofar as they are reasonably pertinent to diagnosis or treatment.

McCormick, Evidence, §292 (2d ed. 1972). A decision of the Illinois Supreme Court dealt with the admissibility of evidence of this nature in a criminal child abuse prosecution, and upheld the admissibility of statements by the victim as substantive evidence of causation. People v. Grant, 58 Ill. 2d 178, 317 N.E. 2d 564 (1974).

A more persistent and common problem is encountered in relation to the admissibility of hospital or other medical records in juvenile court proceedings involving abuse or neglect. Counsel involved in such cases must become thoroughly familiar with medical records in the preparation of his case. Initially, the records should be used for the purpose of acquainting the attorney with the abused or neglected child's injuries or illness and to enable the attorney to question the examining doctor before trial based on the records. Secondly, the records themselves may be admissible as proof of facts at issue in the case. Thirdly, the records may be used for the purpose of refreshing the memory of a testifying physician or

other medical professional without actually introducing the records into evidence. Hospital records will ordinarily contain an admission sheet, an order sheet, temperature charts, x-ray reports, nurses' notes, laboratory tests, progress notes, and a discharge summary or notes. The records may also contain statements made to the physician or nurses concerning the cause of an injury, or a medical opinion or diagnosis as to the nature of an illness or injury.

The threshold problem regarding the admissibility of the medical records may be met by the "business records statute" of Maryland, C.J.P. §10-101, which permits the admission into evidence of a "writing or record made in the regular course of business as a memorandum or record of an act, transaction, occurrence, or event." This statute has been applied to allow the admission of medical records as direct evidence in a criminal case involving child abuse. See Dietz v. Moore, 277 Md. 1, 7-8, 351 A.2d 428 (1976). It is not necessary to call, as witnesses, the persons who made the individual entries in the hospital records; it is only necessary that the custodian of the hospital records, usually the medical records librarian, be called as a witness to lay the foundation for admission of the records. The foundation to be laid will generally consist of showing: (1) from whose custody the record comes; (2) the identity of the record offered as that of the child or patient in questions; (3) the manner of preparing the record, including the sources of the information

recorded and the timeliness, regularity, and accuracy of the recording; (4) that the entries in question were made in the regular course of business; and (5) that the regular course of the hospital's business included making records at or near the time of the act, transaction, occurrence, condition or event recorded. See Hospital Records, 6 Proof of Facts 2d 131. See also Child Abuse - The Battered Child Syndrome, 2 Proof of Facts 2d, 365; Child Neglect, 3 Proof of Facts 2d 265. Reproductions of the original records are equally admissible as the originals. C.J.P. §10-102 (a).

An additional problem involving the admission of hospital records concerns statements contained in those records regarding the cause of injury, and diagnostic opinions. The more complex problem presented by the admissibility of statements in a hospital record relating to the cause of injury is that it is "double hearsay", that is, hearsay statements twice removed from the actual statement of the declarant. The admissibility of such a statement may frequently be determined by the skill of the attorney in demonstrating that the statement was germane to treatment. See generally, Comment, Admissibility of Hospital Records in Evidence, 21 Md. L. Rev. 22 (1961); Bethlehem/Sparrows Point Shipyards v. Scherpenisse, 187 Md. 375, 50 A.2d 256 91946); Marlow v. Cerino, 19 Md. App. 619, 313 A.2d 505 (1974). The diagnostic findings and opinions of the physician and others involved in the treatment of the child will also be

admissible.

The admissibility of demonstrative evidence will also frequently become an issue in the trial of a child abuse or neglect case. For example, it is often useful to have photographs, especially color photographs, of the child at the time of admission to a hospital or at the time the child came to the attention of the authorities. Since the judicial proceeding will usually not take place until quite some time after the discovery of the injuries or the neglect, the physical evidence of such injuries or neglect will have often faded by the time of trial. Consequently, the admissibility of such photographs may be important to a case. The admission of photographs is largely within the discretion of the trial judge and, especially in proceedings in the juvenile court where no jury is present, this discretion will rarely be reviewed and seldom, if ever, overturned. Two criminal child abuse prosecutions in Maryland have resulted in appellate decisions which upheld the admissibility of explicit photographs. State v. Fabritz, 276 Md. 416, 348 A.2d 275 (1975); Dyson v. State, 6 Md. App. 453, 251 A.2d 606 (1968).

X-rays may also be important demonstrative evidence especially in abuse cases. Several precautions should be taken in authenticating the x-ray for admissibility at trial: 1) the x-ray photograph should be identified as being of the child whose condition is in issue: 2) the physical condition of the child should be demonstrated to be the same at the time in

question as when the x-ray was taken; 3) it should be established that the x-ray equipment was in good working condition at the time of the photograph; 4) there should be a demonstration that the person who took the x-ray photograph was experienced; and 5) it should be shown that the manner in which the x-rays were taken was reasonably calculated to result in accuracy. See X-Rays, 11 Proof of Facts 741. If the x-ray is difficult to interpret and is particularly critical to one's case, consideration should be given to having a "positive" produced of the x-ray, since most x-rays are simply negatives which must be shown through a "shadowbox" and which are difficult to interpret without expert commentary.

As previously indicated, an unusually large number of hearsay problems may exist in a child abuse or neglect proceeding in a CINA case because of the non-public nature of abuse and neglect and the youth of the victim. Consequently, certain exceptions to the hearsay rule will be extremely important and useful in such cases. One will be the res gestae, or excited utterance, exception to the hearsay rule. McCormick has characterized this exception in the following terms:

Formulations of the exception differ, but all agree on two basic requirements. First, there must be some occurrence or event sufficiently startling to render normal reflective thought processes of an observer inoperative. Second, the statement of the declarant must have been a spontaneous reaction to the occurrence of the event and not the result of reflective thought.

McCormick, Evidence, §297 (2d Ed. 1972). Several Maryland

cases have upheld the admission into evidence of statements by children made within a few hours after the event in questions. In Saldiveri v. State, 217 Md. 412, 143 A.2d 70 (1957) the court approved the admission of a statement made by an eight-year-old a few hours after the event, and a similar statement was approved when made by a child three-and-one-half years old within hours after the event in Moore v. State, 26 Md. App. 556, 338 A.2d 344 (1975). However, in Harnish v. State, 9 Md. App. 546, 266 A.2d 364 (1970) the court held that the statement of five-year-old, about eleven days after the incident in question, was inadmissible. See also Deloso v. State, 37 Md. App. 101, 376 A.2d 873 (1977). In Smith v. State, 6 Md. App. 581, 252 A.2d 277 (1968), a four-year-old's statement four to five hours after the event was held admissible under the res gestae exception; and in Reckard v. State, 2 Md. App. 312, 234 A.2d 630 (1967) the statement of a six-year-old child "immediately" after the event was admissible. Maryland also adheres to the general rule that spontaneous declarations made by a child who may himself be incompetent to testify, but which are made to a competent witness, will be admissible. Moore v. State, supra.

In addition, prior inconsistent statements of a witness, including a child who has changed his version of what has occurred, may be admissible as substantive evidence. See Comment, "Evidentiary Problems in Criminal Child Abuse Prosecutions," 63 Geo. L. J. 257, 267 (1974). Most

jurisdictions will only permit the use of a prior inconsistent statement for impeachment purposes but a strong argument can be made for utilizing a more liberal rule in child abuse cases. See Mulligan v. State, 6 Md. App. 600, 252 A.2d 476 (1968). Also, a declaration made by the abusing parent against his interests may be admissible against him. Dyson v. State, 6 Md. App. 453, 456 251 A.2d 606 (1968); Mulligan v. State, supra. In Dyson, the court further held that evidence of the abusing parent's flight was admissible, as well as evidence of his instructions to his wife to lie.

A further evidentiary problem concerns the competency of a child to testify as a witness. At common law a child under fourteen was presumed to be incompetent as a witness, and a child of fourteen or over was presumed to be competent. However, this precise dividing line is no longer widely accepted. The most relevant considerations now will be whether the child has sufficient mental capacity to receive an accurate impression, sufficient memory to hold that impression, sufficient capacity to understand simple questions about the impression, and the capacity to articulate the impression. It is also said that the child must understand the nature and obligation of an oath. The following cases have approved the admissibility of testimony by children with ages in the parentheses following the case citations - Horsey v. State, 225 Md. 80, 169 A.2d 457 (1960) (11); Robert v. State, 220 Md. 159, 151 A.2d 737 (1958) (12); Saldiveri v. State, 217

Md. 412, 143 A.2d 70 (1956) (9); Jones v. State, 11 Md. App. 468, 275 A.2d 508 (1971) (12); Williams v. State, 11 Md. App. 350, 274 A.2d 403 (1971) (8); Jacobs v. State, 6 Md. App. 238, 251 A.2d 33 (1968) (6); Boswell v. State 5 Md. App. 571, 249 A.2d 490 (1968) (10); Rodgers v. State, 4 Md. App. 407, 243 A.2d 28 (1968) (11); White v. State, 3 Md. App. 167, 238 A.2d 278 (1968) (8, 10); Reckard v. State, 2 Md. App. 312, 234, A.2d 630 (1967) (6). The courts also frequently permit leading questions to be directed to a child witness. Boswell v. State, supra.

Another critical evidentiary issue involves the admissibility of prior acts of abusing parents. Family Law Art. §5-911 provides for a central registry of child abuse reports. A number of Maryland cases have discussed, and allowed, the admissibility of evidence relative to prior incidents of abuse or neglect by the custodians of a child. See e.g., United States v. Woods, 484 F.2d 127 (4th Circ. 1973); Fabian v. State, 235 Md. 306, 318, 201 A.2d 511 (1963); Palmer v. State, 223 Md. 341, 164 A.2d 467 (1960); Wood v. Department of Social Services, 11 Md. App. 10, 272 A.2d 92 (1971); Dyson v. State, 6 Md. App. 453, 251 A.2d 606 (1968); Mulligan v. State, 6 Md. App. 600, 605, 252 A.2d 476 (1968).

Additional problems may arise regarding the admissibility of other documents, the laws of other jurisdictions and various public records. Attorneys are often faced with efforts to admit marriage licenses, birth certificates, and death

certificates. C.J.P. §10-202 governs the admissibility of foreign statutes and, C.J.P. §10-203 deals with the admission of ordinances, regulations and resolutions of local governments. C.J.P. §10-204 governs the admissibility of a public record if certified as a true copy by a custodian while C.J.P. §10-205 relates to certain exceptions to the general provisions of §10-204, including confidential information. C.J.P. §§10-501 et. seq. provide the basis for the court to take judicial notice of foreign laws.

The only testimonial privileges provided by law in Maryland are the attorney-client privilege, C.J.P. §9-108, the patient psychiatrist or psychologist privilege, C.J.P. §9-109, the privileged communications between an accountant and client in non-criminal proceedings, C.J.P. §9-110, the clergyman-penitent privilege, C.J.P. §9-111, and the newsman's privilege, C.J.P. §9-112. The Maryland Code also provides for the confidentiality of any communications between spouses of a person charged with a crime may not be compelled to testify as an adverse witness "unless the charge involves the abuse of a child under eighteen." C.J.P. §9-106.

A discussion was set forth previously regarding the qualification of a medical professional as an expert witness. Consideration should also be given to the qualification of other expert witnesses in appropriate cases, including psychologists and social workers. In a neglect case, as opposed to a physical abuse case, the qualification of an

experienced social worker as an expert witness to testify regarding the rearing of a child may be a particularly useful tool. See Bernstein, "The Social Worker as an Expert Witness," Social Casework 412 (July, 1977).

Obviously, this discussion of evidentiary problems in CINA cases is far from exhaustive, but an effort has been made to highlight the problems that will most frequently arise in such proceedings. Reference may be made to general treatises on the law of evidence, and a useful tool in Maryland is the Committee on Continuing Legal Education, Reference Handbook for Evidence (1972), published by the Maryland State Bar Association. More specific and detailed discussions may be found in Child Abuse - The Battered Child Syndrome, 2 Proof of Facts 2d 365; Child Neglect, 3 Proof of Facts 2d 265; Comment, Evidentiary Problems in Criminal Child Abuse Prosecutions, 63 Geo. L. J. 257 (1974); Comment, Evidentiary Problems of Proof in Child Abuse Cases: Why Family and Juvenile Courts Fail, 13 J. Fam. L. 819 (1974); Brown, Fox & Hubbard, Medical and Legal Aspects of the Battered Child Syndrome, 50 Chi.-Kent L. Rev. 45 (1973).

8. The Judge's Interview of a Child in Chambers

Since 1973, in three separate cases the Maryland Court of Special Appeals has approved the judges interviews of children in chambers, and out of the presence of the parties and their attorneys, as a proper means for lessening the possible adverse psychological impact of the trial upon the child.

Shapiro v. Shapiro 54 Md. App. 477, 480 (1983), Nutwell v. Prince George's County D.S.S. 21 Md. App. 100 (1974), and Marshall v. Stefanides, 17 Md. App. 364 (1973). The manner of conducting an in camera interview of a child is described in Marshall v. Stefanides, 17 Md. App. 364 (1973).

"...We believe that a Chancellor's interview of a child in a custody case out of the presence of the parties to be proper, in the discretion of the court, with or without the consent of the parties, and with or without the presence of counsel.

In all cases, unless waived by the parties, the interview must be recorded by a court reporter. Immediately following the interview its content shall be made known to counsel and the parties by means of the court reporter's reading of the record of that interview to them. In so holding, we share the view of some jurisdictions that a trial judge should be allowed to conduct an in camera interview with the child or children to the exclusion of the litigants or counsel, if some means of appellate review of the interview is available. We, however, add the requirement that the court reporter shall make known immediately to the parties and counsel the content of the interview [unless waived]. This should be done sans the presence of the child or children."

Marshall v. Stefanides at 370.

9. Burden of Proof and Sufficiency of Evidence

C.J.P. §3-819 and Rule 914 (e) provide that the allegations in a CINA case must be proved by a preponderance of the evidence. Woods v. Department of Social Services, 11 Md. App. 10 (1971). The sufficiency of the evidence is to be tested on appeal in precisely the same way as in other cases. The "judgment of the lower Court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility

of the witnesses." Rule 886, Rule 1086.

10. Presence of Respondent

Rule 910 (b) provides that the child may be temporarily excluded from CINA proceedings where the court finds such absence to be in the best interest and welfare of the child. This exclusion of the child in a CINA case should be exercised with great caution as courts and counsel are sometimes too hasty to have the children excluded from the proceeding.

11. Medical Care

A child in need of medical care which is not being provided by his parents or custodian may be considered a child in need of assistance by the courts. Under C.J.P. §3-822 the "court may order emergency medical, dental, or surgical treatment of a child alleged to be suffering from a condition or illness which, in the opinion of a licensed kin or dentist... requires immediate treatment," if the parents or custodian are unavailable or refuse to consent to the treatment without good cause. Similarly, the Child Abuse & Child Neglect Acts provide that a physician licensed to practice medicine in Maryland who has, in his custody, a child believed to be abused or neglected may provide immediate medical treatment for that child "with or without the consent of a parent, guardian or custodian of said child" and the physician is deemed to be immune from any civil liability or criminal penalty. Family Law Article §5-712 (b) and §5-712 (d), provides the authority for a physician to examine the

child with or without the consent of the parent without any civil liability. See also Proctor, Consent to Operative Procedures, 22 Md. L. Rev. 190 (1962); Goldstein, Medical Care for the Child at Risk: On State Supervention of Parental Autonomy, 86 Yale L.J. 645 (1977).

12. Court's Witness

In Draper v. Draper, 39 Md. App. 73, 382 A.2d 1095 (1978), the court held that when the court orders the preparation of a report by either a social worker or other juvenile officer, the reporting person should be called as the court's witness. This witness is then subject to cross-examination by all parties.

13. Settling the Case

A large number of CINA cases are settled before or at the adjudicatory hearing. Counsel for the parties are frequently able, after thorough investigation and preparation, to negotiate an agreement. This settlement may involve all parties agreeing to a statement of facts that will support a CINA finding, and thus obviate the need for a contested adjudicatory hearing. The judge or master may then approve the Stipulations.

L. THE DISPOSITION HEARING

1. The Purpose of Disposition

The disposition hearing has been described as the "heartbeat" of the juvenile justice process. Sections 3-802 and 3-820 clearly demonstrates that the emphasis of the

Juvenile Causes Act is on disposition, and that the focus of disposition is the best interests of the child and the protection of the public interest. Specifically, the disposition hearing is a proceeding to determine: 1) whether the adjudicated child "needs or requires the court's guidance, treatment or rehabilitation; and, if so, 2) the nature of the assistance, guidance, treatment or rehabilitation." C.J.P. §3-801 (n). When making these determinations the court must decide the child's physical legal status. This involves determining where the child will reside and who will have responsibility and control over the child, i.e. custody. Also, the court must decide what rights and obligations to place upon the parties. Finally, the court needs to address what services are needed for the child and/or the family to prevent removal or to facilitate reunification.⁶

2. Pre-Disposition Investigation and Report

After a CINA petition has been filed, the court may direct a qualified agency (DSS) to make a study concerning the child, his family, and environment, and other matters relevant to the disposition of the case. C.J.P. §3-818. Even if the court does not direct the agency, it would be good practice for the local department to make such a written report. This pre-disposition report can be an important tool in making dispositional decisions. It can assist the agency, the parties, and the court to arrive at a plan so that children

⁶CJ § 3-820

are not unnecessarily removed from their parents or, in the alternative, are returned home quickly. The report should act to focus the issues to be addressed at disposition. It should document those efforts the agency has made to prevent placement, and flesh out alternatives available for the child so that the fact finder is aware of these alternatives at disposition. As a guide, the following information should be included in the report:

- a. the problems which originally required court intervention;
- b. the appropriate services needed for the family to prevent the child's removal or to reunify the family after removal;
- c. which services are inappropriate and why;
- d. What services were provided?
 - (1) Were they sufficient to meet the child's and family's needs so as to prevent removal? if not, why?
 - (2) If services were not provided, the reasons why?
 - (3) The need for, or appropriateness of, continuing such services if the child remains in the custody of the family or if the child is placed outside the home.
- e. discussion of alternatives, such as leaving the child at home, placement with friends or relatives, and placement through an agency;
 - (1) The services which are needed to support each of the alternatives should be identified, along with any barriers through an agency;
- f. an estimate of the time needed to achieve the goals of intervention;
- g. If removal of the child is recommended, there should be an explanation of:

- (1) the reasons the child cannot be protected adequately in the home;
- (2) previous efforts to work with the parents and the child in the home;
- (3) the in-home treatment programs and home-based services which have been considered and rejected;
- (4) harms the child will likely suffer as a result of removal, including a discussion of the nature of the parent-child attachment and the likely impact of separation and loss on both the parents and the child; and
- (5) steps that will be taken to minimize the harm to the child that may result when separation occurs, including, but not limited to, visitation arrangements, continued contact between parent and child, and continued use of familiar objects (such as toys and furniture) by the child.

The pre-disposition report is not a substitute for a hearing. It exists within an adversarial structure and within that framework it can serve to focus the parties and the fact finder on the issues to be considered at disposition. It should, like any evidentiary document, go through the scrutiny provided by the adversarial process. Maryland law provides that the report is admissible at disposition and that the attorney for each party has the right to inspect the report prior to its presentation to the court, to challenge or impeach its finding and to present appropriate evidence with respect to it. C.J.P. §3-818 (c). More specific recommended procedures regarding the report include the following:

- a. The report should be provided to the parties and their counsel well in advance of the hearing;

b. The report should specify not only the preparer but also the source of any information contained in the report;

c. The report should not be presented to the court prior to the hearing, except by agreement of all parties;

d. If presented to the court at the hearing, the report should be subject to all normal evidentiary objections. The only exception that might be allowed is one that specifies that the report may not be considered hearsay if the preparer of the report and all the individuals who have provided any information contained in the report have been identified and are available for cross-examination if subpoenaed by any party.

These procedures will help to ensure the accuracy and reliability of the information in the report and offer the parents and the child the right to confront and cross-examine anyone whose information they contest.

It is crucial to keep in mind that the report is not a substitute for a case plan. The report is the product of the agency. It may include the child's case plan, if available, but this case plan should be treated as a proposal of the agency. The actual case plan should be a joint effort of all the parties.

3. Procedural Requirements of Disposition

a. Time and Manner of Disposition

Dispositions, like all hearings under the Juvenile Causes Act, should be conducted in an informal matter. C.J.P. §3-812 (e). Under Maryland Law, dispositions must be separate from the adjudicatory hearing unless waived by all parties in writing. C.J.P. §3-820 (a). The principal reason for this

bifurcated process is to allow the introduction of evidence at disposition that is not admissible at adjudication.

The disposition may be held on the same day as adjudication if the five day notice requirement is waived on the record by all parties. C.J.P. §3-820 (a) Rule 910 (c). The disposition must be held no later than thirty days after the conclusion of the adjudication. Rule 915 (a). However, dismissal does not result if the disposition is not held within that time period.

b. Parties

A party is:

- a child who is the subject of a petition
- the child's parent, guardian or custodian
- the petitioner
- an adult who is charged under § 3-831 of this subtitle

C.J.P. §3-801 (g)

Upon timely application, any person, other than a parent, seeking custody or guardianship of the child may be permitted to intervene for the purposes of disposition. Rule 922 (b). In cases where a child has been in voluntary foster care, and the agency later files a CINA petition, the foster parent should file a Motion to Intervene if interested in having custody or guardianship of the child. See Appendix VIII for a sample Motion For Leave to Intervene.

c. Right to Counsel

All parties have a right to counsel at the disposition hearing C.J.P. §3-821. Usually the agency is represented by the County Solicitors office or their own counsel, parents are represented by the Public Defenders Office, and the child by the Legal Aid Bureau or the Maryland Disability Law Center (MDLC). See Chapter IV for a discussion of the role of counsel.

d. The Hearing

The Disposition hearing may be held in open court or in chambers. Rule 910 (b). It is held without a jury, and it must be recorded. Rule 910 (a). The court can close off the hearing to all but those persons whose presence is necessary or desirable. Rule 910 (b). The court may also exclude the child from the hearing if it finds that this would be in the child's best interest. Rule 910 (b).

e. Notice

Parties must be served with written notice of the time, date and purpose of the hearing together with a copy of the petition or any other pleading, at least 5 days prior to the hearing Rule 910 (c).

f. Rules of Evidence

Rules of Evidence are relaxed at disposition, with matters ordinarily not admissible being permitted. That which can be admitted into evidence includes:

- pre-disposition report (after inspection by

counsel)

C.J.P. §3-818

- statements made during informal adjustment or in the preparation of the study, which are inadmissible prior to and during the adjudicatory hearing. C.J.P. §3-811.

g. Burden of Proof

A dispositional hearing is a civil action, and thus the appropriate standard is the preponderance of evidence.

4. Dispositional Alternatives

The Maryland Juvenile Causes Act confers a generalized power on the juvenile court to tailor a disposition to fit the needs of the child and society. C.J.P. §3-820 (b) provides that "the priorities in making a disposition are the public safety and a program of treatment, training, and rehabilitation best suited to the physical, mental, and moral welfare of the child consistent with the public interest." In accordance with the stated purpose, the court may:

- a. Place the child on probation or under supervision in his own home or in the custody or under the guardianship of a relative or other fit person, upon terms the court deems appropriate;
- b. Commit the child to the custody or under the guardianship of the Juvenile Services Administration, a local department of social services, the Department of Health and Mental Hygiene, or a public or licensed private agency; or
- c. Order the child, parents, guardian or custodian of the child to participate in rehabilitative services that are in the best interest of the child and the family. C.J.P. §3-820 (c).

As noted, the court has several dispositional alternatives. The first and most important decision is whether

to remove the child from the home of his natural parents.

a. Standards for Removal

The Maryland statute controlling disposition does not specify a standard for removal. However, a consistent line of court decisions has articulated the presumption

"that the primary right to rear and nurture a child rests in its parents and not in the state, and it is only under the most extraordinary circumstances that a parent may be divested of that right and custody of a child placed in the hands of others."

This strong policy is reinforced by both state and federal law. In Maryland, one of the express purposes of the Juvenile Cause Act is to "conserve and strengthen the child's family times and to separate a child from his parents only when necessary for his welfare or in the interest of public safety." C.J.P. §3-802 (a)(3).

Reaffirming this policy, the Court of Special Appeals in a recent case stated that "the fear of harm to a child or to society to justify removal must be a real one predicated upon hard evidence; it may not be simply gut reaction or even a decision to err-if-at-all, on the side of caution. To implement this standard, the court stated that judges should clearly explain their reasons for removing a child from his home, and that their findings of fact should expressly support their reasons. This case simply articulates the requirement in Rule 915 (b) that if the disposition order includes placement of the child outside the home then the reasons for the placement must be stated in open court and in a statement

filed with the court.

Under the federal Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §670 et. seq., there is a requirement that in state court proceedings authorizing removal of a child from home, there must be a judicial determination that continuation within the home would be contrary to the child's welfare.⁷ In addition, there must also be a judicial determination that reasonable efforts were made, a) prior to placement to prevent or eliminate the need for removal, and b) to make it possible for the child to return home.⁸ See Chapter I for a discussion of reasonable efforts.

Given the strong presumption in both Maryland and federal law that a child should remain at home, removal should be prohibited unless:

1. the child is in continuing danger from the specific harm, or risk of harm justifies intervention; and,
2. the agency can show that the child could not be protected from the specific harm while remaining at home; and,
3. the agency can show that the child could not be protected in the home even with the appropriate services within the home.

In addition, where removal is necessary, the agency should show that there is an alternative appropriate placement

⁷42 U.S.C. § 670 et. seq.

⁸42 U.S.C. § 670 et. seq.

available, so that one bad situation is not substituted for another.

The factors which should be examined when deciding whether or not to remove a child from their home include:

1. Age of child: The younger the child, the less capable of self protection.
2. Physical and Mental Ability of Child: Again, the child's level of functioning impacts on ability to protect his/herself.
3. Level of Cooperation of Caretaker: Does the caretaker recognize that there is a problem? Will he or she work with Social Services to correct it?
4. Physical/Mental/Emotional Abilities of Caretaker: Is the caretaker capable of caring for the child?
5. Circumstances Surrounding Maltreatment: Is the problem due to lack of knowledge on the caretaker's part or an intentional desire to harm the child? Is the incident of abuse or neglect an isolated incident or a repeated occurrence?
6. Access to Child by Perpetrator: If child remains home will the caretaker be able to protect the child from the person(s) causing the problem?
7. Extent of Permanent Harm to Child: What is the effect of the abuse/neglect on the child?
8. Conditions of the Child's Home: Is the home safe?
9. External Support for Caretakers: Do the caretakers have a support system (neighbors, family, etc.) or are they isolated from the community?
10. Prior Agency/Court History: Has the family previously been involved with the court or a social service agency due to a child related problem? If so, what was the family's involvement with the system?
11. Stress in Family: Is there instability, unemployment, serious illness, spousal abuse, or substance abuse?
12. Preventive Services: With services to the family, could the child safely remain in the home?

b. The Physical Placement and Assignment of Care and Control of the Child.

Under Federal and State law, the child must be placed in the least restrictive setting possible. Beginning with the least restrictive placement, the alternatives are:

1. Leaving the child at home:

a. Leaving the child in the home with the normal custodian;

b. Leaving the child in the home, subject to an order under Courts Art. §3-827 controlling the conduct of any person before the court;

c. Leaving the child in the home under certain conditions of protective supervision;

d. Leaving the child in the home under the supervision of an appropriate public agency;

e. Leaving the child in the home while ordering participation in rehabilitative services;

f. Placing the child in the custody or under the guardianship of a relative or other fit person;

- depending upon the situation, this disposition may require the child's removal from home;

- also, a guardian appointed under this section has no control over the child's property unless he receives this express authority from the court.

g. Committing the child to a public agency with placement in the child's home with his/her normal custodian; (note that commit simply means to transfer legal custody) C.J.P. §3-801 (h)

2. Removing the child from the home:

a. Committing the child to a public agency with placement outside the home in a foster home or other similar location;

b. Committing the child to a licensed private agency.

- this option may or may not require removing the child from home.

c. Committing the child to a public agency with placement of the child in an institution.⁹

d. Granting guardianship to a relative or other fit person, under terms the court deems appropriate.

3. The respective rights and responsibilities of the various parties under these options:

a. The Rights of the Custodian and The Natural Parent

Parties given custody of the child have the right to determine where the child lives and the right to make short-term decisions on behalf of the child regarding such things as food, clothing, shelter, "ordinary" medical care and discipline. The natural parent retains all other rights and responsibilities for their child. The natural parent also has the right to participate in decisions regarding the child's placement, and the right to receive services from the Department with the goal of enabling the natural parents to resume their parental responsibilities. COMAR 07.02.11.03.A. and B. The natural parents also have the right to visit the child regularly as planned with the department, the right to determine the religious affiliation of the child and the right to be involved in major changes in the life of the child. (i.e. change in placement plans, hospitalization for surgery or illness, marriage, entry into armed forces). COMAR

⁹C.J.P. 53-820 (h) and 53-820 (f) delineate specific and stringent guidelines for placing a child in a state mental hospital. These code sections should be reviewed carefully when a CINA case involves allegations of a mental handicap.

07.02.11.03. [NOTE: When DSS has custody, the term commitment is usually used. Parties having custody usually have the right to determine where the child lives unless the court in its order specifies where the child will be placed.]

b. The Rights of The Guardian and the Natural Parents

Parties given guardianship of the person have the right to make major decisions for the child (i.e. medical care, release of information, marriage). The natural parents retain residual rights such as the determination of the child's name and religion, the right to consent to adoption, the right to inherit from the child, the obligation to support the child, and the right to visit the child.

c. Services to Meet the Needs of the Child and the Family

Many children and families involved in abuse and neglect cases will need extensive educational, psychological, medical and social services. As part of the disposition hearing, treatment plans for the child and the family should be developed. These plans can be incorporated into the disposition orders. Often the services the child will need may be available from agencies other than the Department of Social Services. For example, if the child needs a residential program to meet his special education needs, the department of education should be jointed as a necessary party for the disposition hearing.

In cases where the child and family remain together under

an Order or Protective Supervision the disposition order should list the services which will be provided to the family, the responsibilities of the child, parent and agency and a mechanism for monitoring that these services and responsibilities are being followed.

For children in foster care, a case plan must be developed which details the services the child will receive. Also, parents have a right to receive services to facilitate reunification, COMAR 07.02.11.03.A. and B., and these services should be listed in the case plan. A copy of the case plan can be attached to the disposition order or the key elements of the case plan can be incorporated into the disposition order. See Chapter III for a more detailed discussion of the Courts power to order services.

d. Dispositional Findings and Orders

Dispositional findings provide the groundwork for future review of the child's case and can function to immediately focus the parties and the court upon the ultimate goals of permanency planning and family reunification.

Set forth below is a list of the major areas that the findings and order should cover.

1. The findings and dispositional order should include a statement which describes the problems which originally justified the court's intervention within the family. Specific problem targeting in the dispositional findings will facilitate the selection of effective services to prevent the child's removal or hasten the family's reunification.

2. If the child is to remain with the family under protective supervision, the findings and order should

include a detailed list of services the family will receive and the specific obligations of the parents and the agency and the child.

3. If the child is to be removed from the family the findings and order shall include:

a. a determination that continuation within the home would be contrary to the child's welfare;¹⁰ and

b. a determination that reasonable efforts were made to prevent or eliminate the need for removal.¹¹ (this requires documentation of services offered, whether parents availed themselves of the offered services; did the agency actually provide services, and why the child cannot be protected in the home even with appropriate services.)

c. a detailed statement of reasons why placement outside of the home is necessary. Rule 915b.

d. a specific placement order. This enables the attorney for the child to know exactly where the child will be placed and requires the agency to come back to court if they wish to change the child's placement.

e. an order that the agency inform the court and counsel for the parties the name of the worker responsible for the case by a set date.

f. a clear case plan or in the alternative, an order that the parties will negotiate and submit a case plan to the court or appear for a hearing if they cannot agree. The case plan should clearly state the permanency plan, and the necessary tasks to meet the permanency goal. It should also include provisions provided to the child, the parents and the obligations to the child, the parents and the obligations of all parties. (See Chapter III for a more detailed discussion of case plans.)

(1) It is important that the case plan be developed as part of the original disposition order, so that at the citizen and court reviews, determinations may be made as to how

¹⁰ Social Security Act §472 (a)(1), 42 U.S.C.A. §672 (1983).

¹¹ Social Security Act §671 (a)(15), 42 U.S.C.A. §671 (a)(15) (1983).

the parties have progressed under the plan, and a decision as to the permanent plan of the child may be made.

(2) It is also important for the court to oversee the case planning process, since the court will ultimately have to decide whether the obligations enumerated in the plan have been met. Consequently the court should insure that a plan is in fact developed by the agency, and that the parents and age appropriate children have been given the opportunity to be involved in the planning process. The Court should also make certain that parents (1) are aware of their right to consult with counsel in the process, (2) that children are represented by counsel; and (3) that the parties are aware of their right to petition the court or request a fair hearing if the plan is unsatisfactory or if services promised by the agency are not forthcoming.¹²

g. An order that the agency inform the court and counsel for all parties if it cannot provide services previously agreed upon, or if it proposes to make changes in visitation plans or placement.

h. An order that the agency provide counsel with copies of case plans, service agreements, etc.

i. An order that the agency send a copy of its pre-review report to the parties and counsel prior to the review hearings.

The more structured and well thought out the findings and order are, the more effective and focused the child's placement and subsequent reviews become. Permanency planning envisions that efforts will be made to reunify the child with the family, or to release the child for adoption, if that is appropriate. Incorporating certain provisions into the dispositional order will ensure that important decisions as to case plan, placement and visitation are made early, giving all

¹²See, CONAR 07.02.11.03 5B(e) and (3)(d).

parties a clear framework for review and decision making.

M. INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

The Compact, Family Law Article §§5-601-611, was enacted by the Maryland General Assembly in 1975 to provide an orderly procedure for the placement of children in facilities outside the boundaries of the state, except those "caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility." Family Law Article, §5-603(4). This statute provides the means for a public agency in the "sending state" to place a child in foster care or in a pre-adoptive home in a "receiving state" after furnishing the counterpart public authorities in the latter state with written notice of the agency's intentions. The notice must contain: 1) the name, date and place of birth of the child; 2) the identity and addresses of the person, agency or institution with which the child is to be placed; and 4) a full statement of the reasons for the actions and evidence of the authority pursuant to which the placement is to be made. Family Law Art. §5-604(b). The placement cannot be made until the appropriate authorities in the receiving state have notified the sending agency in writing that the proposed placement does not appear to be contrary to the interests of the child.

The sending agency retains jurisdiction over the child for the purpose of determining all matters relative "to the

custody, supervision, care, treatment and disposition of the child" Family Law Article §5-606. That agency will also retain financial responsibility for support and maintenance of the child. The principal intent of the Compact is to avoid making blind placements in other jurisdictions without first insuring the appropriateness of the placement.

N. APPEALS AND COLLATERAL ATTACK

Where the CINA hearing is held before a master, the findings, conclusions and recommendations made by the master do not constitute the order or final action of the court. C.J.P. §3-813(d); Rule 911 (a)(2). Hearings before a master are "recorded by stenographic notes or by electronic, mechanical or other appropriate means," and within ten days after the conclusion of the disposition hearing the entire file on the case must be transmitted to the judge, along "with a written report of the proposed findings of fact, conclusions of law, recommendations, and proposed orders with respect to adjudication and disposition." C.J.P. §3-813(b); Rule 910(a); Rule 911(b). A copy of the master's report and proposed order must be served on each party. C.J.P. §3-813(b); Rule 911(b).

Within five days of such service upon a party, written exceptions may be filed by any party, specifying the basis of the Exceptions and electing whether the hearing before the judge will be de novo or on the record. C.J.P. §3-813(c); Rule 911(c). See Appendix I at for Sample Exceptions. A copy of the Exceptions must be served on all of the parties and the

court must thereafter schedule a prompt hearing on the Exceptions. Rule 911(c). The hearing before the judge on the Exceptions must be limited to the matters to which Exceptions were taken. Any excepting party may elect a hearing de novo or on the record except if the state is the excepting party in a delinquency proceeding. C.J.P. §3-813(c). Rule 911(c).

In the absence of the filing of timely and proper Exceptions, the juvenile court may treat the master's proposed findings of fact, conclusions of law and recommendations as final. The court may either adopt them, adopt them and enter an order other than that proposed by the master, remand the case to the master for further hearing, or the court may, on its own motion, schedule and conduct a further hearing. Rule 911(b). A commitment recommended by the master after a disposition hearing is subject to approval by the court but the commitment may be implemented prior to court approval. Rule 915(b).

Once the judge has issued a final order, Maryland law provides for an appeal as a matter of right from any proceeding in the juvenile court, C.J.P. §12-301.¹³ The procedural steps to be taken in an appeal from the juvenile court are identical to those in other proceedings although the rules provide for the preservation of anonymity and confidentiality by precluding the use of the name of the child

¹³C.J.P. §3-832 provides for appeals from the District Court for Montgomery County sitting as a juvenile court as though they were from a Circuit Court.

in the appellate proceedings. Rule 897; Rule 1097. An appeal from a juvenile court judgment will not operate to stay the judgment from which the appeal is taken, nor will it operate to discharge the juvenile from his custodial commitment. However, a stay may be obtained from the appellate court. C.J.P. §12-701(b). Any party has a right to appeal the judgment of the juvenile court.

Distinct from the appellate process, the order of a juvenile court may be attacked collaterally. The court itself has the power under Rule 916 to modify or vacate a prior order if deemed "to be in the best interests of the child or the public." Also any party may petition the court to modify or vacate its order. Rule 916(b). See Appendix III for Sample Petition for Review of Court Order. Additionally, habeas corpus would appear to be an available procedure for collaterally attacking a juvenile determination. See C.J.P. §§3-701 through 3-706. See Chapter III for a discussion of post disposition review procedures.

THE COURT-APPOINTED SPECIAL ADVOCATE PROGRAM (CASA)

On July 1, 1989 a new law took effect in Maryland which created an additional notice for the child. Found in the Maryland Code under Courts and Judicial Proceedings § 3-834.1 it addresses appropriate case planning and services for children in court (see below).

§ 3-834.1. Court-Appointed Special Advocate Program.

(a) Definitions -

(1) In this section, the following words have the meanings indicated.

(2) "Advocate" or "C.A.S.A." means a Court-Appointed Special Advocate.

(3) "Program" means a court-appointed special advocate service that has been established in a county or Baltimore City with the support of the juvenile court for that jurisdiction for the purpose of providing trained volunteers appointed by the court to:

(i) Provide the court with background information to aid the court in making decisions in the child's best interest; and

(ii) Ensure that the child is provided appropriate case planning and services.

(b) In general -

(1) There is a Court-Appointed Special Advocate Program.

(2) The purpose of the Program is to provide volunteers whose primary purpose is to insure that children who are the subject of this proceeding are provided with appropriate service and case planning that is in their best interest.

(3) The Program shall be administered by the Administrative Office of the Courts.

(4) The Administrative Office of the Courts shall report annually to the Chief Judge of the Court of Appeals and,

subject to § 2-1312 of the State Government Article, to the General Assembly regarding the operation of the Program.

(5) The Administrative Office of the Courts may adopt rules governing the implementation and operation of the Program including but not limited to training, selection, and supervision of volunteers.

(c) Funding -

(1) The Governor may include funds in the budget to carry out the provisions of this section.

(2) Any State funds available for this Program shall be allocated to the counties on a 50 percent cost sharing basis.

(d) Liability - An advocate or a member of the administrative staff of the Program is not liable for acts or omissions in providing services or performing duties on behalf of the Program, unless the act or omission constitutes reckless, willful, or wanton misconduct or intentionally tortious conduct. (1989, ch. 641.)

CASA programs at this time (1991) exist in Montgomery County, Baltimore City, Washington County, Howard County and Talbot County.

Baltimore City's CASA Annual Report (1989-90) reflects the enthusiasm demonstrated by the unpaid volunteers engaged in the program. The following information was reprinted with the permission of the CASA programs to show the involvement of the community and to encourage other jurisdictions to establish their own CASA program.

PROGRAM ACTIVITIES

ACCP - In 1989, CASA of Baltimore expanded its program to include Advocates for Children in Criminal Court Proceedings (ACCCP). Through this program, CASA volunteers provided assistance to 15 children who were victims of sexual abuse. The efforts of the volunteers contributed to the child's positive emotional adjustment

by providing support through concrete services. These activities help to alleviate the child's discomfort around unfamiliarity with courtroom proceedings.

Court School - The Assistant Director of CASA, in cooperation with a staff member of the Child Advocacy Network, was instrumental in developing Baltimore City's Court School. This program was developed to familiarize children and their families with the court process. Held on a monthly schedule, the Court School has served 20 children and their families in preparation for a court trial.

Educational Audiovisual Tapes - Over the past year, the Executive Director of CASA authored three audiovisual tapes which have been used across the country to increase public awareness and promote the concept of CASA nationally.

"JUSTICE FOR THE SMALL: THE COURT APPOINTED ADVOCATE" is a ten minute documentary on the overloaded juvenile court system, its effect on the children it seeks to serve, and CASA's role in alleviating some of the court's burden and negative impact.

"KIDS IN COURT II" is a video narrated by a child. This short video familiarizes a child with the court process. Scenes are taken from various courthouses and courtrooms. Terms such as judge, jury, lawyer and witness are defined in language that is understandable to a child.

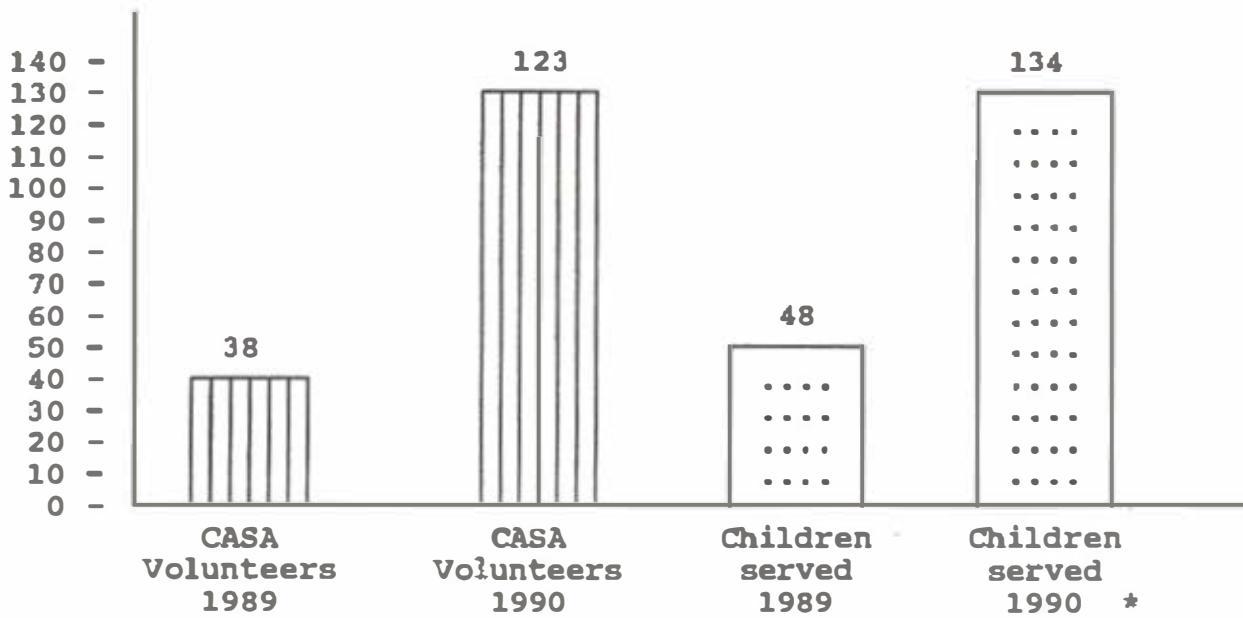
"THE ADVOCATE FOR CHILDREN IN CRIMINAL COURT PROCEEDINGS" is a five minute video that can be used as a teaching tool to prepare volunteers to be advocates for children who are victims of sexual abuse or assault. The video guides the advocate through the court process and the role of the advocate. Emphasis is on prosecution preparation and how the volunteer can assist the child in the process.

Statewide Involvement - Through the past year, CASA of Baltimore has assumed the responsibility of actively participating in the expansion of CASA programs through community and statewide conferences and by providing direct consultation. CASA of

Baltimore's technical assistance and support was instrumental in the development of CASA programs in Talbot County and Washington County. In addition, CASA of Baltimore authored the original statewide guidelines for CASA program operation in Maryland which was adopted by the Administrative Office of the Courts.

Evaluation - In order to ensure that CASA of Baltimore continued to improve its services as it expanded, the staff and Board of Advisors chose to develop and design a program evaluation. Feedback in the area of supervision, volunteer recruitment and training, legal representation and program effectiveness was gathered and will be used to generate a more effective child advocacy program during fiscal 1991.

For involvement of volunteers, see bar graph below.



*22% of these children are living at home under an order of protective supervision, and 78% are living in a foster care placement.

Volunteer Profile

86% Female
 14% Male
 48% White
 51% Black
 1% Hispanic

CASA Child Profile

51% Male
 49% Female
 20% White
 80% Black

AGE:

3% 0-2 years
 11% 3-5 years
 18% 6-10 years
 38% 11-15 years
 30% 16-20 years

CASE EXAMPLES TO SHOW THE WORK OF CASA VOLUNTEERS

A CASA volunteer was assigned to work on a case in which four teenage brothers and sisters were kept on the road for three years by their father. During this time they did not attend school and were made to beg for money, food and clothing. When these children came into the custody of Baltimore City Department of Social Services, a CASA volunteer was assigned. One CASES volunteer accomplished the following:

*The volunteer advocated to ensure services were provided for the children. Through this effort reunification of the four children with their 23 year old sister was supported.

*The CASA volunteer acted as a mentor and worked with the family to get the children into school and provided the older sister with support and assistance to teach her how to take on the great responsibility of raising her four brothers and sisters.

*After nine months of CASA involvement, the children were thriving in their new environment, and two of the children were listed on the honor role of their respective schools.

*The volunteer through the CASA program, was able to provide the services to the four children for under \$5,000. The state would have spent over \$60,000 by putting the children into foster homes and would not have supported the best interests of the children, as the CASA volunteer was able to do.

A CASA volunteer was assigned to advocate for a young girl placed in a well-respected group facility. During a CASA visit, this child appeared lethargic and unresponsive. The child also could not eat a full meal and had to be carried to her room after the visit due to extreme exhaustion. The group facility explained that the child was "just adjusting" to a change in medication. However, the CASA volunteer was not satisfied with that answer and did the following:

*She alerted the attorney to the possibility of a drug overdose.

*She arranged a prompt examination of the medical records which revealed that the child was receiving an adult's dosage of an antidepressant by mistake.

*The CASA volunteer wrote a report and presented it at the next hearing. This resulted in a court ordered independent review of the child's medical records and treatment.

*At the time the child was placed in this facility, it was predicted that she would live in institutional settings

indefinitely. However, this prediction did not follow through. With CASA involvement, this child is living in a therapeutic foster home where her needs are being met more positively.

CASE PROCESS

The child's attorney or social worker petitions the court for the assignment of CASA volunteer.

A designated CASA staff member selects a CASA volunteer who can best meet the child's needs and contacts him/her to discuss the case.

Upon the volunteer's agreement to serve the case, the judge will prepare the court order appointing the volunteer as the child's Court Appointed Special Advocate.

The CASA volunteer then reviews the child's juvenile court record to gain as much background information as possible.

After the court is reviewed, the CASA volunteer meet with his/her supervisor to discuss the case and develop a plan.

The CASA volunteer then makes initial contact with the professionals working on the case based on the objectives outlined in the case plan, and begins to develop a relationship with the child. During these first few months, the CASA volunteer maintains weekly contact with his/her supervisor.

Once initial contacts have been made, and a positive rapport has been established, the CASA volunteer carries out acts to meet the objectives and goals of the case plan. During this stage the CASA volunteer has contact with his/her supervisor on an average of every two weeks.

Two weeks prior to the child's court date, the CASA volunteer compiles a court report detailing the information they have gathered and formulates recommendations which they feel are in the best interest of the child. Once completed, the CASA volunteer's supervisor reviews the report and signs it indicating his/her approval.

On the date of the child's hearing the CASA volunteer presents the court report to all professional parties involved in the case and participates in the negotiations held prior to the trial.

Once all reasons for CASA assignment have been resolved and the child is in a safe and permanent home receiving all services, the Executive Director requests the court to rescind the CASA court order.

III. REVIEW OF CHILDREN IN FOSTER CARE

A. INTRODUCTION: THE NEED FOR PERMANENCY PIANNING

A child adjudicated CINA, and committed to D.S.S. will usually spend some portion of his childhood in state supervised foster care. Because foster care is a ~~short-term~~ service, it is not to be seen as an end in itself, but rather as a means to identify and eliminate those barriers that have interrupted an adequate family life for a child with his own family. The primary goals of the foster care program are:

1. to make every effort through the provision of all necessary services to both the child and his family, to reunify families as soon as possible and if that is not possible to actively seek an alternative permanent home for the child; and
2. to assure, that for every child for whom placement is necessary, that the placement will be the least restrictive, in close proximity to the parents' communities to allow for visitation, and will provide a quality of care which encourages the child's growth and development.

Case-management efforts, therefore, should be directed towards strengthening and preserving family ties. Services should be provided which will reinforce the parents or relatives' ability to provide adequate care for the child.¹

During the 1970's concern grew regarding the large number

¹Md. State Dept. of Human Resources Social Services Administration, Foster Care Policy Direction.

of children in foster care who were repeatedly moved from foster home to foster home, never knowing when they might be removed from their current home, and who ultimately reach majority without belonging to a family. This concern regarding "foster care drift" resulted in the enactment of P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980. The goals of the Act are to provide permanent homes for children who have been abused, neglected or abandoned by (a) improving preventive services so as to avoid unnecessary removal, (b) providing effective case planning and services directed toward reunification, (c) making timely decisions regarding the permanent placement and legal status of foster children, and (d) actively working to securing permanent stable homes for foster children who are unable to return home.

Permanency planning is a dynamic process which facilitates decision-making in foster care. Through this process, communication between the social worker and the clients should be improved, expectations should be clarified, and the direction of case planning should be known by all parties concerned. The process begins when a decision is made to remove a child from the home of his natural parents or guardians. Within 90 days of placement, a permanency plan must be formulated and recorded in the case plan. The plan is intended to provide stability in a child's living arrangement

and a continuity of significant relationships.²

Permanency planning is assured for each child in foster care through the use of case plans and service agreements. Progress toward implementing the plan is monitored through the case review system. Both the case plan and the review system are mandated by Public Law 96-272, and federal funding for state foster care programs depends upon compliance.

B. CASE PLANS

1. Federal Requirements

Public Law 96-272 requires a written case plan for each child for whom the state claims federal foster care maintenance payments. Section 675(1) defines a "case plan" as a written document which includes the following elements:

- (1) a description of the type and appropriateness of the proposed permanent placement;
- (2) the agency's plan to effect this placement;
- (3) the services that will be provided to the child, biological parent(s) and foster parent(s);
- (4) a discussion of the appropriateness of the services (i.e. how the services will improve conditions in the home, and facilitate either the child's return or another permanent placement); and
- (5) a discussion of the services provided to the child and how they address his needs.

2. Maryland's Case Plan

In Maryland, the Case Plan is the 830 form, a seven page document developed by the Department of Human Resources. It is

²Maryland Foster Care Review Board, Blue Sheet, No. 4 (Sept. 8, 1982), hereinafter, "Blue Sheet". The Blue Sheet is a quarterly in-house publication of the Maryland Foster Care Review Board.

subject to frequent modification.

1. the Static Face Sheet, which identifies circumstances which led to foster care service, and the efforts which were made to prevent the need for placement;

2. the Child Status Update, which provides information regarding the legal status, attorney information and school placement;

3. the Child's Whereabouts Update (living arrangements);

(4 & 5) the Permanency Planning Record, which identifies long term goals and objectives needed to implement the plan, and to which the service agreement is attached;

6. the Periodic Re-Assessment of Natural Family, which notes contacts between the parent and child, and between the family and the agency; and

7. the Periodic Re-Assessment of Child, which identifies the child's current foster care placement, health, education, services, and need for continued placement.

An order mandating the development of a case plan should be included as part of the court's original disposition order. If the parties are unable to agree on a case plan, counsel should bring the matter to the court's attention through a Petition to modify or review the disposition order. See Appendix III, Rule 916. Alternatively, if the department of social services fails to develop a case plan within 60 days, counsel may request a fair hearing pursuant to COMAR 07.02.11.18-1.

3. The Permanency Plan

Public Law 96-272 requires individual case plans in order to assure permanency planning for each child in foster care.

The permanency plan, which identifies the Child's current placement, the proposed permanent living arrangement of the child and his future legal status, must be developed and recorded in the case plan within 60 days of placement. The permanency plan should be achieved as soon as possible, but no later than 18 months after the date of entry into foster care. However, the permanency plan is subject to modification if circumstances change.³

Since the purpose of the permanency plan is to avoid foster care drift by providing a permanent family arrangement, some permanency plans are more desirable than others. Permanency plans ranging from the most desirable to the least desirable are set forth below:

1. Return to parents or guardian - The emphasis in P.L. 96-272 is on providing services to facilitate reunification.
2. Placement with relatives with legal status - Whenever the child cannot return to his own home, efforts should be made to place him with relatives. It is necessary to assign enhanced legal responsibility for the child to the relative, i.e. adoption or guardianship of the person.
3. Adoption - If return home and relative placement are not possible, then an adoptive family should be found and the natural parents' parental rights terminated. A current foster parent with whom the child has resided continually for at least the 12 months before establishing the permanent plan of adoption would have priority.
4. Continued foster care - This category requires careful scrutiny, because continued foster care should never be the permanent plan absent special circumstances. This plan is totally inappropriate for a young child

³ CONAR 07.02.02.13 Audon Resources, Social Services Policy Direction, Dec. 1980.

because it could lead to numerous placements over the years, i.e. foster care drift.

The subcategories below are not listed in a hierarchy from most desirable to least, but rather illustrate the range of options from which a choice is made after consideration of the individual needs of the child. They include:

a. Independent living - This category is generally reserved for the older foster child. The worker will be providing services to enhance the child's ability to live independently once they leave the foster care system. The goal of the independent living arrangement is to help the child attain self-sufficiency. This is an inappropriate plan under 96-272 and case law for a child under the age of sixteen. See Appendix IV, re: semi-independent living initiative.

b. Permanent foster care - Children in this category are those whose natural parents' rights have been terminated, and guardianship with the right to consent to adoption has been awarded to D.S.S. A child reaching majority in this category has no legal family except for an impersonal agency.

c. Guardianship to caretaker - Occasionally foster parents would like to keep the child until majority but are unable to adopt, and the child wishes to remain with the foster family. In these cases it is sometimes preferable to give guardianship of the person to the caretaker, so that the foster parent has the legal authority to make and carry out major decisions on the child's behalf. These include consent for medical and surgical procedures, for marriage below the age of consent, for entry into the armed forces and for educational purposes. However, guardianship of the person does not terminate the natural parents' rights. The natural parents retain the right to visitation, the right to determine the child's religion, and the right to information about the child. The child retains the right to inherit from his natural parents. Guardianship of the person remains in effect until the child is 18.

d. Long-term foster care - Under this plan, the child remains committed to D.S.S., which has legal

authority to determine where the child shall live. The natural parents however, retain the right to make major decisions on the child's behalf in addition to rights to visitation, and to receive information regarding the child. This should not be the plan for a young child.

See Appendix II, COMAR 07.02.11.01, Foster Care.

It is important to be aware of the difference between a child's "current placement" and his proposed "permanent placement". The current placement is the home or institution in which the child is living while services are being offered to implement the permanency plan. The permanent placement is the proposed permanent living arrangement. Public Law 96-272 requires that the current placement be in the least restrictive and most family like setting consistent with the child's best interests and special needs. It should also be located in close proximity to the parental home, so as to facilitate contact between parent and child. Both the current placement and the permanent placement come under scrutiny at each of the review hearings.

4. The Service Agreement

The written service agreement, which is developed by the social worker with the parent(s), identifies specific duties and expectations of both the departments of social services and the parents, the satisfaction of which will facilitate the return of the child to the parental home. It is designed to focus the attention of the social worker, the parent(s), and the court onto the barriers that prevent immediate reunification, service goals and objectives to overcome these

barriers, steps to be taken by both parties to achieve these goals, and specific time frames for goal achievement.

Specifically, a service agreement should include:

1. A statement of the goals and intent of the agreement.
2. A statement regarding the circumstances or problems which necessitated placement in foster care;
3. A list of the problems that must be resolved before the child can return home;
4. A description of the frequency of visits, as well as the participants in the visits with the child in care;
5. A list of services and support which the worker and Department will provide to assist the parent(s);
6. A list of the tasks the parent(s) and the child are to accomplish and time limits for the tasks;
7. A statement of possible actions to be taken by the Department if the terms of the agreement are not met;
8. A statement indicating that the parent's progress in completing the tasks will be reviewed during the regular meetings between the worker and parents;
9. A description of the place and frequency of meetings between the various parties.
10. A statement indicating that the terms of the agreement can be modified by the consent of the parties;
11. The length of time that the agreement is in effect; and
12. Signatures of all parties to the agreement;⁴
14. The date or dates the agreement is signed.

A copy of this agreement is to be given to the parent(s) or legal guardian(s).

State policy requires the service agreement to be written

⁴COMAR 07.02.11.15

(1) with the child's parents, within 60 days of placement, if the plan is to return the child to the parents; (2) with the parent to whom the child will be returned, within 30 days before return; (3) for the child 16 years old and older, with the child, the parents and where appropriate, the foster parents or representative payee.⁵ Occasionally, fulfillment of this requirement of this requirement is impossible; for example, a parent may be unable to participate in developing a service agreement because he is incarcerated or mentally ill. In that case, a written explanation concerning the absence of the service agreement should be documented in item III on the Permanency Planning Record.

A service agreement can be constructed so as to facilitate progress toward achievement of the permanency plan, or it can be a vague, irrelevant or unrealistic document. A workable service agreement should:

1. reflect a real consensus between worker and client;
2. be germane to the problem;
3. be short-term and include specific target dates;
4. clearly state the intent of the agreement;
5. include things the agency is to do, as well as things parents are to do; and
6. be written in simple language.⁶

⁵Id. COMAR 07.02.11.15.

⁶Handout - Service Agreements. Adapted from D. Downs and C. Taylor, Permanent Planning in Foster Care: Resources for Training. Washington: USDOHHS, 1980.

Problems arise when the clinical requirements for a good service agreement conflict with the legal interests of one or more parties. For example, good casework practice requires a specific and clearly worded list of concrete tasks; however, a parents' attorney is likely to advocate for a more general description of parental tasks, so as to cover the parent in case he fails to follow through. Similarly, the child's attorney may demand a service agreement which addresses all areas in which parental performance is inadequate. However, a good clinician would limit the required tasks to those which the parent is capable of working on in the present, and which would address the most serious concerns regarding the child's safety. One solution to the latter conflict is the use of a series of relatively short-term service agreements in lieu of a massive and overwhelming document. Another type of conflict arises when the service agreement is so poorly constructed that the parents can rightfully claim that they have fulfilled its requirements, and yet the home is still unsafe. Counsel for the child should guard against this possibility by being involved in the construction and implementation of the service agreement. See Chapter IV, re: role of child's attorney.

A good service agreement is the result of skilled casework practice, and its elements necessarily vary from case to case. Therefore, there is a standard service agreement, which can serve as a model. An example of one type of service agreement, a brief initial service agreement, may be found in

Appendix V.

C. CASE REVIEW SYSTEMS

Public Law 96-272 requires each state to establish a two-tier case review system. Section 676(5) defines a case review system as a procedure for assuring that:

1. each child has a case plan designed to achieve placement in the least restrictive (most family-like) setting available, and in close proximity to the parents' home, consistent with the best interests and special needs of the child;

2. the status of each child is reviewed periodically, but no less frequently than once every six months by... administrative review... in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care may be returned to the home or placed for adoption or legal guardianship, and

3. ...procedural safeguards will be applied... to assure each child in foster care under the supervision of the state of a dispositional hearing to be held, in a ... juvenile court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis)...

Thus each child in foster care must have a case plan, an administrative review every six months, a judicial review within 18 months of placement and periodically thereafter. Under Maryland's case review system, each child in foster care must have a case plan (described supra), a citizen review every six months by the Foster Care Review Board (Md. Ann. Code., Family Law Article §§5-535-5-547), and a judicial

review in juvenile court every 18 months, Rule 915d. In additional, D.S.S. provides for a system of internal administrative reviews. COMAR .07.02.11.18.

1. Administrative Reviews

Administrative Reviews are internal reviews by D.S.S. which are held pursuant to COMAR .07.02.11.18. The actions taken at the administrative review are entered in the case plan of each child's file and can provide an attorney with useful information concerning the services that have been provided, the extent of contacts, and parental compliance with the service agreement. The information is contained in a form usually called "830" and its attachments and is prepared by the worker.

If the periodic review is an administrative review, the local department shall invite the participation of the parent or parents of the child and notify the child's attorney.

If the periodic review is an administrative review, it shall be conducted by a panel of not fewer than three adult persons, who may be employees or volunteers of the local department, at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parent or parents who are the subject of the review.

The periodic reviews shall continue until the child exists foster care or is returned home, whichever is sooner.

Thus the data recorded at reconsiderations can be helpful

to an attorney who needs additional information regarding the chronology of events, the services provided, parental compliance with the service agreement, the child's progress, and the department's evaluation of the permanency plan.

2. Citizen Reviews

a. Federal Law

Citizen review is the first tier of review mandated by P.O. 96-272. It is defined in §675(6) as "a review open to the participation of the parents of the child, conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of, the delivery of services to, either the child or the parents who are the subject of the review." Citizen review must occur every six months to determine:

1. the continuing necessity for and appropriateness of the placement;
2. the extent of compliance with the case plan;
3. the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care; and,
4. to project a likely date by which the child may be returned home or placed for adoption or legal guardianship.⁷

b. Maryland Law: Foster Care Review Board

In Maryland, the six month review of foster care is the responsibility of the Foster Care Review Board. The Maryland Foster Care Review Board system was created by an act of the

⁷Md. State Dept. of Human Resources, Soc. Serv. Adm., Foster Care Review Board Manual of Policies and Procedures, 6 (July, 1982) (hereinafter Foster Care Review Board Manual.)

Maryland General Assembly during the 1978 legislative session. The system consists of one or more local review boards in each jurisdiction, and a single statewide Citizen Board for Review of Foster Care for Children (State Board), Md. Ann. Code, Family Law Art. §§5-535-554 (1984).

Currently, there are 54 local Review Boards statewide. The Board Members consist of citizens who have demonstrated an interest in children through community service or professional experience, and who serve without compensation. The local Boards are responsible for reviewing cases of children who have resided in public or private foster care under the jurisdiction of DSS for a period of six months or more. Each case should be reviewed by the Board every six months. The purpose of the six month reviews is to ensure that all appropriate efforts are being made to achieve permanency for children in foster care and that the current foster placement is the least restrictive environment (most family like) and located near to the parents home in order to facilitate visitation, where appropriate.

Specific responsibilities of the local Boards include the following:

1. to meet each month to review cases and make written recommendations to the local Department and to the Juvenile Court; and
2. to report annually to the local judiciary on efforts to secure permanent homes for children in foster care.

a. Foster Care Review Boards Procedure

A child is eligible for citizen review provided he is

living in foster care while under the jurisdiction of DSS for 6 months or more. Under COMAR 07.02.11.18 citizen reviews following the initial review may be deferred if the Court has reviewed a case within the past six months, providing that the review board sees the case at least once per year.

All initial reviews are scheduled for a full review. Persons invited to the review fall into three categories: those whose attendance is mandatory, those routinely invited, and those who may be invited. Any DSS caseworker who is directly responsible for a child's case must attend the review. In those situations where sibling groups are reviewed, the primary caseworker for each child must attend. Persons who are routinely invited to attend include DSS supervisors, the child (if 10 years or older), the natural parents, the foster parents, and, if a child resides in a child-care institution, a representative from the institution. If either DSS or the local Review Board requires other knowledge or information, consultants (e.g. a psychologist or attorney) or other interested parties (e.g. a child's relative) may be invited. In cases in which there may be a disagreement regarding the appropriateness of the case plan or service agreement, counsel should plan to attend.

Abbreviated, rather than full, hearings are held for cases after the first review if the permanency plan has not changed in order to utilize the board's time more efficiently. Only the natural parents and agency staff are invited to this

abbreviated review. All other cases receive a full review.

The review board staff prepare schedules through their access to DHR's database of foster children which tracks entry into and exit from placement. Upon receipt of the schedule, the DSS is required to provide the names and addresses of interested persons to the board at least three weeks prior to the review date. The staff assistant to the Foster Care Review Board then sends letters of invitation to the interested persons. DSS is also required to provide an updated case plan (830) at least one week prior to the Review Board meeting.

The full review hearing follows a standard procedure. The case plan (the 830 form) is distributed and read by the Board Members. The caseworker is interviewed to clarify the specifics of the permanency plan. Attention is focused on the rationale of the permanency plan, the steps taken to achieve the planned permanent placement, obstacles to be overcome, the timetable for achievement, and the written service agreement. Each interested person (biological parents, foster parents, child, etc.) is then interviewed separately to ascertain his understanding of the permanency plan. At the conclusion of these interviews, the Board focuses on a discussion of four issues: (1) Is the permanency plan appropriate as a goal? (2) Have adequate efforts been exerted by all responsible agencies to achieve permanence? (3) Is the current living arrangement appropriate? (4) Is the DSS placement plan (short of permanent placement) appropriate? The Board votes on each of these

questions, and may choose to concur with the plans proposed by DSS or to disagree and make its own recommendation. In cases of disagreement, the board should include a brief rationale for their disagreement in their recommendations. The caseworkers are expected to remain during the discussion of recommendations. See Appendix VI for Sample Foster Care Review Board Agenda.

In arriving at a recommendation, the board exercises its function as a monitor of DSS's decision-making. The board's role is to assure that all appropriate factors have been given due consideration, and that DSS has used a clear rationale in weighing all sides of the situation. The review boards can also determine whether DSS plans are internally consistent and in keeping with good policy and practice considerations. However, the board is not a fact finding forum, nor is it appropriate for the board to engage in casework. The board should also refrain from issuing a detailed assessment of the "fitness" of persons or the "suitability" of foster homes for a specific child. Rather, the board makes recommendation regarding specific placements only in regard to the level of restrictiveness (foster family home, group home, institution) and the proximity to the natural parents when visitation is important, and the bonds and attachments which may exist between child and substitute caregivers.

Following the review meeting, the review board staff prepares the care recommendation report form (See Appendix

VII) and sends copies to:

(1) DSS within a week after the review. Within two weeks of its receipt of the report, DSS must notify the board of whether the agency agrees or disagrees with the recommendation. If the agency accepts the recommendation, DSS must then proceed to implement the plan and prepare to report on its progress at the next review.

(2) Court As soon as DSS returns the report to the board (and within six weeks of the review), the report is sent to the appropriate court. In cases of disagreement or when the board finds inadequate progress, the report is flagged for special attention by the Court.

(3) Interested Persons Within three weeks of the review, a letter indicating the review board's recommendation is sent to all interested persons who were notified of the review.

b. Mechanism for Triggering Juvenile Court Review

Maryland Law provides that the Foster Care Review Board shall submit a written report to the Juvenile Court regarding each child whose case is reviewed. However, the law does not specify what the court should do once these reports are received. In cases where the Foster Care Review Board disagrees with the permanency plan of the DSS, finds inadequate progress, or cites an inappropriate placement plan, the Juvenile Court should schedule a review to determine for itself the appropriate direction for the case. It is suggested

that additional legislation or Court rules should be developed to resolve this problem.

3. Judicial Review

a. Federal Law

P.L. 96-272 requires that, in addition to the six-month citizen review, each child in foster care for whom federal funds are claimed, must receive:

"a dispositional hearing, to be heard in a ... juvenile court... no later than eighteen months after the original placement (and thereafter during the continuation of foster care, which hearing shall determine the future status of the child including but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should, (because of the child's special needs or circumstances) be continued in foster care on a permanent or long term basis." P.L. 96-272 §675(5) (c).

b. Maryland Law

COMAR 07.02.11.19 states the local Department shall hold a review every 18 months so long as a child remains in foster care. The Court of Appeals, however, amended the Maryland Rules of Procedure, Rule 915, effective on July 1, 1983, to read as follows:

c. Commitment to Department of Social Services

In cases in which a child is committed to a local department of social services for placement outside the child's home, the court, within 18 months after the original placement, and periodically thereafter at intervals not greater than 18 months, shall conduct a review hearing to determine whether and under what circumstances the child's commitment to the department of social services should continue. Considerations pertinent to the determination include whether the child should (1) be returned home, (2) be continued in foster care for a specified period; (3) be placed for adoption, or (4)

because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis. The hearing shall be conducted as prescribed in Rule 910 or, if conducted by a master, as prescribed in Rule 911, except that the child's presence shall not be required if presence at the hearing is likely to cause serious physical, mental, or emotional harm to the child.

The purpose of judicial review therefore, is to assess (1) the current placement in terms of the standard set forth in P.L. 96-272, (i.e. whether it is the least restrictive environment in close proximity to the parental home, consistent with the best interests and special needs of the child); (2) the permanency plan, in terms of its goals, the degree of compliance with the service agreement, and barriers to be overcome; and (3) the determination of the future status of the child in terms of the hierarchy of placement options.

(1) How Court Review is Initiated

Periodic Court Reviews are generally triggered by the previous court order which sets reviews one year from the date the child was originally placed in shelter care and subsequently every year after that for all children committed to the local Social Services Department. The Court may also schedule reviews Sua Sponte or upon petition of any party when children are placed under an order of protective supervision (OPS) or custody and guardianship to a specific person. The incentive for DSS to insure reviews are held within the time frame is derived from the fact that federal funds are available for foster care programs only if the 18-month dispositional review hearings are held. Court review may also

be initiated by the filing of a petition to modify or vacate an order of the court. See Appendix III, Rule 916b. This petition may be filed by any party or agency which has supervision or custody of the child. Furthermore, upon timely application, a person other than a parent, who is seeking custody or guardian ship of the respondent child, may be permitted to intervene for dispositional purposes only, and to file a petition to review, modify or vacate a disposition order. An application to intervene shall be made by motion. Rule 922. See Appendix VIII for sample Motion to Intervene.

(2) Procedures Prior to the Hearing

(a) Preliminary Hearing

In some jurisdictions, a preliminary hearing is held thirty days prior to the review hearing, at which time the judge/master determines whether the parents and the child are represented by attorneys. D.S.S. presents its case plan for the child, and copies of the plan are given to all attorneys and parties.

(b) Preparation & Discovery

Prior to the review hearing, the child's attorney and the parents' attorney must obtain copies of the Case Plan. Additionally, the attorney for the child should interview the child to ascertain his wishes. Other information may be obtained by interviewing the foster parents and the child's social worker, and by reading the child's file. The administrative review notations may be particularly helpful.

In determining the special needs of the child, the child's attorney should review school reports, medical reports, psychological reports, and the Foster Care Review Board report. Discovery in Juvenile Court is generally informal, but the Maryland Rules of Procedure provide for broad authority for the court to pass such orders in aid of discovery and inspection of evidence as justice may require. Rule 909b. See Appendix IX for Court Order giving counsel the right to inspect all records.

If after their investigation the child's attorney determines that the agency's plan is not in the child's best interest, the attorney should be prepared to submit an alternative plan and testimony to support the need for this plan. See Chapter IV, for a discussion of the role of counsel for the child and parents.

(3) Parties

The parties to a juvenile review proceedings include the child who is the subject of the petition, the child's parent, guardian or custodian, and the petitioner (agency), Md. Ann. Code, Cts. & Jud. Proc. §3-801(q). A person permitted to intervene pursuant to Rule 922 shall not be deemed a party, but counsel for the intervenor, upon request shall be entitled to be furnished copies of such studies and reports that shall be entitled to be furnished copies of such studies and reports that directly relate to the intervenor's petition for custody or guardianship of the respondent child. Rule 922b. The

child's presence is not required at the hearing, if his presence is likely to result in serious physical or mental harm to the child. Rule 915d.

(4) Standard and Burden of Proof

The Standard in a review hearing is that the allegations must be proved by a preponderance of the evidence.

The Department of Social Services has the burden of proving that the child's commitment to DSS should continue. If DSS fails in this burden, the commitment should be rescinded in accordance with Rule 920 (Final Order of Termination). If DSS meets this threshold burden, however, the Department must then present its permanency plan and prove by a preponderance of the evidence that the court should adopt its plan. If another party contests the permanency plan, the other party must be prepared to present an alternate plan and prove by a preponderance of the evidence that the alternate plan should be adopted.

It should be noted that if a party advocates long-term foster care under 915d(4), that party must prove that special needs or circumstances exist which necessitate this less desirable permanency plan.

(5) Rules of Evidence

The juvenile court shall conduct all hearings in an informal manner. Md. Ann. Code, Cts. & Jud. Proc., §3-812(e). While this implies relaxed rules of evidence, the attorney should be prepared to conduct the hearing under the standard

rules of evidence. The area of biggest concern involves the admissibility of numerous reports which may be available, including the Foster Care Review Board Recommendations, medical records, psychological reports, and school reports. Arguably, however, these reports should be admissible under the business records exception to the hearsay rule. Cts. & Jud. Proc. §10-101. If the Court has ordered a physical or mental examination pursuant to §3-818 of the Courts Article, the report of examination is admissible.

(6) Witnesses & Documents

Any party may request the clerk to issue a witness summons or a summons duces tecum. Rule 904d. Since the court is to evaluate the permanency plan in terms of the best interests of the child, witnesses (especially expert psychiatrists, psychologists and social workers) can provide useful information.

However, the most significant evidence presented will frequently be the testimony of those directly involved. Persons who can contribute significantly to an understanding of the case are listed below, with examples of relevant questions.

(a) Parents

Do they understand the case plan?

Are they aware of the permanency plan for the child?

Have they performed their obligations incorporated in the service agreement?

Have they been provided appropriate services to make reunification possible?

Were appropriate arrangements for visitation made?

Are there impediments still existing that could be ameliorated through provision of other services?

Do they want the child to return home at this time?

Are they capable of providing a safe and secure home?

(b) The Department of Social Services Caseworker

How did the agency become involved?

What services were provided to prevent removal?

What services have been offered to the child?

Has the agency fulfilled its obligations incorporated in the service agreement?

Has the agency provided services to facilitate reunification?

In the agency's view, have the parents fulfilled their obligations such that the child should be returned home? If not, are there services that could be provided to effectuate return home within a specified period of time?

Have the parents visited the child as provided in the plan?

Have new problems arisen since the initial removal?

Is there still a danger to the child if he returned home?

Has the agency's plan been made in terms of the hierarchy whereby the more desirable placements are ruled out before the recommendation is made for long-term foster care?

If the recommendation is for long-term foster care, can the agency prove the "special circumstances" requirement?

Are the services succeeding in alleviating the problem that required removal?

If the child cannot return home, what efforts are being made to find an alternative permanent home?

(c) Foster Parents

What are their obligations under the case plan?

Do they know the permanency plan for the child?

Do they see a need for additional services for the child?

What are their observations about parental contact and visitations with the child?

(d) The Child

What are the child's feelings about his current placement?

Does the child want to return home?

Are there particular problems the child is experiencing that need attention?

In addition to live testimony, several reports are particularly helpful. These include the case plan, the service agreement, the Foster Care Review Board report, and any reports of experts involved such as psychologists or psychiatrists. While these reports may need to be scrutinized for hearsay objections, they arguably can be introduced under the business records exception to the hearsay rule. Md. Ann. Code, Cts. & Jud. Proc. §10-101. If introduction of these reports is contested, a proper foundation will need to be laid showing (1) from whose custody the record comes; (2) the identity of the record as pertaining to the child; (3) the sources of the information recorded; (4) that the entries were made in the regular course of business; and (5) that the regular course of the business included making records at or

near the time of the act, transaction, occurrence, condition or event recorded. See Chapter IV, for a discussion of the role of counsel for the parent and child.

(7) The Judicial Determination: Substantive Issues and Decisions

(a) The Current Placement

D.S.S. must be prepared to show that the current placement is the least restrictive (most family-like) environment feasible, and is located near the parental home in order to provide for continuing contact between the child and his parents. If these factors cannot be demonstrated, then D.S.S. must present evidence regarding those special needs of the child that necessitated the current placement. Also as part of the case plan, the department is to list the services provided to the child and family and address how these services meet the child's needs and how the services to the family will facilitate the child's return home. See Chapter I for a discussion of case plans.

Counsel for the child should visit the child in the current placement to ensure that it is appropriate for the child. In addition, if counsel feels that the child needs additional medical or psychological services or an alternative living arrangement, he should request that the agency provide these services or that the court order the agency to provide the services.

There is considerable debate as to the specific powers of the juvenile court to order services for the child and the

family. Md. Ann. Code, Cts. and Jud. Proc., §3-802 confers a broad generalized power on the juvenile court to tailor the disposition in a CINA case to meet the child's individual needs. Furthermore, Rule 915d states that the court shall conduct an 18-month review hearing "to determine whether and under what circumstances the child's commitment to the local department of social services should continue" (emphasis added). This language appears to give the juvenile court the authority to order D.S.S. to provide specific additional services to the child and family to order to facilitate reunification. See also COMAR 07.02.11.15. On the other hand, Maryland Appellate Court decisions have imposed limitations on juvenile court authority. For example, the Court of Special Appeals has ruled that a juvenile court may not order the Secretary of the Department of Health and Mental Hygiene to pay the cost of treatment for a child in need of assistance in a private mental health facility. Md. State Dept. of Health and Mental Hygiene v. Prince George's County Dept. of Social Services, 47 Md. App. 436 (1981). See also In re George G., 64 Md. App. 70 (1985). This issue was further challenged in the case of In re Demetrius J. 321 Md. 468 (1991). The Court of Appeals reviewed the legislative intent of CJ8-320 as well as prior case law and determined that while the court could name the type of facility, that the court was not authorized to order the child be placed in a specific private facility at the expense of the Department of Juvenile Services. These

cases have all concerned children found to be delinquent. However, the Court of Special Appeals in a strictly CINA case has also recently stated that "As a result of their broad discretionary powers, juvenile court judges have the opportunity and indeed the obligation to act as a monitor in order to review, order and enforce the delivery of specific services and treatment for children who have been adjudicated CINA. This duty flows from their inherent *parens patriae* jurisdiction." In re Danielle B. 78 Md. App. 41 at 68 (1989). Thus, while the juvenile court appears to have authority to order specific additional services, the scope of that authority is unresolved. See also Chapter I and Chapter II.

(b) Reasonable Efforts

Public Law 96-272 requires a judicial determination, that reasonable efforts were made to prevent removal and to effect reunification, in order for the state to receive federal funding for children in foster care. In order to insure that this determination is made, the Department of Social Services should be prepared to provide the following information at the dispositional review hearing: (1) documents and testimony regarding the problems which necessitated placement, (2) documentation of services offered to facilitate reunification, and (3) documentation of whether the services were actually provided, and (4) information regarding whether the parents were willing to utilize the services. See Chapter I for a discussion of reasonable efforts. See Chapter III for a

discussion of documentation in case plans. For further discussion see Reasonable Efforts as Defined in Caselaw Throughout the U.S. immediately following this chapter.

(c) Permanency Plans: The Options Under Md. Rule 915(d) and the Decision Regarding Child's Future Status

Maryland Rule 915(d) states that the court shall conduct the review hearing, "to determine whether and under what circumstances the child's commitment to the local department of social services should continue. Considerations pertinent to the determination include whether the child should (1) be returned home, (2) be continued in foster care for a specified period, (3) be placed for adoption, or (4) because of the child's special needs or circumstances, be continued in foster care on a permanent or long-term basis."

At the review, the court is thus required to make a definitive choice among permanency plans for the child. The determination should be based on evidence presented and provide for a plan which is in the best interests of the child. C.J.P. §3-802(a)(1). Since the goal is to achieve permanency for the child, the most desirable option is to return home, or where that is not possible, placement with relatives with enhanced legal responsibility must be pursued. If the court determines that the child should be continued in foster care on a permanent or long term basis, there should be specific findings outlining the special needs or circumstances which required choosing this least desirable option.

1) Option a: Return Home

One of the primary goals of the foster care system is to effect reunification of the child with his own family where appropriate. However, distinct, and conflicting, criteria have been utilized to determine whether and when to return a child to his parents home. Set forth below is a brief discussion of these criteria.

a) Some courts evaluate CINA cases by means of the same set of criteria that is utilized in cases involving a modification of custody award. The issue is then framed in terms of should custody be changed from the Department of Social Services to the natural parent. In determining what constitutes the child's best interests, the fact finder evaluates the child's probable life chances in each of the homes competing for custody. The criteria for this determination includes but is not limited to:

- (1) fitness of the parents;
- (2) character and reputation of the parties;
- (3) desire of the natural parents and agreements between the parties;
- (4) potentiality of maintaining natural family relations;
- (5) preference of the child;
- (6) material opportunities affecting the future life of the child;
- (7) age, health and sex of the child;
- (8) residence of parents and opportunity for visitation;
- (9) length of separation from the natural parents, and;

(10) prior voluntary abandonment or surrender.

Under this standard, the court considers all the above factors, and does not weigh any one to the exclusion of all others. Montgomery County D.S.S. v. Sanders, 38 Md. App. 406, 419-420 (1978).

b) Frequently a foster child will be returned to his natural parents if the parents have complied with the requirements of the service agreement. The natural parents are told by the Department of Social Services that the service agreement is an affirmation of the agency's hope of return, and is a tool whereby the parents' progress in ameliorating the reason for the child's placement will be monitored. Arguably then, the parent can assert that the child must be returned home if he has fulfilled all of his obligations under the service agreement. A problem with this standard arises in cases in which the service agreement is so poorly constructed that the parent can reasonably claim that he has fulfilled its requirements, and yet the home is manifestly unsafe.

c) Another standard is found in the Department of Human Resources' regulations which set out minimum standards of child care. These minimum standards include the provisions of: (1) physical care; (2) a healthy and safe place to live; (3) sufficient food and suitable clothing; (4) consistent attention re: child's activities are

supervised and child has necessary preventive and remedial medical, surgical and hospital care; (5) an adult who assures that the child gets to school regularly, on time and adequately clothed; (6) an example and direction from parents to provide for wholesome development; (7) a sense of belonging; (8) opportunity to participate in community activities; and (9) appropriate chores for the child and time for play, study, rest, etc. COMAR 07.02.07.15. If a parent can show that they meet these standards they can request that the court return the child to their home.

d) A fourth criteria, is suggested by the Foster Care Review Board. The Review Board considers the following factors when evaluating whether reunification with the natural parent should be the permanency plan:

1. Do the parents want the child and is their proposed time frame for return home sensitive to the child's needs;
2. Is there a clear and convincing evidence that the risk of harm to the child (defined as serious and permanent) can be reduced sufficiently within a reasonable time?
3. Is there evidence of a psychological parent-child relationship between foster parent and foster child that if lost would be more detrimental to the child than benefits gained by reunification.

e) A fifth position is that there are situations in which the child has been so traumatized by experiences in the natural parent's home that he should never be returned, despite the fact that former conditions in the home have been ameliorated, the parents have fulfilled the conditions of the service agreement, and there is yet no substantial emotional bonding with the foster parent. Those who utilize this approach appeal overtly to the standard of the "best interests of the child."

Thus, diverse standards are currently being used in making this important determination. Additional legislation is needed to clarify what standard should be used in determining whether the child should return home.

2) Option 2: Continue in Foster Care for Specified Period

The goal of foster care is to provide for permanency and stability in the child's life through return home or adoption. Therefore, situations calling for option two would appear to be very limited. The child should be continued in foster care for a specified period only when it is determined that at the time of the review hearing either: (1) the child is expected to return home but an additional period is needed to complete the service agreement, or (2) the agency is nearing completion of its plan for adoption but needs additional time due to specific circumstances. It is recommended that if this option is adopted, the attorney for the child ask on the record for a review hearing to be held at the end of this specified

period in order to hold all parties accountable for their efforts in achieving a permanency plan. However, many factors play into the decision to continue foster care such as the age of the child, the child's ties to the natural family and the quality of social work services provided.

3) Option 3: Placed for Adoption

When it is determined that the services provided have not ameliorated the conditions leading to removal of the child, and further services would not lead to reunification, then adoption should be considered for the child. Adoption can be planned with relatives, current foster parents or with approved adoptive parents. However, before adoption can be initiated, parental rights must be terminated either by parental consent, or by means of an involuntary termination proceeding in the Circuit Court. See Md. Ann. Code, Family Law Art., §§5-301 et. seq. (1984).

It is not clear whether the juvenile court can order D.S.S. to file a petition in Circuit Court for Guardianship with Right to Consent to Adoption, in order to terminate parental rights and thereby free a child for adoption. The Court of Special Appeals has ruled that the juvenile court may not prohibit D.S.S. from filing such a petition in Circuit Court by incorporating the prohibition in the disposition order. In Re: Darius A., 47 Md. App. 232 (1981). However, this holding left open the question whether the juvenile court may order the filing of a guardianship petition. There are two

grounds for the claim that the juvenile court has this authority. First, the Court of Special Appeals was primarily concerned that the juvenile court would defeat the power of the Circuit Court to hear guardianship petitions. This power is not threatened by juvenile court authority to order the filing of guardianship petitions in Circuit Court. Second, Rule 915d states that the juvenile court shall conduct 18-month review hearings "to determine whether, and under what circumstances, the child's commitment to the local department of social services should continue". It has been argued that this language grants the juvenile court broad discretion to act on behalf of the child and to order the department to file for termination of parents rights.

a) Subsidized Adoption

A child who is legally free for adoption and for whom the Department of Social Services has determined that special circumstances exist (physical disability, emotional disturbance, recognized high risk of physical or mental disease, age, sibling relationship, racial or ethnic factors) may be eligible for a cash subsidy, medical assistance, or medical care in order to assure his adoption. Md. Ann. Code, Family Law Article §§5-401 et. seq. (1984). This arrangement requires a written agreement between the subsidized adoptive family and the local department of social services before the final decree of adoption is issued.

b) Subsequent Review Hearings

P.L. 96-272 provides that if a foster child is in an adoptive home awaiting finalization of the adoption, then no subsequent dispositional hearing is required unless there is a change in the adoption plans. Fed. Reg. Vol. 48 No. 100, May 23, 1983, p. 23109. Under § 1-201 of the Family Law Article the jurisdiction of the juvenile court is automatically terminated when the local DSS obtains guardianship with the right to consent to adoption over the child. [For information concerning subsequent Circuit Court hearings when the child is not placed for adoption within certain time periods, see §5-319 of the Family Law Article. See also In re: Arlene G., Rhonda G., Teresa G., Md.]

c) Visitation In Adoption and Access to Adoption Records

In the past, when adoption functioned as a service for childless couples and infants were placed from the hospitals, the sacred practice of sealed records and secrecy was founded. Today in some situations older children may need to continue to have contact with their biological parents. For these children some local DSS's have informally arranged for ongoing contact with their biological parents after the adoption. Obviously this arrangement must be agreed to by the adoptive parents. However, many adoptive parents who recognize the significance of the child's relationship with their biological parents are willing to provide this opportunity for their adoptive children. See Family Law Article §5-313(e), Weinschel v. Strople, 56 Md. App. 252 (1983).

We have also learned over the years the importance attached to discovering facts about one's biological roots. This is seen as more and more adoptees (usually now adolescents or adults) request that the agencies unseal their adoption records for them. See Family Law Article §5-329 re: Access to adoption records re: needed medical information.

4) Option 4: Permanent or Long-Term Foster Care

A plan recommending permanent or long-term foster care requires careful scrutiny by the court. The party advocating this plan has the additional burden of proving by a preponderance of the evidence that the child's special needs or circumstances necessitate this least desirable plan. Special attention should be directed to efforts made by DSS to find another alternative prior to recommending this plan. Generally long-term foster care is recommended only for an older child who has been placed with a specific family who cannot adopt, in cases in which both the family and the child wish to maintain the relationship on a permanent basis.

P.L. 96-272 provides that if the court determines that a child shall remain permanently in foster care with a specific foster family, no subsequent dispositional hearing is required. Fed. Reg. Vol. 48 No. 100, May 23, 1983, p. 23109. However, if circumstances change, a party could petition for a review hearing under Maryland Rule of Procedure 916.

4. Right to Appeal

For a discussion of the right to appeal from the Order

and findings of the judge or master see Chapter II, Appeals and Collateral Attack.

5. Additional Procedures for Monitoring a Child's Progress

The role of counsel does not terminate after the disposition or dispositional review hearing. Frequent monitoring and further action may be required to facilitate progress toward achievement of the permanency plan for the child.

There are a number of ways in which counsel can assist in the implementation of a permanency plan. First, under C.J.P. §53-826, the court may supervise a commitment by requiring the filing of periodic written progress reports. This provision may be useful in that it focuses the attention of the busy social worker onto one's client, and provides an incentive for aggressive case management efforts. If, after reviewing the progress reports, the attorney believes that insufficient progress is being made, he may request an early review of the case. It is not necessary to wait 18 months between review. See Rule 916. Second, If D.S.S. fails to construct or implement an adequate case plan or service agreement within a reasonable time, counsel should request a fair hearing pursuant to COMAR .07.02.02.02. Third, should the parties fail to agree regarding the terms of a service agreement or case plan, counsel may invoke Rule 916, Modification of Court Order. See Appendix III, Petition to Modify or Review court Order. Fourth, if at any time, the attorney for the parents

can successfully argue that his clients have ameliorated the conditions necessitating removal, he may request the court to terminate the commitment to D.S.S. Rule 920. The court may order the Department to notify all parties prior to any change in the child's placement or the parties may agree to certain conditions being placed in the court order. Finally, counsel should maintain regular contact with his client and the social worker; periodic telephone calls to monitor performance may be useful in keeping oneself informed regarding progress, and in stimulating case management. See also Chapter IV for a discussion of the role of counsel for the child and the parents.

REASONABLE EFFORTS AS DEFINED IN CASELAW THROUGHOUT THE U.S.

The following is a compilation of the caselaw that attempts to define "reasonable efforts" in individual fact situations. The cases are from state courts throughout the country and are listed alphabetically by state. A short summary of each case follows the case citation. Also included are those few cases brought as class actions which attempt to enforce the reasonable efforts requirement on a systemic basis.

Many of the cases discussed below define reasonable efforts in the context of a termination of parental rights proceeding, with the courts explaining the efforts that an agency must make before the courts will grant the permanent severance of biological parents' right to the care and custody of their children. While these cases may be based on a reasonable efforts or services requirement, as mandated by state termination statutes, the cases are still extremely relevant in defining reasonable efforts under Pub. L. 96-272.

As set out in Pub. L. 96-272's legislative history, Congress passed the reasonable efforts requirement because such efforts were considered to be good social work practice and because of the importance of the constitutional right to family integrity. Certainly these are the same reasons states pass statutes requiring agencies to make reasonable efforts before courts can terminate parental rights. Particularly in light of the lack of an adequate definition of reasonable

efforts in either the federal act or accompanying regulations, how courts define the concept is helpful to anyone assessing the requirement in individual cases.

ARIZONA

Appeal of Maricopa County Juvenile Action, 653 P.2d 55 (Ariz. App. 1982)

The mother, who was Korean and married an American serviceman, had a child in Korea, and moved to Arizona with her husband. A second child was born in Arizona, and the parents subsequently divorced. One child was removed from the mother's custody on the grounds of abuse and subsequently returned. Two years later, both children were removed from the home. The mother underwent psychiatric treatment, and a psychiatrist determined that, as a result of the treatment, the mother was competent to care for her children.

The local child welfare agency developed a treatment plan for the mother which included visitation, meetings with case workers, monitoring by the case worker after placement, therapy for the children after placement, contact between the mother and a member of the Korean community, and provision of a home and support by the mother. The mother refused to participate in the case plan and refused to visit with the children for approximately a year and a half, at which point the mother's parental rights were terminated on the grounds of abandonment.

On appeal, the court held that the mother's refusal to maintain contact with the children and to participate in the case plan in order to reunify her family constituted abandonment. The court also held that the agency had made reasonable efforts to reunify, and that the parent also was obligated to make efforts toward reunification in order to avoid termination.

The court further held that extensive cross-examination of the state's psychiatrist on the mother's cultural background provided clear and convincing evidence that the removal and termination were not based on culturally-determined childrearing practices.

Matter of Appeal in Pinal County, 729 P.2d 918 (Ariz. App. 1986)

Mother appealed trial court's termination of her parental rights to her sixteen-year-old daughter. The trial court had found that mother was unable to parent her daughter due to the

mother's mental condition diagnosed as chronic paranoid schizophrenia. The court found that the condition was likely to continue for a prolonged, indeterminate period.

Mother argued on appeal that her rights should not have been terminated because the child welfare agency had failed to attempt to reunify her with her child. The court disagreed, holding that any reunification efforts would have been futile based on expert testimony that the child would be at risk with the mother in unsupervised settings. The court noted that a court-ordered psychological evaluation found mother to be suffering from a long-term, completely disabling form of schizophrenia, and that while mother acknowledged that she had physically abused her daughter, she denied her need for treatment.

CALIFORNIA

In Re Clarence I., 225 Cal. Rptr. 466 (Ct. App. 1986)

Mother appealed from an order terminating her parental rights as to her son. The child's father had earlier voluntarily relinquished his parental rights. The trial court based its termination decision on the following three grounds: (1) mother had neglected or abused the child; (2) the child had been in a foster home for over a year and his return to his mother would be detrimental to him; and (3) mother had failed and was likely to fail in the future to meet her statutory responsibilities to adequately care for the child.

The court also ruled that attempting to reunify this family was inappropriate because of the severity of the child's injuries, the felony convictions of the parents, the parents' psychological evaluations, and another agency's written report.

The mother's sole challenge on appeal was that the trial court had failed to order family reunification services as required under both case law and court rules prior to terminating her parental rights. The appeals court held the court rule applied only to juvenile court proceedings and thus was inapplicable to this superior court challenge. It stated that a decision to order reunification services was within the sound discretion of the trial court, and that the court was not required to order them prior to terminating the parental relationship.

The court of appeals affirmed the trial court's determination that it would have been inappropriate to attempt to reunite this family and return the child to his parents with whom he would have likely suffered additional serious bodily injury or perhaps death.

In re Venita L., 236 Cal. Rptr. 859 (1987)

The parents of a three year old child appealed from the court's decision terminating reunification services and ordering a petition freeing the child from her parents' custody to be filed. The court of appeal reversed.

The child had originally been placed in foster care when her mother had been hospitalized in a psychiatric unit. The father lived in a motel at the time and said he could not provide a home.

As a result of these circumstances, the agency devised a reunification plan requiring therapy, suitable residence, and regular visitation. In a little more than a year, the parents' reunification plans had been amended five times. The father's plan required participation in Alcoholics Anonymous due to repeated episodes of violent drunken behavior. In the meantime, the child had lived with a foster family who wanted to adopt her. According to psychologists, the foster parents had become the child's psychological parents.

In its decision reversing and remanding the case, the appeals court addressed the impact bonding and alcoholic abuse had on the lower court's decision, noting that "if a child's immediate attachment to foster parents could outweigh all other considerations, then reunification services . . . would serve no meaningful purpose." While not making light of father's alcohol abuse, the court determined that this was not the basis for the initial dependency. The appeals court further found that mother had substantially complied with reunification efforts, but that the lower court ignored those efforts and instead focused on the father's alcohol problems.

In Re Michael S., 234 Cal. Rprt. 84 (1987)

The mother of three dependent children appeals from a juvenile court order removing the minors from her custody without providing reunification services. Two petitions were filed, one alleging the mother's physical abuse of one son, the other alleging sexual molestation of all the children by the mother's boyfriend with her knowledge and possible involvement.

On the basis of the first petition, the minor was made a court dependent and the court issued an order incorporating the reunification plan recommended by the social worker. The plan required mother to keep the social worker informed at all times of her whereabouts; maintain regular visitation with one son placed out of the home; enroll in and complete parenting classes and personal counseling; and be cooperative with the social worker and agency.

At the six-month review, the court determined that the mother was in compliance with the plan and returned her son to her. Several months later, a supplemental petition was filed as to each of the children alleging molestation. Additionally, a social work report indicated that the mother was no longer complying with the reunification plan.

Since mother was incarcerated on child abuse charges and it seemed unlikely that reunification would take place within six months, a permanency planning hearing (California's name for the federal 18 month dispositional hearing) was held on behalf of all three children.

On appeal the mother contended that a second reunification plan was required as part of the dispositional order on the supplemental petition. The appeals court found that further reunification plans were not required in all cases. Specifically, the judges held that courts may not be forced to return to square one with respect to reunification efforts when a petition is brought to modify a prior juvenile court order. Instead, a reunification plan is mandated only in the initial disposition on an abuse and neglect petition, and failure to order additional reunification services will only be a reversible error if the court is found to have abused its discretion.

In the present case, looking at the totality of the circumstances, the court found it an abuse of discretion not to provide further reunification services. In support of its holding, the court cited many factors including inadequate reunification services with respect to the first petition; the agency's failure to give mother reunification services specifically tailored to the problem which led to the removal of all three children (as a result of the supplemental petition); inexcusable delays in the case which hindered mother's ability to further reunify; and the family maintenance services provided by the agency did not satisfy the county's statutory obligation. The court ordered an additional six months of reunification services during which time the agency was ordered to assess mother's ability to successfully complete a plan to regain custody of her children.

CONNECTICUT

In re Cynthia A., 514 A.2d 360 (Conn. App. 1986)

Mother appealed a neglect judgment committing her three-year-old daughter to the custody of the local child welfare agency who then placed the child with the paternal grandmother who lived in Puerto Rico. In approving this placement, the trial court also listed three "expectations:" 1) that the

grandmother return the child to Connecticut at least once a year for at least a three week visit; 2) that the agency make reunification services available to the mother; and 3) that if the mother visits Puerto Rico, she be granted extremely liberal visitation.

On appeal, the mother claimed, among other things, that the trial court erred in ordering her daughter into agency custody with placement in Puerto Rico, without having made reasonable efforts to reunify her with her daughter as required by Pub. L. 96-272. The Court of Appeals dismissed this challenge, holding that Pub. L. 96-272 is an appropriations act not applicable to individual actions or judicial findings.

DELAWARE

In the Matter of Derek W. Burns, 519 A.2d 638 (Del. 1986)

Mother, a nineteen-year-old who had been in foster care since one month of age, appealed a family court's decision terminating her parental rights to her two-year-old son on the grounds of inadequate planning for the child's physical needs. When her child was born, the mother had turned to the child welfare agency for help in finding housing for her and her child. As a condition of agency assistance, she was required to place her child in "voluntary" foster care for ninety days.

Mother, upon turning eighteen and relying on the terms of the voluntary placement agreement, notified the agency that she was terminating the arrangement and taking her child with her to live elsewhere. The agency refused and the child was eventually forcibly taken from the mother and placed in foster care.

An agency case worker then established a case plan calling for the mother to attend counseling and parenting classes, to attend weekly visits with her son, and to secure adequate housing and day care. Because the mother was not able to maintain a stable living arrangement for at least six months, the agency initiated, and the court granted, a termination of parental rights petition.

The Supreme Court reversed, holding that the failure of the agency and the family court to recognize and comply with minimal due process and the requirements of P.L. 96-272 vitiated the trial court's judgment. In explaining the state's failure to comply with P.L. 96-272, the court found that the agency had neither provided the mother with meaningful case plans outlining reunification guidelines, nor made reasonable efforts to provide preventative and/or reunification services. Even though the sole reason for the child's transfer to agency

custody was lack of housing, the case plan did not indicate any housing assistance services.

FLORIDA

Interest of K.H., 44 So. 2d 547 (Fla. App. 1984)

This case addresses whether two dependent children were entitled to the continued supervision of the local child welfare agency. In 1976, the children were removed from their mother's custody due to her serious alcohol problem, adjudicated dependent, and placed with relatives under the supervision of the agency. Six years later, the court reaffirmed their dependency, continued the placements, granted the mother reasonable visitation rights, and terminated the agency's supervision.

On the mother's appeal, the court affirmed in major part but reversed the termination of supervision. Under state legislation intended to help maintain the family unit, the court held that the children were entitled to that supervision aimed at future restoration of custody with their mother as long as they were classified as dependents. The court stressed the legislature's intent that the agency make every reasonable effort to reunite parent and child, and, if not possible, seek termination of parental rights and adoption.

T.W.S. v. Dep't Health and Rehab. Serv., 466 So. 2d 387 (Fla. Dist. Ct. App. 1985).

The local child welfare agency assumed custody over a child without entering into any written performance agreement with the parents or showing evidence that it complied with the Interstate Compact for the placement of Children. The agency sought to terminate dependency and give custody of the child to his paternal grandparents. The lower court granted the order.

On appeal by the mother, the court found that the agency's failure to comply with the requirements of the statute mandating performance agreements and its failure to make any efforts to assist the mother in reunifying with her son required reversal of the order terminating foster care. The court directed the lower court to determine whether reunification was possible, and if not, to order adoption as the permanent plan.

In the Interest of DWK, 492 So. 2d 1360 (Fla. App. 1986)

Father appealed an order terminating his parental rights to his child. The main argument on appeal was whether the trial court committed reversible error in not requiring a

performance agreement between the parents and the agency.

According to the appeals court, Florida law requires that a performance agreement be entered into for children either in the custody of the agency or in foster care. In this case, the child was adjudicated dependent and placed with his maternal grandmother. Since the child was never committed to the legal custody of the agency or placed in foster care, the court held it was not reversible error when the agency failed to offer, or the court to order, a performance agreement. The court held that even without a performance agreement, there was, in fact, a definite plan or effort to reunite the child with its parents, including the trial court's repeatedly ordering father to undergo psychological and drug and alcohol evaluations, pursue counseling, and to pay child support.

The court of appeals held that the record presented overwhelming evidence that the father was well aware of what was required of him in order to reunite with his child. In two years he made only a few attempts to comply with the court's orders, made virtually no contact with his child, and told an agency counselor that he did not want actual custody of the child but was pursuing it since he was denied visitation.

INDIANA

Matter of Jones, 436 N.E.2d 849 (Ind. Ct. App. 1982)

Parents appeal from termination of their parental rights to their child. Subsequent to the child's removal from the home, the parents had minimal visitation and contact with the child. The father was frequently unemployed, and the parents maintained a substandard living arrangement. The lower court found that the parents had moved frequently and failed to maintain contact with the child welfare agency. The lower court further found that the agency had assisted the parents in paying their medical bills, and had referred them to a consulting center for parenting training and homemaking skills.

In reversing the termination order, the court of appeals found that the agency had merely informed the parents of what actions should be taken in order to facilitate the return of the child. Despite the fact that the parents had changed residences and employment, the court held that the agency was not excused from providing services and, in fact, should have assisted the family in obtaining a stable residence. In addition, the agency's failure to ensure that the homemaker actually made visits and that the parents received parenting training indicated that the agency did not make reasonable efforts to assist the family in reunification.

Matter of V.M.S. 446 N.E.2d 632 (Ind. Ct. App. 1983)

Five children were removed from their parents because the parents had inadequate and unsanitary housing, had failed to provide adequate medical care, and had demonstrated inappropriate sexual behavior (although there was no allegation of sexual abuse of the children). The children were briefly returned to the parents, but removed again when the agency reported that the children had not been enrolled in necessary remedial education programs, that the children's school attendance was bad, that the children were not provided with routine medical care, and that the parents had not found adequate housing or employment.

The agency petitioned the court to terminate the parents' rights based on the fact that the agency had custody for three years, that the parents' housing remained inadequate and the parents were making no efforts to find adequate housing, that the parents had not improved their parenting skills, that the parents' behavior while visiting the children did not demonstrate an adequate parental relationship, and that the parents had demonstrated no commitment to meeting the medical, emotional, and moral needs of the children. In addition, the agency alleged that the parents refused to recognize any problems in their parenting of their children. The court granted termination.

Parents appealed, contending, among other things, that the agency had not offered reasonable reunification services to the family. The court disagreed, and found that the agency had not helped the family obtain food stamps or locate low-income housing. The court found the family ineligible for food stamps and capable of finding, and in fact did find, low-income housing on its own. Further, the court found the agency had referred the parents to parenting counseling, but had not made further attempts after the initial counseling was rejected. The court determined that the agency was not required to make a futile gesture where the parents had clearly indicated their resistance to obtaining counseling or following the agency's recommendations. The court held that the agency "did all that it could reasonably be expected to do under the circumstances." The court therefore upheld the order terminating parental rights.

KANSAS

In the Interest of JG, 734 P.2d 1195 (Kan. App. 1987)

A mother appealed from a district court order terminating her parental rights to her two children. Her appeal was based on (1) the court's failure to require a reunification plan, and (2) the lack of clear and convincing evidence that she was

unfit and that her conduct was unlikely to change in the foreseeable future.

The State had filed a child in need of care petition and requested termination of the mother's parental rights to her children without developing a reunification plan. The petition, affidavits and hearing on the matter set forth lengthy allegations of ongoing physical and medical neglect. A social worker, an adult services worker, and a public health nurse had made home visits and determined the housing to be inappropriate, and the children in need of immediate medical care. At the hearing, the nurse and social worker testified that the mother repeatedly refused services offered her in four different states. As a result, the district court determined that significant changes in the mother's parenting skills would not occur in the near future and terminated all parental rights to both children.

The court of appeals concluded that the development of a reunification plan prior to terminating parental rights was not mandatory. Under the facts of this case, the court judged reunification not to be a viable alternative because the mother repeatedly refused services and showed no interest or potential to change her living habits. For the same reasons, the court found abundant evidence that mother was unfit.

MAINE

In re Shannon R., 461 A.2d 707 (Maine 1983)

The local child welfare agency obtained custody of mother's two children based on her failure to provide them with adequate clothing, food, shelter, or medical attention. The mother was given the right to visitation, but visited with her children only once between the time they were placed in custody and the filing of the termination petition approximately two years later.

Although the agency developed a plan for reunification, it was apparently unable to contact the mother the first year the children were in care because the mother had moved. At that point, the mother contacted the agency and informed them she was living in Pennsylvania and wanted the children to be moved there so that she could visit with them and attempt to reunify. The local child welfare agency in Pennsylvania reported to the Maine agency that the mother had a stable living and was taking adequate care of a third child. The agency refused to move the children, and instead filed a petition to terminate parental rights. The court granted the order of termination, citing that the agency had made all reasonable efforts to reunify.

The Maine Supreme Court reversed the termination order, holding that the mother's actions in contacting the Pennsylvania agency and requesting that the children be moved to Pennsylvania constituted evidence that she had no intent to abandon the children, and that the statutory requirement that "the circumstances were unlikely to change in a reasonable time" was not met. Further, the agency's failure to demonstrate any attempts to assist the parent in reunification made it impossible to determine that circumstances were unlikely to change. In addition, the court held that the state statute requiring the agency to "provide, arrange, or coordinate services to facilitate rehabilitation and reunification of parent and child" in its custody were not met.

MINNESOTA

In the Matter of the Welfare of CD, CT, MT and ST, 393 N.W. 2d 697 (Minn. App. 1986)

Mother appealed from an order terminating her parental rights to her four children on neglect grounds. On appeal, mother argued that the child welfare agency did not provide adequate reunification services, that the evidence did not show the children were being neglected, and that additional services would likely bring about lasting parental adjustment and a return of the children within a reasonable period of time.

The Minnesota Court of Appeals rejected the mother's contentions and found the evidence supporting the termination of parental rights specific and extensive. At the time the oldest child was eight, he was placed into foster care on the basis of neglect. Reunification plans were ordered including psychological evaluations and treatment programs. A judge later found the three oldest children neglected and ordered protective supervision and family therapy.

The court reviewed the disposition eight times, each time finding the children continued to be neglected. At each review, the court found that the agency had made reunification efforts, including providing food and housing, obtaining a placement for the family at a residential home which taught parenting skills and self-sufficiency, referring mother to community service programs and psychological counselors, arranging visits, and offering to help mother apply for public benefits such as AFDC and food stamps.

MISSOURI

In the Interest of D.L.H., 660 S.W.2d 471 (Mo. App. 1983)

Mother's children were placed in foster care because of mother's inability to care for them due to injuries she received in a car accident and because there were no relatives available to care for the children. The children remained in the agency's custody for over eight years. Several service agreements were entered into, but none were approved by the court as required by statute. The agency moved to terminate parental rights, and the lower court upheld the termination.

The appellate court overturned the termination because of the trial court's failure to make a number of required findings. These included: (1) whether the mother had failed to rectify the conditions that were the basis for the petition, (2) whether the agency had made efforts to assist in rectifying these conditions, and (3) how the parent had failed to maintain a relationship with the child. The appellate court further found that since no court-ordered plan had been developed, the parent could not have failed to comply with it.

In the Interest of AMK, 723 SW.2d 50 (Mo. App. 1986)

Appeal by mother from judgment terminating her parental rights to her four children. On appeal, mother argued, among other things, that the child welfare agency had failed to use reasonable, diligent and continuing efforts to help her rectify those conditions which led to the removal of her children.

The Court of Appeals rejected mother's argument based on the evidence before them. The basis of this termination was mother's liability to properly support her children. When the agency intervened, the family had inadequate food, clothing, and electricity and eviction was imminent. Mother's employment was sporadic and at best her monthly earnings were \$180, insufficient to cover food, housing, utilities, and clothing costs. The Court found the evidence sufficiently clear, cogent and convincing of the mother's inability to rectify the conditions for termination.

In addition, they cited the following actions of mother as evidence of her further failure to rectify: 1) leaving a 6 month residential treatment program after 1 week; 2) missing community service meetings; 3) having only minimal attendance at her therapy sessions; 4) not completing financial assistance applications; and 5) canceling visits with her children and not seeing them regularly.

The Court then enumerated the agency's reasonable efforts on behalf of the family: providing food and housing, obtaining a placement for the family at a residential home which taught parenting skills and self-sufficiency, referring mother to community service programs and psychological counselors, and

arranging visits with the mother and her children. The agency also offered to help mother apply for public food and housing benefits such as AFDC and food stamps.

NEW YORK

Matter of Star A., 435 N.E.2d 1080 (1982)

Child welfare agency appeals lower court's dismissal of proceedings it instituted to terminate mother's parental rights as to her two children who were removed while the mother was hospitalized from mental illness. She was subsequently rehospitalized on several occasions. The agency attempted to arrange psychiatric counseling for the mother on at least two occasions, but made no further efforts to arrange counseling because it felt they would be futile since the mother had been receiving services from other agencies and had not been cooperative with them.

The court on appeal found that the agency had not made "diligent efforts to encourage and strengthen the parental relationship" as required by state law, holding that the agency could not simply predetermine that efforts would be futile.

The dissent found that the intent of the statute was to ensure permanency for children, that there was no possibility of the children being reunited, that efforts would in fact have been futile, and that therefore the court should have ruled for the agency and terminated parental rights.

In the Matter of Sheila G., 462 N.E.2d 1139 (N.Y. 1984)

Mother gave custody of her child to a local child welfare agency. Subsequently, the child's father communicated to the agency his interest in visiting with and financially supporting his child. The mother asked the agency not to permit visitation, and the agency followed her request. The child was placed in a pre-adoptive foster home, and the foster parents were informed that the child would be available for adoption.

Subsequently, the mother agreed to permit the biological father to have visitation with the child, which he did for approximately a year and a half. The father also presented a plan for taking custody of the child, but the agency made no efforts to help him implement it. After the child had been in custody for approximately three years, the agency petitioned for termination of parental rights, and the court denied the petition, based on the agency's failure to assist the father in reunifying with the child.

On appeal by the state, the intermediate appeals court reversed, finding that the child had been permanently neglected since the agency had not affirmatively blocked return of the child and the father had not presented a plan for reunification with the child until the child was a year and half old.

The father appealed this decision to the court of appeals, New York's highest court, which reversed and denied termination. The court held that a parent's failure to maintain contact with the child or plan for its future cannot be judged without considering whether the agency's statutory duty to make diligent efforts to encourage or strengthen the parental relationship. The court further found that many New York agencies failed to provide adequate services and in fact interfered with reunification. In addition, the court determined that, if the agency has not specifically evaluated the parent and provided assistance, parental rights could not be terminated.

Matter of Loretta 001, 114 A.D.2d 648, 494 N.Y.S. 232 (N.Y. App. Div. 1985)

Three siblings had been in foster care most of their lives and continuously since a neglect petition was filed in 1981 against their mother. A case plan was developed for the reunification of the family which provided the mother with weekly visitations and individual and family counseling.

At a fact finding hearing two and a half years later, it was determined that the mother's participation in the plan was insufficient. The mother attended only twenty of the sixty-six counseling sessions scheduled over an eighteen-month period, and did not regularly visit the children. The court, at the hearing, ruled that the children were permanently neglected, guardianship to the child welfare agency.

The mother appealed, and the court, while remanding the case for other reasons, did hold that the agency's arrangements of meetings for counseling and visitations and its provision of transportation to and from these meetings, were "not only extensive but consistent with the statute" requiring "diligent efforts to encourage and strengthen the parental relationship."

In the Matter of Enrique R., 494 N.Y.S.2d 800, 129 Misc. 2d 956 (Family Ct. N.Y.C. 1985)

Enrique R. was born in 1979, and was placed in the New York City foster care system in 1980 by his maternal grandmother. Both of the child's parents were drug addicts, undergoing treatment, and unable to provide a stable home. In

1981 the child was returned to the maternal grandmother, but placed back in foster care two weeks later. The child remained in placement though his parents visited regularly.

All parties agreed that the maternal grandmother was a fit person to provide the child a permanent home and could provide access to both parents while they underwent drug therapy. However, the child was not discharged to grandmother solely because she could not obtain adequate housing. (She had applied for public housing in 1980 and because her application was lost, filed again in 1984). This case was heard by the family court upon a petition for foster care review, seeking continuance of care for this child.

The court explicitly recognized the negative effects of prolonged foster care upon children, and the duty of the agency to take all steps necessary to implement the state's goal of permanency for foster children. The court found that return of the child to his maternal grandmother satisfied that goal, but for inadequate housing. Relying on state law and agency regulations, the court ordered the agency to assist the grandmother in obtaining adequate housing. Such assistance was to include writing letters, making phone calls, and taking legal action on the grandmother's behalf to secure a preference in tenant selection for public housing. Foster care was continued pending acquisition of suitable housing.

In the Matter of Jason S., 117 A.D.2d 605, 498 N.Y.S. 2d 71 (A.D. 1986).

Child welfare agency appealed a decision of the family court dismissing a petition to terminate mother's parental rights. The New York Supreme Court Appellate Division affirmed, holding that the agency failed to establish that it had actively aided the mother in her search for suitable housing - the primary obstacle preventing the return of the child). Additionally, the court found that the agency failed to work with the mother to strengthen and encourage her relationship with her child, even though she often showed little interest in having regular contact with her child.

While the petition to terminate parental rights was held to be properly dismissed, the court gave the agency the opportunity to begin a new termination proceeding on the ground of permanent neglect. In support of a new petition, the court noted that the child was adjudged to be a dependent child, had never lived with the mother, and that two years had elapsed since the family court rendered its termination decision.

In the Matter of Lisa L., 499 N.Y.S.2d 237 (A.D. 3 Dept. 1986)

Parents appeal determination that their two children were permanently neglected and the termination of their parental rights. The bases for the decision were (1) the father's refusal to accept counseling for his alcohol problem; and (2) the parents' failure to plan for their children's future by refusing to accept budgeting assistance.

The court held that the child welfare agency "must affirmatively plead in detail and prove by clear and convincing evidence that it has fulfilled its statutory duty to exercise diligent efforts to strengthen the parent-child relationship and to reunite the family" (quoting Matter of Sheila G., 61 N.Y.2d 368, 474 N.Y.S.2d 421, 462 N.E.2d 1139). In strategizing a reunification plan, the court held that the agency "should be sensitive to the particular needs and capabilities of the parents . . . and should not be unrealistic in light of the financial circumstances of the parents." These "responsibilities are not one-sided, for the parents are obligated to cooperate with the [agency]. . ."

In upholding the termination, the court found that the agency complied with its statutory duty to exercise diligent efforts to reunite the family by arranging alcohol counseling services, but that the father failed to cooperate by denying that an alcohol problem existed and by failing to keep counseling appointments.

The court further found that the failure of the parents to plan for the future of the children did not result from financial inability, but resulted from the refusal of the parents to cooperate with the agency's efforts to teach them to budget their resources.

Matter of Catholic Guardian Society, 499 N.Y.S.2d 587 (Fam. Ct. 1986)

Mother, classified as mildly retarded, appeals the termination of her parental rights as to her four children. In denying the termination petition, the appellate court held that (1) the agency had not made the diligent efforts required by statute and thus was not entitled to termination on the basis of neglect; and (2) the evidence did not establish that the mother's mental retardation precluded her from caring for the children for the foreseeable future.

The court noted that diligent efforts did not exist where the agency had not provided general psychiatric or psychological services or specialized services for mental retardation. Furthermore, the court found that mother's passive behavior during visits did not establish a substantial and continuous failure to maintain contact with the children, and that present incapacity to care for children because of

mental retardation does not, ipso facto, demonstrate a future incapacity.

Grant v. Cuomo, 509 N.Y.S. 2d 685 (1986).

Four named plaintiffs and three non-profit corporations sued New York state and municipal officials seeking class certification, declaratory relief and a mandatory injunction requiring defendants to perform duties imposed upon them by New York's child welfare laws. Specifically, plaintiffs alleged that defendants failed to make preventative services available for families with children being considered for foster care; and failed to provide protective services to children in danger of child abuse.

The New York Supreme Court held that since defendants availed themselves of federal funding for child welfare programs, they were bound by its mandates. Specifically, defendants were required to (1) make reasonable efforts to keep children with their families prior to placing them in foster care; and (2) implement a service plan or children being considered for foster care, including short and long term goals, services required by the child, the manner in which they will be provided, alternative plans, and preventative services.

Vincent A. v. Gross, No. 24388/85 Slip Op (N.Y. Sup. Ct. 4/27/87)

Motion by several families against New York City's child welfare agency. Plaintiffs argued that the agency had failed to provide them with preventive services sufficient to avoid foster care placement for their children. To support their argument, plaintiffs cited state law which required the agency to provide day care, homemaker services, parent training, and aid transportation, clinic services, and 24 hour access to emergency shelter, cash and goods. They also challenged the 90-day limit on emergency shelter services.

The New York Supreme Court granted the families' motions for preliminary injunction holding that defendants had a mandatory duty to conduct thorough evaluations, develop meaningful service plans and identify the services to be provided. The court also ordered the agency to implement a plan that was consistent with its legal obligations and enjoined the state from imposing the 90-day limitation on emergency shelter since it conflicted with the purpose of preventative services law. The court noted that providing emergency shelter for longer than 90-days may, for example, wipe out the need for foster care placement altogether or reduce it substantially.

NORTH CAROLINA

In the Matter of Christine Tate, 312 S.E.2d 535 (N.C. App. 1984)

The child was placed in the custody of the local child welfare agency because of the mother's drug and alcohol abuse and mental problems. After two years, the agency filed a petition to terminate parental rights, and the court ordered termination.

The court of appeals upheld the termination, finding that the agency had made significant efforts to assist the mother by referring her to mental health centers, helping her with housing and employment, and monitoring her case. The court further found that the mother had not made "substantial progress," despite the fact that she had made some efforts to work with her child, because "substantial progress" requires a positive result from these efforts. Further, the mother was legally required to provide support as ordered by the court unless she challenged the court's order or presented evidence that she was unable to obtain or maintain gainful employment.

The court also held that the following facts indicated that termination was in the best interests of the child: (1) the child did not cry when visits ended; (2) the parent did not complete entire visits; (3) the parent had completed only seven visits in the past year; and (4) the mother had demonstrated an inability to provide a stable environment.

OREGON

State ex rel. Juv. Dept. v. Habas, 700 P.2d 225 (Or. 1985)

Mother appeals the termination of her parental rights as to her infant child. The child was placed in the custody of the child welfare agency at birth because of mother's periodic bouts of manic depression requiring medication and hospitalization. After mother completed parenting classes, the child was returned to her, contingent upon the agency immediately supplying her with homemaker services and a day nurse.

When the child had been home sixteen days, but before any services had been provided by the agency, the mother suffered a depressive episode and left the child alone for several hours. The child was found in good health except for a severe diaper rash. The agency determined the mother to be a good parent when not in the midst of a depressive bout, but was unfit during such episodes.

The trial court had granted termination based on (1) the mother's mental illness which rendered her incapable of caring for her child; and (2) the mother's failure to effect a lasting adjustment after reasonable efforts by the agency. This decision was affirmed by the court of appeals, and mother appealed to the Supreme Court.

The Supreme Court reversed the termination order, holding that the agency had failed to show that the mental illness made it impossible for the parent to care for the child in the future and that the agency had failed to make reasonable efforts to provide services. The court noted, among other things, that the failure to provide services appeared to have been due to "some administrative confusion as to which of two counties was to provide the services." (p. 230)

In the Matter of A Child, No. 88178 (Or. 1986)

Upon the mother's motion, the Juvenile Department of the Circuit Court of Multnomah County reviewed the foster care placement of a six and a half-year-old disabled child, and the services rendered to her family. At the time of the hearing, the child had been in out-of-home care for approximately nine months. The court's order addressed only whether the child welfare agency had made reasonable efforts to eliminate the need for removal of the child from her home and to make it possible for the child to return home.

The state's first contention was that neither Oregon nor Federal law compelled a reasonable efforts finding at a review hearing requested by a parent. Specifically, it argued that the hearing was gratuitous since not in response to the agency's report, or a statutorily required six, twelve, or eighteen month review. The court rejected this claim on both federal and state grounds. It held that P.L. 96-272 intended frequent and thorough review of children in foster care, and that state law, while not requiring more hearings, encouraged them.

The state also argued that a reasonable efforts finding is not necessarily in the best interests of the child because it only directly impacts the federal matching funds to the child welfare agency. The court rejected the argument, holding that close scrutiny of the services offered to reunite a family could only be in the child's best interest.

The State also asserted that the reasonable efforts required by the referee at the shelter hearing in this case (medical exam of the child and interview of child's grandmother as possible placement for child) were all that were required in the case. The court, however, found these services to be few and incomplete for a reasonable efforts

finding for a child who already had been in agency care for nine months. The court held that State's contention flew in the face of both the language and legislative history of P.L. 96-272.

Finally, the court, after closely scrutinizing all agency efforts, held that it had not made reasonable efforts to provide either preventive or reunification services to the family. The court based this holding on the following:

(1) The family was not formally referred to parenting classes, a critical service identified for this family, until nine months after the child was removed from the home;

(2) The agency was too slow in providing family and marital counseling and offered no adequate explanation for why it had not offered its intensive family counseling from the outset;

(3) The agency's efforts to arrange a medical appointment for the mother to determine if she needed medication superseded and interfered with the provision of necessary individual counseling for the mother;

(4) The agency failed to provide frequent and appropriate visitation, because it did not attempt unsupervised, extended, overnight and weekend visits which the court deemed entirely appropriate; and

(5) The child's medical exam was not to be considered a reunification service as it was not given for other than routine purposes.

PENNSYLVANIA

In the Interest of CW, 519 A.2d 1030 (Pa. 1987)

Mother appeals from decree terminating her parental rights to her eight-year-old daughter primarily because mother failed to have meaningful contact with the child for approximately a seven-month period. The Pennsylvania Superior Court reversed and remanded, holding that the termination was not supported by clear and convincing evidence, since mother had substantially reformed her situation.

At the time of the child's birth, mother was young and experiencing problems, and therefore hired a babysitter to care for the child. Before the child was two, she was taken from mother by the babysitter. Mother took the child back into her custody until the Pennsylvania child welfare agency placed her back with the babysitter. Shortly thereafter, the trial court granted custody of the child to the agency with visitation rights to mother.

In the beginning visitation was frequent, but then became sporadic when mother remarried and moved to North Carolina. The North Carolina child welfare agency found mother's new home satisfactory and her new marriage a stabilizing influence. At the six-month review hearing, the master recommended immediate return of the child to mother in North Carolina. However, the court refused and ordered that legal custody remain with the Pennsylvania agency, and that caretaker responsibilities remain with the babysitter. This continued until mother's parental rights were terminated.

In upholding mother's claims, the appeals court relied on a prior holding of the Pennsylvania Supreme Court that parents who seek a caretaker for their child because the parents are in a temporary crisis are not failing to perform parental duties. The court found that repeated efforts by mother to regain custody were frustrated by her move to North Carolina and not encouraged by the babysitter or Pennsylvania child welfare agency. Mother wrote letters and sent cards, but received no feedback about her daughter receiving them or about her general welfare.

The court ruled that it was the duty of the Pennsylvania agency to act as initiator in attempting to maintain contact between parent and child and in developing a program for the child's return to the parent. Because the agency failed to fulfill this role and mother had demonstrated a substantial reform in her situation that remedied her incapacity, the court held there was no clear need to disrupt the parent-child relationship.

RHODE ISLAND

In re Kathleen, 460 A.2d 12 (R.I. 1983)

The mother placed her child in voluntary foster care, and the local child welfare agency attempted to provide the parent with services aimed at reunification. The mother complied with that part of the plan requiring her to find gainful employment and an apartment, and to maintain weekly visits with her daughter, but failed to seek counseling.

Approximately two years later, the mother admitted to dependency, and a new reunification plan was developed. The plan involved increased visitation and required the mother to participate in counseling. She again failed to attend counseling sessions, despite problems that surfaced during visitation.

The mother's parental rights were terminated under a state statute which permits termination when a child has been in state care for at least six months, and when the agency has

made "reasonable efforts . . . to encourage and strengthen the parental relationship." The court found that the agency had made reasonable efforts by urging the mother to participate in counseling, and that her failure to do so indicated the impossibility of reunification, thus justifying the termination of her parental rights.

In re Crystal, Joshua, and Jacquelyn A., 476 A.2d 1030 (R.I. 1984)

Three children were removed from their mother because she was found to be psychotic and unable to care for them. She was diagnosed as being "schizo-effective," with recurrent psychotic episodes. The agency arranged visitation for the mother and also attempted to provide her with psychiatric counseling and drug therapy.

Parental rights were terminated because of mother's mental illness. Mother appealed the termination, contending that the agency had not made reasonable efforts to encourage or strengthen the parental relationship. The court upheld the termination, holding that the agency had met its statutory burden by providing an adequate case plan that provided for visitation and monitoring by the caseworker, and by attempting to provide psychiatric help.

In re Kristina L. 520 A.2d 574 (R.I. Supreme Ct. 1987)

Appeal by parents of the termination of their parental rights to their middle child. The child had spent all but her first six months in foster care where she had been placed for failure to thrive. The trial court had bonded to her foster parents, and that future bonding with her biological parents was impossible.

The Rhode Island Supreme Court reversed for the following reasons: (1) the state's failure to prove that the parents were unfit; (2) the trial court's failure to find that the child was likely to suffer physical or emotional harm if she were returned to her family; (3) the parents cooperated with the child welfare agency; and (4) the agency failed to make reasonable efforts to reunify the family.

The Supreme Court, in its decision, noted that it was not surprising that the child had bonded with her foster family in light of the "totally inadequate" visitation schedule arranged by the agency and discussed at length in the court's opinion. The court also was concerned that, in spite of the parents cooperating with the agency and showing their care and concern for the child, their rights were terminated. The court noted that the mother had taken the child to three different hospitals when she was an infant in an attempt to determine

why the baby was not gaining weight, and had also participated in counseling sessions, visited the child, attended a parenting program, and at times "went beyond what was required" for reunification.

The Supreme Court determined that the agency's keeping the child from her family for six years for reasons as insignificant as dirty dishes and laundry and awkwardness between mother and child was unacceptable, and ordered the family court to oversee the reunification of the family. In its decision, however, the court encouraged the foster family to continue to play a part in the child's life.

SOUTH DAKOTA

People In Interest of J.S.N., 371 N.W.2d 361 (S.D. 1985)

Parents appeal order terminating their parental rights of their children. In upholding the termination order, the court held that when reasonable rehabilitation efforts fail and the parents do not use assistance to progress and correct problems, termination of parental rights is required, even though every possible form of assistance has not been exhausted. The court affirmed the trial court's conclusion that the child welfare agency had made reasonable efforts to provide assistance that failed for lack of parental cooperation, and that no narrower or less restrictive alternative remained.

This conclusion was based on findings that the parents (1) failed to exercise visitation rights, (2) failed to cooperate with parent education programs, (3) failed to maintain continued employment or stabilize their financial situation, (4) failed to obtain adequate housing, (5) were unable to provide for the children's speech and special education needs, and (6) were financially and socially unable to provide for the proper and necessary subsistence, medical care, and other care necessary for the children's health and well-being.

VIRGINIA

Banes v. Pulaski Dept. of Social Services, 339 S.E.2d 902 (Va. App. 1986)

Father appeals termination of his parental rights as to his six-year-old daughter. Child had originally been placed in foster care due to mother's "drinking problems" and father's "inactive interest" in the child.

The court of appeal, in upholding the termination decision, found that father had refused to cooperate with the

agency's reasonable efforts to rehabilitate him. This lack of cooperation on the father's part included (1) refusal to participate in parenting classes; (2) failure to secure appropriate housing; (3) failure to properly budget his income leading to frequent lack of food in the home, yet refusal to participate in agency's budgeting classes; and (4) unsatisfactory, sporadic visits, usually initiated by the agency.

WASHINGTON

In re Welfare of Siegfried, 708 P.2d 402 (Wash. App. 1985)

Mother appeals trial court's order terminating her parental relationship with her eight-year-old daughter. The evidence showed that mother had repeatedly physically abused her child since infancy. In 1982, following reports of child abuse, dependency proceedings were initiated. Mother resumed counseling sessions as part of an earlier case plan with the agency. Eventually, the child was placed in a residential treatment center where she remained at time of trial. She was diagnosed as exhibiting a conduct disorder secondary to physical and sexual abuse.

There was evidence from the center that contact with her parents would be detrimental to her potential recovery, and that the center planned to locate and help the child integrate into an adoptive home after at least a two-year period of intensive treatment. Mother's psychologist, over objection, described mother's lack of progress during therapy, her resistance to change, and her lack of candor. The order terminating parental rights was issued in July of 1984. There was also evidence that the agency had provided mother with homemaker services and counseling, but had denied her visitation for nearly two years prior to termination.

The court of appeals held that (1) mother waived her psychologist-client privilege to confidential communications with respect to her relationship with her child when she agreed to the ongoing communication between the agency caseworker and her therapist; (2) the evidence was sufficient to support a finding that the state had provided all reasonable and necessary services to correct parental deficiencies within the foreseeable future; and (3) evidence was sufficient to support a finding that there was little likelihood that conditions would be remedied so that the child could be returned to the parent in the near future.

MODEL QUESTIONS FOR DEFINING REASONABLE EFFORTS

Introduction

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

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

Furthermore, while the answers to these questions may lead to a negative finding initially, the judge can always change that finding as developments change. For example, suppose that a judge finds that visitation every other week for one hour is "unreasonable" for a particular family and that therefore the agency is not making "reasonable efforts" in that case. By the next court hearing, if visits are then taking place at least weekly for

several hours in duration, the judge might then change the negative finding to a positive one. Very often the answers to these questions are important enough to the preservation or reunification of a family that they should be addressed in the case plan so that everyone knows the "reasonable efforts" that the judge expects to be made in the case.

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

The importance of these questions cannot be overemphasized. Because the primary goal of Pub. L. 96-272 is to prevent children from languishing in foster care, Congress gave families very short time periods for reunification. Given those shortened time periods, due process requires that agencies make "reasonable efforts" when helping families. Family preservation and child welfare services which we know to be successful for preservation and reunification should be our goal. Many of these service orientations are based on common sense, recognizing that the families in question are in crisis. Courts should carefully scrutinize service plans with these premises in mind.

Finally, these questions are meant to be a starting point for

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

QUESTIONS COMMON TO ALL SERVICES

Overview

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

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

The research is generally of two types: studies that analyze characteristics of the service system as they influence use or non-

use of services and studies that analyze characteristics of the clients or population in relation to patterns of service utilization. Researchers may label and measure the prerequisites of access and utilization differently but there is agreement on what the components of access must entail. These include:

- Awareness, Need: The client family and the agency must recognize that there is a need for services. It is important to note that how people define need or a problem and what to do about it involves the interplay of social, cultural, and psychological factors. How people respond to a crisis situation such as illness, death, or family discord is learned behavior based on cultural values and norms.

- Availability, Geographic Access: The services should be within reach. Often this is defined in terms of distance with travel time less than 30 minutes. It also includes waiting time to get an appointment or service and the wait once a client reaches the agency if services are provided out of the home.

- Ability to Obtain, Financial Access: The services should be affordable. The assessment should consider direct and indirect costs, e.g. bus fare, gas costs, childcare costs and competing survival needs such as food and housing.

- Acceptability: The services should be acceptable to the client. Usually this means that some standard is maintained, e.g. confidence in expertise of service providers, rapport and satisfaction with services.

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

These five components of access: awareness, availability, ability to obtain, acceptability and appropriateness are guiding principles for defining reasonable efforts. The following questions provide a framework for determining to what extent components of a

case plan meet the prerequisites for access to services. The subsequent discussion sections document their theoretical and practical significance for case plan development, service delivery and evaluation.

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

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

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

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

Discussion: Families in crisis should not have to wait weeks or months at a time to receive a service. Indeed, sometimes even a few days wait can be unreasonable. From a psychological perspective, a family in crisis may be very open to change during that crisis, thereby making services such as family counseling very effective at that time. Once a crisis is over, very often because the children have been removed, the family will reorganize without the children, making reunification difficult. Also keeping in mind the fact that parents can have their parental rights terminated in very short periods of time, waiting lists can mean the difference between a service being "reasonable" or "unreasonable."

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

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

Discussion: The rationale behind this question should need little explanation. Telling a family to avail themselves of a particular service, such as counseling or parenting education, which is not in the family's native language or where the family has a minimal understanding of English, is patently "unreasonable." For a family in crisis, this is even more important. "Reasonable efforts" means services should accommodate the family, not that the family accommodate the system.

Despite the passage of the English Only Initiative, unprecedented demographic trends at national, state and local levels underscore the critical importance of multilingual and multicultural services. In California, foreign immigration is the primary demographic factor responsible for the state's changing population growth profile. During the 1970's, immigration accounted for almost half of California's new residents. Estimates since 1970 and 1980, the Latino population increased 61%. Current estimates are that Latinos make up 8% of the total U.S. population with numbers in excess of 20 million. The term Latino refers to multiple ethnic groups with different national origins and cultural traditions. Latinos constitute 20% of California's population with the majority of Mexican origin.

The population increase of Asian and Pacific Americans is equally striking. Between 1970 and 1980, the Asian and Pacific American population grew to 3.5 million - an increase of 128 percent. Asian and Pacific American is really an umbrella category

for describing more than 32 ethnic groups, most of whom are immigrants or refugees with a diverse cultural and sociopolitical heritage.

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

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4. How far was service from family's home?

Discussion: When a service is not available in the family's community, a number of pressures are put on families to avail

themselves of the service. These pressures add to the crisis situation. They do not relieve it. Transportation alone can be a major problem. (See question 5.) Also, when the service is in a different community, the chances that it will be culturally appropriate diminishes.

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Shannon, G.W. et. al. "The Concept of Distance as a Factor in Accessibility and Utilization of Health Care." Medical Care Review 26:143, 1969.

Sue, S. "Community Mental Health Services to Minority Groups." American Psychologist 616-622, August, 1977.

5. Was transportation available? How accessible was it?

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

Available transportation is a mandatory prerequisite for use of services. Access to transportation is related to factors such as cost, distance and travel time as well as more subjective issues like safety when families rely on public transportation. When

transportation resources are available (e.g. bus tokens, ride sharing, money for gas), families may have to weigh the benefits of having transportation against the costs of lengthy rides and long waits whether at the bus stop or at the agency. These decisions often involve devoting an entire day in order to receive an hour or less of services. As health and human services options diminish due to Medicaid restrictions and the unavailability of service providers for families without public or private insurance, families cannot always choose to use services that are closer to home. Moreover, the services that are closer to home may not be the services most appropriate for the client family's needs.

References:

Health Access, The California Dream, The California Nightmare: 5.2 Million People with No Health Insurance. March, 1988. Author.

Select Panel for the Promotion of Child Health. Children's Health Care: The Myth of Equal Access. Prepared by D. Dutton. In: Better Health for Our Children: A National Strategy. Vol. IV pp. 357-440 DHHS No. (PHS) 79-55071. Washington D.C.: U.S. Government Printing Office, 1981.

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

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

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

References:

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IN-HOME INTENSIVE SERVICES

Introduction

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

1. Kids on verge of placement?
2. Crisis oriented?

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

3. Combine "hard" and "soft" services?

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

4. Staff available on 24 hour basis?

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

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

Discussion: Since the workers in these programs may spend as much as 10-15 hours a week in the family home, they will have a wealth of information about the family at their fingertips. Therefore, their assessment of possible harm to the child if left in the home is based on this information. Additionally, the family knows that the worker is on call at all times and that the worker will respond in any emergency.

6. Deal with whole family?

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

7. Work done in home?

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

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

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

9. Small caseloads (2-3)?

10. Short periods of involvement?

11. Followup/evaluation?

References:

The Edna McConnell Clark Foundation. Keeping Families Together: The Case For Family Preservation. New York, 1985.

Youth Law Center. In-Home Intensive Services Bibliography. San Francisco, CA, 1988.

PARENTING EDUCATION

1. Location/transportation?
2. Times?
3. Child care available?
4. Who takes responsibility for enrolling parents?
5. How long before class starts?
6. What is the reading level of materials used in class?
7. How individualized is class?
 - special needs child?
 - age of child?
 - cultural/language considerations?

References:

In the Matter of the Child, No. 88178 (Or. 1986)

In the Matter of Derek W. Burns, 519 A.2d 638 (1986)

VISITATION

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

Discussion: Many times after children have been removed from their homes, it may be two weeks or sometimes longer before they have their first visit with their parents. From a psychological standpoint, this can be a very damaging interval for both the parent and the child and may decrease the family's chances for a successful reunification. Regardless of the nature of the family's problems before the child was removed, both the parent and the child are probably experiencing strong reactions to the separation. For a child, the effects of the separation are numerous. First, on a cognitive level, the child may suffer a short-term memory deficit. This is often why children are labeled "learning disabled" once they have been removed. Any kind of crisis can do this for a child, but separation from the biological parent is often a trigger. Second, the child may show signs of grief behavior, part of which may be anger at being separated from their parent. The parent likewise may be in this grief stage and experiencing anger within the first week or two after placement, much of which may be expressed toward the worker. At any rate, regardless of the behavior, it is very important that the first visit take place as soon as possible after the child has been removed so that the grief process does not become the main dynamic that is going on.

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

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

3. How often do visits take place?

Discussion: The frequency of visits for children in foster care is vitally important. The more often the visits take place, the more likely the family will be reunified. Particularly when the child is an infant, frequency of visitation can be crucial. Once-a-week visits with a small child can be of little value when trying to preserve the parent/child attachment. With an infant, a short once-a-week visit will be meaningless since no attachment can even

be established. If workers fail to adopt plentiful visitation schedules for families, judges should question whether the agency is making the requisite "reasonable efforts" to reunify a family.

4. How long do they last?

Discussion: A visit that only lasts an hour can be extremely destructive for both parent and the child. Very often after removal the children will express anger toward the parents because, in the eyes of the children, the parents have abandoned them. It may take the child a fair amount of time, frequently more than an hour, to try and work through some of that anger with the parent. If the visit does not allow the family this time, the only thing that someone supervising the visit may see from the child is anger and rejection toward the parent. When asked how the visit went, this supervising person may not be able to relate a positive parent-child interaction. When judges receive this kind of information, they should not assume that the visit went badly but rather that the child's anger may indicate a very strong attachment to the parent. If the worker is contemplating reunification within a few months, overnight or weekend visits should certainly be strongly considered.

5. Are they supervised?

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

6. Location of visit?

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

7. Transportation?

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

short.

8. Is the child placed near family?

9. Child's reactions after visits?

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

References:

Fahlberg, V., M.D. Attachment and Separation: Putting the Pieces Together. Michigan Department of Social Services, 1979.

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Matter of Sheila G., 462 N.E.2d 1139 (N.Y. 1984)

Youth Law Center. Visitation Bibliography. San Francisco, CA, 1988.

COUNSELING

1. What is the purpose of the counseling?
2. Should it happen right away or should other needs of family, such as housing or emergency financial assistance, be taken care of first?
3. Does the counseling utilize a family systems approach as opposed to a psychoanalytical approach?
4. Is there an evaluation component to the counseling? Is this necessary? If psychological evaluation is prepared, can parent read and understand it?
5. Is the counselor sensitive to the cultural values of the client?

References:

Everstine, D.S. and L. People in Crisis: Strategic Therapeutic Interventions, 1983.

In the Matter of a Child, No. 88178 (Or. 1986)

Matter of L. Children, 499 N.Y.S.2d 587 (Fam. Ct. 1986)

DRUG ISSUES AND PARENTING

Introduction

The questions that follow may help judges and others involved in child welfare systems to reevaluate their policies concerning addicted parents, particularly those with children born with positive tox screens. Several programs (described in the references below) are finding there are ways to assess and treat addicted mothers so that many of them are eventually able to safely care for their children. The questions below are those that these programs either use in their assessment of whether a mother should enter their program or concern aspects of successful treatment programs. Rather than accept as given that no addicted person can ever parent their child, the questions take the approach that every family should be assessed individually and that carefully planned treatment programs may keep at least some of these children with their families. "Reasonable efforts" requires no less.

Judges may want to consider using an independent chemical dependency expert to advise them in these cases. However, judges should be sure that this person has the expertise and experience in the parent's type of chemical dependency. For example, a person with expertise in heroin and other opiate addictions may have little or no expertise in cocaine addiction.

When assessing treatment programs, judges should realize that drug-addicted or abusing parents, particularly mothers, have been considered by many as "unfit" parents. Consequently, traditional drug treatment programs have all but ignored their role as parents. Even day treatment programs generally do not make provisions for childcare for the children of these parents. These attitudes result in many mothers avoiding seeking treatment either because the programs make no provisions for their children or worse, because they fear they will have to relinquish their children once the system discovers their addiction. This is particularly true with pregnant addicts, since many agencies have a policy of automatically placing a hold on any newborn whose tox screen test is positive.

1. Does the mother express a strong desire to maintain custody of her child?

Discussion: If the mother expresses a strong desire to keep her child, she may be more motivated to accept treatment and parent skills training. An expert may be helpful in assessing this motivation.

2. What is the mother's actual ability to care for her child? If she has had other children, was she able to successfully care for them? If unsuccessful in the past, what is her current situation? Does she have new sources of support that were not

in place previously?

3. What other family members are actively involved in providing support to the mother?

Discussion: If members of the mother's extended family are available to help with caring for the children, the mother may be more likely to be an effective parent.

4. What is the mother's drug treatment status?

Discussion: If the mother is not receiving drug treatment or is negative about entering a treatment program or stopping her drug use, then it is unlikely improvement in her parenting abilities will occur. However, judges should consider how accessible any offer of treatment to the mother was before concluding that she refuses to seek treatment. As discussed above, an accessible program will be community-based, provide childcare if necessary, etc.

5. If the mother is in drug treatment, what was her reason for entering the program?

Discussion: If the mother entered drug treatment because she was concerned that her drug use would prevent her from safely caring for her children, then her motivation may be a strong factor in her successfully completing treatment.

6. If the mother is in treatment, has she continued to use drugs during treatment?

Discussion: If the mother has been able to refrain from using drugs during her treatment, it is more likely that she will successfully complete her treatment program.

7. What is the mother's drug history? How long, how often, and what type and amount of drugs has the mother been using?

Discussion: Obviously, the longer the mother has been using drugs, the harder it will be for her to successfully end her drug use. Additionally, the more frequent her use and the higher the amount of drug use will negatively impact on her parenting ability.

8. If the child has been removed, did a single person make the decision to remove the child, or was a team of individuals familiar with the mother and with parenting and drug dependency involved in making the removal decision?

Discussion: At least one expert recommends that a team of persons be involved in the child removal decision to avoid the possibility of a decision based on negative stereotypes of addicted women as mothers (Finnegan, L., ed.).

References:

Colten, M. A Comparison of Heroin-Addicted and Nonaddicted Mothers: Their Attitudes, Beliefs, and Parenting Experiences, National Institute on Drug Abuse, HHS.

Finnegan, L., ed. "Continuing Care of Mother and Infant." In: Drug Dependency in Pregnancy - Clinical Management of Mother and Child, National Institute on Drug Abuse, HHS, 1978.

Jessup, M. & R. Roth. Clinical and Legal Perspectives on Prenatal Drug and Alcohol Use: Guidelines for Individual and Community Response. To be published in 1988.

Lawson, N. & G. Wilson. "Parenting Among Women Addicted to Narcotics." Child Welfare 59 (20), February 1980.

Lief, N., M.D. "The Drug User as a Parent." The International Journal of the Addictions 20(1):63-97, 1985.

Pearlman, P., M.S., et al. Mothers and Children Together: Parenting in a Substance Abuse Program. In: Treatment Services for Drug Dependent Women, Vol II, HHS, (year?).

Reed, B., Ph.D., et al. Working with the Child Welfare System to Obtain Needed Services for Drug Dependent Women and Their Children. In: Treatment Services for Drug Dependent Women, Vol. II, HHS (year?).

Suffet, F., M.A., et al. "A Comprehensive Care Program for Pregnant Addicts: Obstetrical, Neonatal, and Child Development Outcomes." In: The International Journal of the Addictions 19 (2):199-219, 1984.

INCARCERATED PARENTS AND THEIR CHILDREN

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

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

(For more information, please read Attachment A.)

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IV. THE RIGHT TO COUNSEL AND THE ROLE OF COUNSEL

A. RIGHT TO COUNSEL

Although the right to the assistance of counsel has long been a hallmark of the Anglo-American system, it was not until the decisions of the Supreme Court of the United States in Kent v. United States, 383 U.S. 541 (1966), and In re Gault, 387 U.S. 1 (1967), that the right to counsel in delinquency proceedings was guaranteed. To date, the courts have not significantly extended this right beyond the adjudicatory phase of delinquency proceedings. However, the Maryland Juvenile Causes Act has created a more expansive right to counsel. C.J.P. §3-821 simply states that a "party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle." See also Rule 906.

Consequently, the right to counsel is not limited to children charged with a delinquent act, but extends to any child and/or parent who is a party to Juvenile Court proceedings. Chief Judge Murphy of Maryland's Court of Appeals reiterated this in a memo which states:

The right to counsel is not limited to children alleged to be delinquents but applies as well to children alleged to be in need of assistance (CINA) or in need of supervision (CINS). It applies to all stages of waiver, adjudicatory or dispositional proceedings... This is of particular importance in any juvenile proceeding which might result in the child's placement in a mental health facility or other placement outside of his home.

[Memorandum of Chief Judge Robert C. Murphy to all Maryland trial Judges, March 17, 1978]

In the city and in most counties, the Legal Aid Bureau and the Maryland Disability Law Center, Inc. (MDLC) represent children in CINA cases. In some counties the public defenders office represents the parents, and county solicitors or legal service units within the local department represent the departments of social services.

Rule 906(b) requires a detailed inquiry by the court into any decision to waive counsel in the hope that such a waiver will be permitted only if it is knowingly and voluntarily made. This Rule specifies the issues which must be addressed in such an inquiry, and requires that the court's determination follow in open court, on the record. If a waiver of counsel is permitted, the court should expressly state on the record its finding that the waiver has been voluntarily, knowingly, and intelligently made. The presence of counsel for all parties in CINA cases is just as critical to the normal, future development of the child as the presence of counsel in a delinquency proceeding. The blanket and expansive delineation of the right to counsel presented in C.J.P. §3-82 therefore applies to CINA proceedings without limitation.

B. ROLE OF COUNSEL

The role of counsel in juvenile court, and in CINA proceedings in particular, is frequently a difficult one. The traditional parens patriae view of the juvenile court, and the resulting informality of proceedings, places an unusual burden on counsel. This is particularly true in CINA cases where the

due process model established by Gault and its progeny is not directly mandated. Standard 2.3(b) of the Standards Relating to Counsel for Private Parties of the Juvenile Justice Standards Project states the policy which should govern the provision of counsel in CINA proceedings.

Counsel should be available to the respondent parents, including the father of an illegitimate child, or other guardian or legal custodian in a neglect or dependency proceeding. Independent counsel should also be provided for the juvenile who is the subject of proceedings affecting his or her status or custody. Counsel should be available at all stages of such proceedings and in all proceedings collateral to neglect and dependency matters, except where temporary emergency action is involved and immediate participation of counsel is not practicable.

Standard 3.1(a) of the same volume states as a basic premise that "however engaged, the lawyer's principal duty is the representation of the client's legitimate interest..." However, the specific role of counsel will differ somewhat, depending upon the party being represented.

1. Representation of the Child

The representation of the child in CINA cases will frequently be more difficult than in delinquency proceedings, because the child is often very young and it is difficult to determine "the client's legitimate interests." The Legal Aid Bureau which represents most of the children in CINA cases has adopted the following standard of representation.

The lawyer's principal duty is the representation of the client's legitimate interests. However engaged, considerations of personal and professional advantage or convenience should not influence counsel's advice or performance. Where

counsel is appointed to represent a juvenile in a child protective proceeding and the juvenile is capable of considered judgment on his or her own behalf, the determination of the client's interests in the proceeding should ultimately remain the client's responsibility after full consultation with counsel.

In child protection proceedings, the respondent may be incapable of considered judgment in his or her own behalf. Under these circumstances and unless a guardian ad litem is appointed for the child, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interests with respect to the proceedings. After this thorough investigation which shall include consultation with the child, the attorney shall adopt intrusive intervention justified by the juvenile's circumstances.

Thus, a juvenile should not be considered incompetent to make decisions and to participate in the direction of his case, merely by virtue of his minority. Rather, counsel must determine whether the child is capable of considered judgment, and thus entitled to determine the position that will be advocated in his behalf. Unfortunately, there is no precise measure that can be used to gauge the child's capacity for considered judgment. Age alone is not dispositive.¹ However, the introductory comments to the IJA-ABA Standards are instructive:

¹Current law reflects a hodgepodge of different ages at which children are considered competent. See, for example, Family Law Article §5-311: if an individual is 10 years old or older, he/she must consent to the adoption; Family Law Article §9-103: a child 16 years of age or older may petition the court for modification of a custody decree without being joined in the action by a next friend; a 6 year old may be competent to testify as a witness, Jacobs v. State 6, Md. App. 238 (1969); a 14 year old of dull normal intelligence is competent to waive Miranda Rights, King v. State, 36 Md. App. 124, cert. denied, 281 Md. 740 (1977); §20-106 Health-General Article, Ann. Code Md.: a minor child 16 years or older has the same capacity as an adult to consent to consultation, diagnosis and treatment of a mental or emotional disorder; §20-101 Health-General Article: a minor 17 years old or older may donate blood without consent of parents. See also, §20-102 Health-General Article: a minor of any age who is either married or a parent has the same capacity as an adult to consent to medical treatment.

It has sometimes been suggested that all or most of the juvenile court lawyer's clientele is not sufficiently mature to instruct counsel in the usual sense and that counsel must, therefore, usually act as guardian or amicus curiae.

The proponents of this view often tend, however, to equate competence with capacity to weight accurately all immediate and remote benefits or costs associated with the available options. In representing adults, wisdom of this kind is not required; it is ordinarily sufficient that clients understand the nature and purposes of the proceedings, and its general consequences, and be able to formulate their desires concerning the proceeding with some degree of clarity.

Most adolescents can meet this standard, and more ought not be required of them. To do so would, in effect, reintroduce the identification of state and child by imposing on respondents an objective definition of their interests. IJA-ABA Standards, Standards Relating to Counsel for Private Parties.

Some children, however, are not capable of considered judgment. In this situation, the standards require that the attorney, conduct a thorough investigation, in order to adopt and advocate the least intrusive intervention that is justified by the child's circumstances. Such a policy is consistent with the position of eminent authors in the field of child psychiatry and child development such as Anna Freud and Albert Solnit.² It is also required by state policy as articulated in the Purposes Clause of Maryland's Juvenile Causes Act, C.J.P. §3-802(a)(3), and recent federal policy as set forth in the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272. 42 U.S.C. §671(a)(15).

²"A policy of minimum coercive intervention by the State thus accords not only with our firm belief as citizens in individual freedom and human dignity but also with our professional understanding of the intricate developmental processes of childhood," Goldstein, Freud and Solnit, Before The Best Interest of the Child, the Free Press, New York, 1979.

Adherence to a standard that calls for the least intrusive intervention is a way of insuring that minors do not unnecessarily enter the foster care system or remain within it for an inordinate amounts of time. Children who do require out-of-home care ought to receive it in the least restrictive environment necessary to meet their needs. C.J.P. §3-802(a)(4), Johnson v. Solomon, 484 F. Supp. 278 (D. Md. 1979). Protective supervision should be the remedy chosen when children can receive adequate protection and parents can receive appropriate support and rehabilitation under such an order. Children whose needs can be met in family foster care should not be placed in institutions.

Removal of a child from his home may be easiest and quickest solution to the problems presented by families in the juvenile court, but there is substantial evidence that the interests of many children have not been served by such a practice.³

Below is a brief discussion of the role of the child's counsel in CINA proceedings.

It is important for counsel to be involved at the earliest possible stage, although it is normally not practicable for counsel for the child to enter the proceedings until the shelter care hearing. (See Chapter II for a detailed discussion of the Shelter Care Hearing.) Counsel should first

³Maryland Social Services Administration, "Foster Care Inventory Report" (1981); Maryland Foster Care Review Board, "Annual Report" (March, 1982); Writzer, Allen and McGowan, Children Without Homes, Children's Defense Fund, Washington, D.C. (1978).

explore whether the child can be adequately protected in the home pursuant to an order of protective supervision, if appropriate services are provided to the family. Counsel should also investigate whether the alleged abusing parent will voluntarily leave the family home, or can be forced to leave, so that the child can remain at home with the non-abusing parent. (See Chapter II) If this is not possible, and if shelter care appears to be required, counsel for the child should normally advocate placement of the child with a relative, or a neighbor or friend familiar to the child. Placement in foster care with a stranger is an alternative of last resort where no other placement appears available or feasible. If the child is placed in shelter care, hearings should be expedited, and pressure should be applied to the appropriate government agency to complete any investigation or cataloguing of alternative dispositions without delay. (See Chapter II for discussion of pre-disposition report.) Counsel for the child should conduct an independent investigation of the facts alleged in the petition, and efforts should be made through discovery, or through contact with counsel, to determine the existence of evidence or information in the hands of other parties. Counsel should explain to the child the nature of the proceedings and the alternatives available to the court, at adjudication and disposition. If the child is capable of considered judgment, counsel should ascertain his wishes. At the adjudicatory hearing, counsel should demand

that the petitioner produce the necessary evidence to sustain the finding requested by the petition. However, counsel should not hesitate to negotiate with counsel for the other parties to obtain an adjudication and disposition advantageous to the client. (See Chapter II for a discussion of the adjudicatory hearing.)

Once an adjudication of CINA has been made, the most difficult aspect of counsel's role lies before him. In CINA cases in particular, the disposition is most critical. Counsel for the child should explore the various dispositional alternatives in order to advocate for the least possible intrusion into the life of the child. The attorney should advocate return of the child to the home, provided that this option is not threatening to the child's life or health, and is consistent with the child's wishes. As a general rule, placement in foster care with a stranger should be the last alternative considered. At the disposition hearing, counsel should searchingly question witnesses for the petitioner to ensure that there has been a full exploration of less intrusive placements.

Counsel should insist that the disposition order specify in detail the rights and responsibilities of all parties. See Chapter II for a discussion of what the disposition findings and order should contain. If the child is placed in foster care, counsel should also insure that the disposition order contain the following:

a. A list of services which the child will receive, i.e. social work, psychological, special education services. (See Chapter II.)

b. A case plan or an agreement that a case plan will be developed in consultation with the child and the child's attorney within a specified period of time. Included should be: (1) an agreement that the case plan will list specifically all services the child and family will receive. (2) An agreement that the case plan will contain the permanency plan for the child and a specific time period for achieving the permanency plan. The obligations and tasks that the parents and the agency are to perform in order to meet the goals should be very specific so that counsel for the child can monitor and determine whether the tasks have been completed. The case plan and service agreement should include a timetable for meeting the goals and should define specifically what will happen if the goals are not met. See Chapter III for a discussion of case plans and service agreements.

c. The services the family will receive in order to facilitate reunification;

d. If the goal for the family is reunification, a placement that is in close proximity to the natural parents;

e. A visitation plan that is in accordance with the child's wishes.

A specific disposition order as described above will facilitate monitoring and lead to a quicker permanent placement for the child.

Once the disposition order has been determined, counsel should insist on the filing of regular status reports by agency personnel, and the establishment of a reasonable and early date for a review hearing. The attorney for the child should not assume that his job has been completed with the making of the disposition order. Counsel may be required to monitor, and to seek review of a disposition in order to ensure that efforts are being made to achieve the permanency plan. Counsel should also visit the child in his foster home, or in his natural home if protective services are being provided, to insure that the child is receiving adequate care and attention. Sample copies of letters which may aid in monitoring the child's progress are included in the appendices.

Counsel for the child may also want to attend the Foster Care Review Board meeting with the child to insure that the child's wishes in regard to the permanency plan are considered. See Chapter III for discussion of proceedings before the Foster Care Review Board.

In addition if prior to the 18 month dispositional review, counsel for the child believes there is a need for a modification of the original disposition order, counsel should petition for court review. See Appendix III for Sample

Petition for Review of Court Order.

In preparation for the dispositional review hearing, the following tasks should be completed:

a. Counsel should interview the child and ascertain his wishes;

b. Counsel should review the child's court file and D.S.S. case file, and speak with the D.S.S. worker.

c. Counsel should consult the foster parents regarding (1) whether they and the child are receiving the services specified in the case plan, (2) whether visitation with the natural parents is occurring and (3) their assessment of the interactions between the child and his natural parents.

d. Significant people in the community, schools, family, friends and relatives, etc. should be interviewed and copies of school records should be obtained.

e. Counsel should review all medical, psychological and psychiatric reports in order to determine whether the special needs of the child are being met and whether the agency is providing the services specified in the disposition order or case plan.

f. If the child's or parent's medical or emotional condition is questionable, counsel for the child should request an independent evaluation of the child or parent.

g. If counsel believes the agency's permanent plan is not in accordance with the child's wishes, counsel should be prepared to offer an alternative plan.

At the dispositional review hearing counsel for the child should raise the following issues:

a. Counsel should ascertain whether the child's current placement is meeting his needs. If the child needs additional services, counsel should ensure that the dispositional order or case plan specifies how these needs will be met. [See Chapter II and III for discussion of services to meet the needs of the child.]

b. If the permanency plan for the child is reunification with the natural parents, counsel should insist that the fact finder make a finding as to whether or not the agency has made a reasonable effort to reunify

the family. See Chapter I for discussion of reasonable efforts.

c. Counsel should be prepared to advocate for a different plan if (1) the child has considered judgment, and if the plan advocated by the parent or the agency is not in conformity with his wishes; (2) the child does not have considered judgment, and the plan is not the least intrusive intervention justified by the juvenile's circumstances; or (3) a party has failed to meet his obligations under the plan. Many times parents may make extravagant promises to the court to avoid having the court accept adoption as the permanency plan for the child. For example, if under the service agreement the parent was to visit the child weekly but never made the visits, promises that the parent should be given additional time to meet these obligations should be rejected. Similarly positions advocated by local departments of social services may be based on the financial resources of the agency and not on the best interests of the child. Counsel for the child should therefore, question all parties thoroughly to insure that the child's interests and needs are addressed.

d. Counsel for the child should insist that the court make a decision regarding the permanency plan for the child. Many times because these decisions are so difficult, the fact finder is willing to continue the child in foster care, hoping that the parent will be able to resume his responsibilities in the future. Children need permanency in their lives, and continued foster care should be considered only when all other permanent solutions fail. If the parents will not be able to resume their parental responsibilities, counsel for the child should advocate for a dispositional order, in which D.S.S. is ordered to file for termination of parental rights and to actively search for adoptive homes. (See Chapter III for a detailed discussion of the judicial determinations at dispositional review hearings.

2. Representation of the Parents, Guardians or Custodian

The role of counsel for the parents (that term will be used generically here) may well be the most arduous of all. It is difficult to successfully contest a finding of CINA, especially when counsel for the agency and counsel for the child are in agreement regarding that status. If after

investigating the facts, counsel for the parents believes a finding of CINA will be made he should try to negotiate a settlement of the case with the agency and the child's attorney. Many times, if the parent is willing to agree to a finding of CINA, and to obtain treatment, the agency will be willing to refrain from specifying specific acts of abuse, recording instead, a general statement that the parent is unable or unwilling to give proper care to the child.

If a settlement cannot be worked out, counsel for the parents' must insist that the agency prove the facts alleged in the CINA petition. See Chapter II for a description of the Adjudicatory Hearing. If the case is heard before a fact finder who applies strict rules of evidence, it may be difficult for the agency to prove a case which is based upon hearsay or the testimony of a very young child. When the alleged abusing party is also facing criminal charges arising out of the same incident, the criminal charges must be dismissed if there is no CINA finding. See Bowling v. State of Maryland, 298 Md. 396, 470 A.2d 797 (Feb. 2, 1984).

Counsel may also prevent a CINA finding by working with the parents to develop a private treatment plan for the family. He may then argue that the child is not a CINA, because he does not require the Assistance of the Courts. C.J.P. 3-801(e). If the treatment plan includes provisions sufficient to insure monitoring of progress, counsel could negotiate privately with the agency and child's attorney for

dismissal of the CINA petition.

However, in most cases there will be a finding of CINA and the job of the attorney for the parent is to focus on disposition - particularly the prevention of the unnecessary removal of the child. To accomplish this, the attorney should develop a program which encompasses the needs of the entire family so that the child can safely remain in the parent's home. See Chapter II for a discussion of the Disposition Hearing.

First, an attorney needs to get the family involved with services which could prevent removal. Services may include:

- casework and supervision of the family, i.e. protective supervision;
- group, individual, or lay therapy;
- child abuse, drug or alcohol counseling;
- parent's self-help group meeting attendance';
- homemaking, parent aide, or housekeeping services;
- child care;
- nutritional counseling; and
- job counseling, training and referral.

Involvement in programs may help convince the court that the child may safely remain at home. The attorney should also explore the resources of family and friends. It is possible that moving a family member into the home could insure the child's safety and render removal unnecessary. Or, if it is not reasonable to expect the child to remain at home, there

may be other family members or friends willing to care for the child. In addition, counsel for the parent should investigate whether the abusing spouse would be willing to leave the home so that the non-abusing parent and the child could remain together. See Chapter II for discussion of methods for getting the abusing spouse out of the house. It is important that counsel offer alternatives to the social service agency's suggestions; mere criticism is inadequate.

Finally if it appears that the child will be removed from the home, counsel for the parents should insist that the agency prove that "reasonable efforts" were made to prevent removal. See Chapter I for a discussion of reasonable efforts. If the agency cannot prove that reasonable efforts were made, it will not receive federal funds for the child while in foster care. In addition the fact finder may become more sympathetic to the parent, if he realizes that the agency has not put forth adequate efforts to keep the family together.

If the child is removed and placed in foster care, the attorney for the parent should be involved in the development of a case plan and service agreement. The key points in the case plan and service agreement may be included in the court's disposition order or there can be provisions in the disposition order requiring development of the case plan and service agreement and submission of such to the court. In advocating for the parent during this process, counsel for the parent should consider the following factors:

1. Counsel for the parents should discuss with the parent the various options, including whether the parents want their child returned home. If the parent wants to be reunited with the child, counsel for the parent must advocate that the agency adopt as the permanency plan for the child the goal of returning the child home. Counsel should then work with the parent, the agency's attorney and the child's attorney to develop specific tasks which the parent and the agency must perform in order to achieve this goal.

2. The obligations of the parents should be related to those problems that necessitated removal; the service agreement should not address every possible problem the parent may have. If the obligations and tasks the parents are to attain are too numerous, the parent may become overwhelmed which in turn, may lead to failure. It is important to insist that the tasks that the parent are to accomplish are realistic and attainable. For example, if the goal is for the parent to get a job and find housing, when there is no affordable housing available, the parent is simply being set up for failure. On the other hand, if counsel believes the parent he is representing is incapable of meeting any responsibilities, he may try to draft as vague a service agreement as possible.

3. Counsel for the parent should insist that the service agreement include a time frame, whereby the child's

return home will be triggered by fulfillment of specified obligations. The agreement should also note the consequences should the parents or agency fail to fulfill their obligations under the agreement.

4. The obligation of the agency regarding the provision of services to enable the parent to resume his parental responsibilities should be listed with specificity. Maryland's regulations provide that parents have the right to receive these services, and if they are not receiving services, or are not satisfied with the services, they have the right to request a fair hearing. See COMAR 07.02.11.03 §B(1) and (3)(d).

5. Counsel for the parents should insist that the child is placed in close proximity to the parent in order to facilitate visitation. Counsel should try to ensure that visitation does not occur at the agency's offices, and that there is a plan for accelerated parent-child visits. If the child is placed further away because of the special needs of the child, there should be provisions regarding transportation of the parent and regarding child care, if there are other children at home.

For a more detailed discussion of what should be included in a case plan and service agreement see Chapter III. See Poster Children in the Courts; (M. Hardin Ed. 1983, p. 359-371, Theodore Stein, The Role of The Attorney in Case Planning).

Counsel for the parent should monitor the extent of the parent's compliance under the case plan and service agreement. If it appears that the child can be safely returned to the custody of the parents prior to the 18 month dispositional hearing, counsel for the parent should petition for a modification or vacation of the Juvenile Court disposition Orders. Rule 916. See Appendix III for Sample Petition for Review of Court Order. For a detailed discussion of what occurs at the review hearings, see Chapter III. See also Foster Children in the Courts (M. Hardin Ed. 1983, pgs. 86-127, D. Dodson Advocating at Periodic Review Proceedings).

STANDARDS OF REPRESENTATION FOR ATTORNEYS
PROVIDING LEGAL REPRESENTATION TO
CHILDREN IN NEED OF ASSISTANCE

(Draft - By William Grimm, former Chief Attorney
of the CINA Unit of the Legal Aid Bureau, Inc.)

"The powers of the Star Chamber were a trifle
in comparison with those of our Juvenile
Courts and Courts of Domestic Relations . . .
It is well known that too often the placing of
a child in a home or even in an institution is
done casually or perfunctorily or even
arbitrarily . . . Even with the most superior
personnel, these tribunals call for legal
checks."

Pound, in Foreward to P. Young, Social
Treatment in Probation and Delinquency (1952)

PREFACE

Despite Pound's assessment of the juvenile courts, the
juvenile courts created in the beginning of this century considered
themselves as benevolent parents that sought to treat rather than
to punish. In such a system many believed "That legal counsel could
serve little function in the new scheme of things other than to
obstruct and delay the providing of necessary diagnosis and

treatment by pettifoggery and technical obstructionism" (Issacs, Jacob, "The Role of the Lawyer in Representing Minor in the New Family Court", 12 Buff. L. Rev. 501 (1963)).

Just several years prior to the Supreme Court's decision in In Re Gault, 387 U.S. 1 (1967), a survey of juvenile courts in 36 states confirmed that in a majority of the courts surveyed lawyers on behalf of children in less than five per cent of delinquency cases and that a similar situation existed with respect to representation in neglect, abuse and dependency cases. (Skoler and Tenney, "Attorney Representation in Juvenile Court" 4 Journal of Family Law 77, 81 (1964)). Gault measured the benevolent, altruistic, therapeutic intentions of the Juvenile Court against the realities of juvenile justice were needed. The child's right to counsel was one of those critical checks against the power of the Juvenile Court.

Since the Supreme Court's decision in Gault in 1967, attorneys have become a more frequent participant in Juvenile Court proceedings. Although Gault dealt specifically with the child's right to counsel in cases of delinquency, a majority of states now require that children who are the subject of child protection proceedings are also entitled to independent representation. In Maryland, this right to representation was first recognized by the Court of Appeals in a decision rendered the year after Gault. See In Re Cager 251 Md. 473 (1968). Subsequent revisions of the Juvenile Causes Act firmly established that both parents and children are parties to Child in Need of Assistance (CINA)

proceedings and that as parties they are entitled to the assistance of counsel at every stage of any proceeding, §§3-821, 3-801(p) Courts and Judicial Proceedings Article.

The implementation of this right to counsel has been complicated by the suggestion that the right to counsel for a child/adolescent is something different, something less than counsel for an adult. The problem is perhaps more acute in child protection proceedings because so many of the children involved are younger than the population of children charged with delinquent acts. Long standing participants in the Juvenile Court process have sought to maintain the informality of that process by suggesting that the attorney's role in Juvenile Court must automatically be different, the attorney/client relationship "adjusted" because of the client's minority. Minority was to be equated with incompetence. Formality and adversariness--two elements that were regarded as antithetical to the philosophy of the Juvenile Court--were to be avoided so attorneys were expected to advocate the child's best interest and not to be advocates for the child's interest as the child perceived them.

Those attorneys who have attempted to define this difficult role have found little help in the case law and statutes. Before Gault legal representation of children was usually limited to attorneys acting as next friend or guardian ad litem in personal injury suits or cases involving the protection of a child's financial interest in insurance proceeds or settlement of an estate. Gault only established the right to counsel, it did not

suggest a detailed model of competent legal representation for minors. Many of the statutes, that established the right to counsel including Maryland's, did not delineate the attorney's specific duties and obligations.

Until recently, the only ethical frame work for such representation was contained in Ethical Consideration 7-12 of the American Bar Association Code of Professional Responsibility.⁴ But since the adoption of the American Bar Association's Code of Professional Responsibility in 1970⁵, no formal opinions discussing the role of counsel for the child who is the subject of Juvenile Court proceedings have been issued by the ABA Committee on Ethics and Professional Responsibility. A brief informal opinion on delinquency cases was issued in 1971 but it provides little guidance both for attorneys involved in delinquency as well as child protection proceedings.

In February, 1979, the House of Delegates of the American Bar Association approved 17 volumes in a series of juvenile justice standards including a volume entitled Standards Relating to Counsel for Private Parties. The Standards were the result of some eight years of work begun in 1971 by the Institute of Judicial

⁴EC7-12: Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interest, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interest of his client

⁵The Code of Professional Responsibility was adopted in Maryland in 1970--see Rule 1230 and Appendix F., Maryland Rules of Procedure.

Administration at New York University School of Law. The American Bar Association became a co-sponsor of the project in 1973 at which time the IJA and ABA Joint Commission on Juvenile Justice Standards was established to serve as the project's governing body. The Commission was a multi-disciplinary group approximately half of whom were lawyers and judges with the balance of members representing nonlegal disciplines such as psychology and sociology. The actual drafting of the Standards and the accompanying commentary was the responsibility of some 30 scholars who worked with one of four advisory drafting committees. The four drafting committees included more than 100 members chosen for their background and experience not only in legal issues effecting youths but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections and police work. Prior to the submission of the Standards to the ABA House of Delegates in 1979, tentative drafts were considered and revised by the Joint Commission then distributed to members of the legal community, juvenile justice specialists and several ABA sections for comments and finally further revised by an Executive Committee of the Joint Commission in 1977 and 1978.

The Standards of Representation that follow are in part taken or adapted from some of the standards set forth in the American Bar Association's approved volume on Standards Relating to Counsel for Private Parties. That volume deals with the "sharp controversy regarding the propriety and role of counsel in Juvenile Court proceedings". Foremost among the Standards contained in that volume

is the general rejection of both guardian ad litem and micus curiae definitions of counsel's role. They require instead "that attorneys in Juvenile Court assume those responsibilities for advocacy and counseling which obtain in other areas of legal representation". It is interesting to note that the proposed replacement for the Code of Professional Responsibility--the Model Rules of Professional Conduct--more closely approximate this role definition.⁶

Standard I. "The lawyer's principle duty is the representation of the client's legitimate interest. Where counsel is appointed to represent a juvenile who is the subject of a Child In Need of Assistance proceeding and the juvenile is capable of considered judgment on his or her own behalf, determination of the client's interest in the proceeding should ultimately remain the client's responsibility after full consultation with counsel.

In child protection proceedings the Respondent may be incapable of considered judgment in his or her own behalf. Under these circumstances and unless a guardian ad litem is appointed for the child, counsel should inquire thoroughly into all circumstances that a careful and competent person in the juvenile's position should consider in determining the juvenile's interest with respect to the proceeding. After this thorough investigation which shall include consultations with the child, the attorney shall adopt and advocate the position requiring the least intrusive intervention justified by the juvenile's circumstances. (ABA Standard 3.1)

Comments:

This standard is taken almost verbatim from ABA Standard 3.1. The basic principle inherent in this standard is that a child simply by virtue of his minority is not to be automatically

⁶Rules of Professional Conduct 1.14: "A lawyer whose client is incapable of making adequately considered decisions, including a minor and a person suffering from a mental disorder shall as far as reasonably possible maintain the normal client--lawyer relationship with the person."

considered incompetent to make decisions, to participate in and to direct the case.

Neither the standard nor the commentary that follows the text of the ABA Standard define the concept "considered judgment". The threshold at which a child is deemed capable of considered judgment is difficult to gauge. There is no precise age or other single measure that can be used to determine the child's capacity for considered judgment. Some authors have suggested that a juvenile 14 years old or below and of average intelligence is incapable of knowingly and intelligently waiving his Miranda Rights, (Grisso, Thomas Juvenile's Waiver of Rights: Legal and Psychological Competence, Plenum Press, New York 1981). Others have suggested that the custodial preference of a child 12 years old or older should be followed automatically by the court (Bersoff, D. "Child Advocacy: The Next Step", New York University Educational Quarterly). The Supreme Court has ruled that mature minors have the capacity to make decisions about birth control and abortion. In Maryland a child 16 years old or older can file a Petition for Custody without using a next friend and can consent to treatment for mental or emotional disorder. The point here is not that we are adopting any hard and fast rule for "considered judgment" but rather that we need to get away from the casual but longstanding and well-entrenched assumption in juvenile proceedings, especially in child protection proceedings, that the child is to be seen but not heard and that it is his best interest that the attorney is to advocate and not the interest as the child perceives and relates

them.

In those situations where the child is not capable of considered judgment, the standards require that the attorney, after thorough investigation, adopt and advocate the least intrusive intervention that is consistent with the child's circumstances. Such a policy is consistent with the position of authors such as Goldstein, Freud and Solnit ("A policy of minimum coercive intervention by the state thus accords not only with our firm belief as citizens in individual freedom and human dignity, but also with our professional understanding of the intricate developmental processes of childhood" Before the Best Interest of the Child, The Free Press, New York, 1978), the Purposes Clause of Maryland's Juvenile Causes Act ("To conserve and strengthen the child's family ties and to separate the child from his parents only when necessary for his welfare" §3-802(a)(3) Courts and Judicial Proceedings Article,) and recent federal policy as set forth in the Adoption Assistance and Child Welfare Act of 1980: Public Law 96-272 (. . . In each case, reasonable efforts will be made (A.), prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home" 42 U.S.C. §67(a)(5)

Standard II. Counsel should ensure that Child In Need of Assistance proceedings are promptly scheduled for hearing and that cases are concluded within the time frames set forth in the statutes and the rules.

Comments:

Both the Juvenile Causes Act (§3-801 et seq., Courts and

Judicial Proceedings Article) and the Rules of Procedure (Maryland Rules of Procedure 901 et seq.) set forth specific time frames within which hearings are to be conducted and evaluations completed and limits placed upon the extension of shelter care. For example:

1. Shelter care shall not be ordered for a period of more than thirty days unless the Adjudicatory Hearing is held (§3-815c);
2. Copies of all studies and reports of physical and mental examinations ordered by the court shall be furnished to counsel not later than two days before any hearing at which the result of the examination will be offered in evidence (Rule 905a2);
3. There shall be a minimum of five days notice of hearing except hearings on continued shelter care (Rule 910c); a thirty day extension of shelter care beyond the initial thirty day period is permissible after an adjudicatory hearing (Rule 912c).

The sanction, if any, for a violation of the procedural time limits mandated by the rules or the statutes is unclear given the recent decisions of Maryland's appellate courts. See e.g. In Re DeWayne H., 290 Md. 401 (1981); In Re Phillip P., et al., 50 Md. App. 235 (1981); In Re Howard L., 50 Md. App. 498 (1982). However, even if there are no sanctions for the violation of time limits in juvenile proceedings, counsel should strive to have the court adhere to such limits. Delays in scheduling hearings, especially dispositional hearings, may be unavoidable - e.g., further time is

required to complete psychological/psychiatric evaluations of the child/parent - but counsel should take every possible step to avoid repeated postponements. The decision making process must take into account the child's sense of time and his/her inability to cope with the uncertainty and instability created by long delays in concluding proceedings that decide who will be his custodian and guardian. (See Goldstein, Freud and Solnit, Beyond the Best Interest of the Child, pges 40-49, The Free Press, New York, 1973). Generally, the older the child the greater the flexibility counsel may have in considering postponements. Obviously, time must be allowed for reasoned judgments but all participants in the child placement decision making process should act with all deliberate speed so as to recognize the child's differing sense of time.

Standard III. If a child is placed in shelter care and shelter care is subsequently extended by the court, counsel will ensure that the child receives appropriate care, treatment, education, etc. while in shelter care.

Comments:

Although shelter care is considered a temporary placement, it can and often does last sixty days or more. The trauma to the child under such circumstances can be immense. He is separated from parents, siblings, relatives and friends. His whole environment may change. The neighborhood of the foster home may be completely different from that of his own. He may have to change schools. He may live with an entirely new foster sibling group.

Counsel has an obligation to ensure that the child's individual needs are provided for during this period of temporary

care. In general, sibling groups should be placed together. If this is not possible custodial agencies should provide frequent opportunities for brothers and sisters to visit with one another. School age children should not linger in the foster home because school transfers are difficult. Necessary medical care should not be postponed because the appropriate forms have not been filled out or a replacement Medicaid card has not been received. Prompt psychiatric and psychological evaluations and the initiation of counseling may do much to reduce the trauma that some children experience and to facilitate the planning of an appropriate disposition.

Standard IV. It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and the allegations in the petition. The lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the client and the client's family. The lawyer's responsibility in this regard is independent of the posture taken with respect to any proceeding in which the client is involved.

Comments:

This standard points out that the lawyer has an obligation to begin his investigation promptly and that there are two important aspects of such an investigation:

1. To discover and assess all information that supports or refutes the allegations in the petition and;
2. To determine what services or resources - e.g., social, psychiatric, psychological, educational - are available within the community and could be appropriately used by the client or the client's family.

The lawyer's contribution to and standing within the court and with other participants will be enhanced if he knows as much or more than any other participant in the proceeding. On the other hand, ill prepared counsel lends credence to the claim that lawyers are not only unnecessary participants in the process but that they often confuse and impede the prompt and proper resolution of child protection proceedings. There are circumstances in which a thorough investigation will not be possible before the hearing - e.g., the shelter care hearing - although this may be avoided by a request for continuance. See Rule 912(a)(3). One of the primary sources of information will be the protective services worker. Counsel should thoroughly discuss the case with the worker and review all appropriate agency records. However, it is critical that counsel conduct his own independent investigation rather than relying solely on the information collected by the agency or the parents' attorney.

Standard V. In those situations in which the client is not capable of considered judgment and shelter care is requested, continued shelter care should be advocated only if custody of the child with his parents would create an imminent substantial risk of death or serious bodily injury to the child and no provision of services or other arrangement is available which would adequately safeguard the child.

Comments:

Maryland law provides little specifics or guidelines for extension of shelter care: ". . . a child may be placed . . . in shelter care . . . if such action is required to protect the child . . . or there are no parents, guardian or custodian or other

person able to provide supervision and care for the child and return him to the court when required." §3-815b Courts and Judicial Proceedings Article. This standard is adapted from standard 4.3B of the tentative draft IJA-ASA Standards Relating to Abuse and Neglect. It emphasizes that shelter care should not be perfunctorily extended in all cases but should be reserved for those instances in which a child would be truly endangered by continuing in the custody of his parents. In determining what position to advocate in these difficult situations, the attorney should keep in mind the trauma that may be caused by separating a child from his/her parents and family and must balance it against the seriousness of the threat to the child's physical safety. Emergency removal from the home is the appropriate response if the child has suffered a serious non accidental injury. It may not be the appropriate response when the family has lost shelter through fire, eviction, etc.

Standard VI. The lawyer's responsibility to his client does not necessarily end with an entry of a final dispositional order. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for his client in matters arising from the original proceeding. If a child is removed from the home and placed in the custody of a public or private agency, counsel has an obligation to maintain contact with the client and the agency or institution involved in the dispositional plan in order to ensure that the client's rights are respected and that the client is provided with proper care and treatment. Such monitoring can be achieved by:

1. Requesting and reviewing progress reports on a regular basis. §3-826 Courts and Judicial Proceedings Article.
2. Request that a service contract/agreement between

the child, the child's parents and the custodial agency be completed within thirty days of the dispositional order.

3. Filing a request for administrative hearing or juvenile court review.

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4. Who Knows? Who Cares? Forgotten Children in Foster Care. New York: The National Commission on Children in Need of Parents (1979).
5. National Council of Juvenile Court and Family Court Judges, Judicial Review of Children in Placement Deskbook (1981).
6. National Legal Resource Center for Child Advocacy and Protection. A.B.A. Young Lawyers Division. The Adoption Assistance and Child Welfare Act of 1980: An Introduction for Juvenile Court Judges. (1983).
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8. A. English, Foster Care Reform, Strategies for Legal Services Advocacy to Reduce the Need for Foster Care and Improve the Foster Care System, October, 1981.
9. J. Goldstein, A. Freud, and A. Solnit, Beyond the Best Interest of the Child, New York: The Free Press, (2nd ed. 1981).
10. McCormick, McCormick's Hornbook on Evidence, St. Paul Minn.: West Publishing Co. (2d ed. 1972).
11. Reference Handbook for Evidence. Baltimore, Maryland: Maryland State Bar Association (1972).
12. National Council of Juvenile and Family Court Judges, Children In Placement Project Manual.
13. Fanshel & Shinn, Children in Foster Care: A Longitudinal Investigation (1978).
14. United States Children's Bureau, The Local Child

E. Initial Clothing Maximum Allowances. Initial one time only clothing allowances are made on an "as needed" basis not to exceed the maximum by age group as specified in Schedule C of Regulation .19. The monthly clothing allowance will not be paid for the same month that the initial clothing allowance is paid. The initial clothing allowance is not available to group care either in institutions or group homes.

F. Cooperative Relationships - Purchase of Care.

(1) In any purchase of a care plan, the local department and the agencies or facilities involved are required jointly to develop and carry out a responsible plan for services appropriate to the needs of the child, his natural family or other significant persons in the child's life. The plan is implemented by regular interagency contacts and a system of reporting and reconsideration at a minimum of every 6 months.

(2) The local department worker shall remain involved with the child and his family during and after purchase of care to assure continuity of care and treatment, coordination of inter-agency effort, and to minimize the duration of purchase of care where possible.

G. Medical Care.

(1) Medical care for foster children is provided under the medical care programs of the State and local health departments. Therefore, no provision is made for payment for medical care from Foster Care funds, except that:

(a) Payment may be made for essential medical appliances for a child but only when not available through the Medical Care Program, the Crippled Children's Program, or other established programs.

(b) Payment of fees not to exceed \$20 per examination may be made for essential consultation from specialists, including psychologists, but only when not available through the Medical Care Program, the Crippled Children's Program, or other established programs. All foster children are to be referred to local health departments or other medical resources which accept the Medical Assistance Card for health screening services as well as diagnosis and treatment of problems discovered during the screening. This provision is mandatory under Title XIX of the Social Security Act and applies to all children under the age of 21 who are eligible for medical assistance. If a child is covered under his natural family's medical insurance, the scope of this coverage should be ascertained and used along with his Medical Assistance Card.

- Standards and Goals, Report of the Task Force on Juvenile Justice and Delinquency Prevention, (1976).
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 19. Brown, Fox and Hubbard, Medical and Legal Aspects of the Battered Child Syndrome, 50 Chi-Kent L. Rev. 45 (1973).
 20. Comment, Admissibility of Hospital Records in Evidence 21 Md. L. Rev. 22 (1961).
 21. Comment, Evidentiary Problems in Criminal Child Abuse Prosecutions, 63 Geo. L. J. 257 (1974).
 22. Goldstein, Consent to Operative Procedures, 22 Md. L. R. 190 (1962).
 23. Kempe, Silverman, Steele, Droegemueller, and Steele, The Battered Child Syndrome, 13 J.A.M.A. 105 (1962).
 24. Note, Evidentiary Problems of Proof in Child Abuse

Cases Why Family and Juvenile Courts Fail, 13 J. Fam. L. 819 (1974).

25. Proctor, Consent to Operative Procedures, 22 Md. L. R. (1962).

C. Collections

1. Child Abuse - The Battered Child Syndrome, 2 Proof of Facts 2d 365.
2. Child Neglect; 3 Proof of Facts 2d 365.
3. Hospital Records, 6 Proof of Facts 2d 131.
4. X-Rays, 11 Proof of Facts 741.

V. Court Cases

- A. Lynch v. King, 78-2152-K (D. Mass. 1982)
- B. In re: Rachel S., 60 Md. App. 147 (1984)
- C. In re: Arlene G., Rhonda G., Teresa G. Md. (1984).
- D. Duley v. State of Maryland, 56 Md. App. 275 (1983).
- E. Nagle v. Hooks, 296 Md. 123 (1983)
- F. In re: Jertrude O., 56 Md. App. 83 (1983)
- G. Bowling v. State of Maryland, 298 Md. 296 (1984)
- H. Matter of McNeil, 21 Md. App. 484 (1974)
- I. Bowers v. State, 38 Md. App. 21 (1977), aff'd on appeal, 283 Md. 115, (1978).
- J. In re: Cager, 251 Md. 473, (1967)
- K. Craig v. State, 220 Md. 590, (1959)
- L. Dyson v. State, 6 Md. App. 456, (1968)
- M. Deloso v. State, 37 Md. App. 101, (1977)
- N. Fabian v. State, 235 Md. 306, (1963), cert. denied 379 U.S. 869 (1964)
- O. Fabritz v. State, 24 Md. App. 708, (1975), cert. denied, 425 U.S. 942 (1976).

- P. State v. Fabritz, 276 Md. 416, (1975), cert. denied, 425 U.S. 942 (1976)
- Q. Fabritz v. State, 30 Md. App. 1, (1976), cert. denied, 425 U.S. 942 (1976)
- R. James v. State, 5 Md. 647, (1968)
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- T. Moore v. State, 26 Md. App. 556, (1974)
- U. Mulligan v. State, 6 Md. App. 600, (1968)
- V. Palmer v. State, 223 Md. 341, (1961)
- W. Terry v. State, 34 Md. App. 99, (1976)
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- Y. United States v. Woods, 484 F.2d 127 (1973), cert. denied, 415 U.S. 979 (1974).
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- CC. State v. Loss, 204 N.W. 2d 404, 295 Minn. 271 (1973)
- DD. Sims v. State Department of Public Welfare, 438 F. Supp. 1179 (1977), rev'd., Moore v. Sims, 99 S.Ct. 2371 (1979)
- EE. Johnson v. Solomon, 484 F. Supp. 278 (D.Md. 1979)
- FF. Kruse v. Campbell, 431 F. Supp. 180 (E.D. Va. 1977), vacated, 98 S. Ct. 38 (1977).
- GG. Pope v. State, 38 Md. App. 520, 382 A.3d 880 (1977).

Appendices

| | | |
|------|---|-----|
| I | Sample Exceptions to the Master's Recommendations | 301 |
| II | Foster Care Regulations - COMAR 07.02.11 | 308 |
| III | Petition to Modify or Review Court Order | 338 |
| IV | Federal (IV-E) Independent Living Initiative | 341 |
| V | Sample Service Agreement and Checklist re Characteristics of a Good Service Agreement and Excerpt from Circular Letter 82-81 re Service Agreements. | 351 |
| VI | Sample FCRB Agenda - Foster Care Review Board | 357 |
| VII | Foster Care Review Board Recommendation Letter and Report Form | 359 |
| VIII | Sample Motion for Leave to Intervene | 361 |
| IX | Court Order Appointing Counsel and Giving Counsel the Right to Inspect All Records | 364 |
| X | Shelter Care Order | 365 |
| XI | Sample Forms—Adjudicatory Stipulation, Stipulation Adjudicatory with Disposition, Stipulation Disposition, Review Stipulation | |

Appendix I: Sample Exceptions to the Master's Recommendations

IN THE MATTER OF _____ : IN THE
: CIRCUIT COURT
: OF
: BALTIMORE CITY
: DIVISION FOR JUVENILE CAUSES
: CASE NUMBERS: _____, _____, _____

EXCEPTIONS TO THE MASTER'S RECOMMENDATIONS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

NOW COMES the mother, _____, by _____, her Solicitor, and Excepts to the report and recommendations of the Master In Chancery as follows:

1. That there was no evidence to indicate the children were in need of shelter care.
2. That the mother, _____, was denied due process of law by not being represented by counsel, or allowed to cross-examine witnesses.
3. That the children were not interviewed to determine their preference.
4. That the recommendation of the Master is not in accord with the law.
5. And for other reasons to be assigned at the time of the hearing.

WHEREFORE, the mother, _____, prays and requests that this matter be set for a hearing de novo before the Circuit Court of Baltimore City and that a stay be granted in the commitment of the children to the Department of Social Services for shelter care.

XXXXXXXX XXXXXXXXX
405 Tower Building
222 East Baltimore Street
Baltimore, Maryland 21202
Phone: 727-8454
Solicitor for the mother, _____

FORM COMPLETED BY: _____

DATE: _____

STATE OF MARYLAND
DEPARTMENT OF HUMAN RESOURCES
STATIC FACE SHEET 2

CHILD'S NAME: _____

CHILD'S CASE NUMBER: _____

OTHER REASONS FOR PLACEMENT (This may include but is not limited to the following):

- Parent unwilling to take care of child
- Financial need
- Inadequate housing
- Physical illness or disability of parent(s)
- Emotional problem or mental illness of parent(s)
- Employment of caretaking parent
- Parent-child conflict
- Marital conflict
- Antisocial behavior of parent(s)
- Child's physical handicap or disability
- Child's mental retardation
- Child's emotional or behavior problem

EXPLAIN: _____

DESCRIBE EFFORTS AND SERVICES TO PREVENT PLACEMENT (this may include but is not limited to the following):

- Relative Resources
- Intensive Family Services
- In-Home Aide
- Day Care
- Crisis Counseling
- Emergency Shelter
- Emergency Financial Assistance
- Temporary Respite Care
- Family Services
- Self-Help Groups
- Services to Unmarried Parents
- Special Education Services
- Mental Health, Drug and/or Alcohol Counseling
- Other/Referrals _____

SUMMARIZE FAMILY SITUATION AT TIME OF PLACEMENT (Identify members of household-parent(s) age, marital status; siblings, age; health of family members; presenting social/economic problems of family members and possible relative resources. Were there previous agency contacts-for what purpose?) _____

SUMMARIZE FAMILY'S STRENGTHS AND WEAKNESSES (Identify strengths that can be used to achieve the selected permanency plan and weaknesses that may present barriers to achieving the plan.) _____

SUMMARIZE CHILD AT TIME OF PLACEMENT (Describe the child physically; child's health status; child's social and emotional status. Is the child's general development in line with his/her age? Are there any outstanding medical, educational or other SPECIAL NEEDS that need attention?) _____

STATE OF MARYLAND
FOSTER CARE PROGRAM
CHILD STATUS UPDATE

| | | | | | | | | |
|------------------|--|----------------------|------------------|----------------|--|--------------------------------|--|---------|
| 1. CHILD'S NAME | | | 2. PARENTS' NAME | | | 3. LOCAL DSS | | |
| 4. DATE OF BIRTH | | 5. DATE F. C. OPENED | | 6. CASE NUMBER | | 7. WORKER NAME (Print or type) | | 8. DATE |

I. LEGAL STATUS *(Must be updated for each new step in the court process)*

| PETITION | | | | COURT ORDER | | | | |
|------------|------------|----------|---------------------|-------------|---------------|--------------|----------|----------------------|
| TYPE FILED | DATE FILED | DOCKET # | WAS PARENT NOTIFIED | | TYPE OF ORDER | DATE ORDERED | REGISTER | DATE FILED IN RECORD |
| | | | YES | NO | | | | |
| | | | | | | | | |
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TYPE OF ORDERS: Shelter Guardianship of the Person Adoption Commitment (indicate if joint) Protective Supervision Agency Guardianship Rescission Other (specify)

II. ATTORNEY INFORMATION

| CLIENT | NAME OF ATTORNEY | ADDRESS | TELEPHONE NUMBER |
|---------|------------------|---------|------------------|
| CHILD: | | | |
| PARENT: | | | |
| PARENT: | | | |
| AGENCY: | | | |

III. SCHOOL PLACEMENT

(Update with each change of placement. Provide as much detail as possible for children age 16-19)

| DATE ENTERED | GRADE | SCHOOL | CURRICULUM LEVEL OF EDUCATION |
|--------------|-------|--------|-------------------------------|
| | | | |
| | | | |
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| | | | |
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| | | | |
| | | | |

9. IF THE CHILD IS 16 OR OVER AND NOT IN SCHOOL, IS THE CHILD REGISTERED FOR VIN? YES (give registration date): NO N/A (explain):

303

| | | | |
|----------------------|----------|--------------------------|----------|
| 10. WORKER SIGNATURE | 11. DATE | 12. SUPERVISOR SIGNATURE | 13. DATE |
|----------------------|----------|--------------------------|----------|

Form
830-C

State of Maryland - Foster Care Program
PERMANENCY PLANNING RECORD
(must be updated at each reconsideration)

| | | | |
|-----------------|----------|------------------------|---------------------|
| 1. CHILD'S NAME | 2. CASE# | 3. DATE OF BIRTH | 4. DATE F.C. OPENED |
| 5. PARENTS NAME | | 6. DATE FORM COMPLETED | |

I. CATEGORY AND DATE OF PLAN

| CATEGORY | DATE ESTABLISHED | REASON FOR CHANGE |
|-----------------------|------------------|-------------------|
| 1. Return Home | | |
| 2. Relative Placement | | |
| 3. Adoption | | |
| 4. Independent Living | | |
| 5. Permanent F.C. | | |
| 6. Long Term F.C. | | |

II. ELEMENTS OF PLAN

| CATEGORY | PLANNED PERMANENCY LIVING ARRANGEMENT | PLANNED PERMANENCY LEGAL STATUS | PROJECTED ACHIEVEMENT DATE |
|----------|---------------------------------------|---------------------------------|----------------------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

III. NEED FOR FOSTER CARE

| REVIEW DATE | NEED FOR FOSTER CARE (State Why Services cannot be terminated. List barriers to achieving permanency plan) |
|-------------|--|
| | |
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| | |
| | |
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| | |

ASSESSMENT/PERIODIC REASSESSMENT OF FOSTER CHILD

AA. PRESENT PLACEMENT: Describe type and appropriateness of placement, including religious factor. Discuss proximity and justify degree of restrictiveness. Discuss adjustment and attitude of child to this placement and any recent placement change. If there was a change in placement were the parents notified in writing?

BB. MENTAL & PHYSICAL HEALTH OF CHILD: Indicate any current physical, mental or emotional conditions that impact on achieving and maintaining the permanency plan. Is the child taking medication or on-going treatment? Diagnosis? Prognosis? List. Date of last physical exam.

CC. EDUCATION: Discuss adjustments and progress. Indicate any special education needs and how any special needs are being met. Include full name and address of school, grade, and kind of curriculum/level of education. Discuss post-high school plans, if appropriate. Comment on implications for achieving or maintaining permanency plan.

DD. SERVICE TO CHILD: (Attach service agreement with child if appropriate) Discuss child's involvement in and opinions about permanency plan. Explain services to child needed to achieve or maintain permanency plan. Explain other services child needs.

EE. SERVICES TO PLACEMENT PROVIDER (Foster Parents, Group Home or Institution): Attach service agreement with placement provider if appropriate. Discuss placement provider involvement in and opinions about permanency plan. Explain services to placement provider needed to help implement plan. Explain other services placement provider needs. Give justification for payment rate other than regular foster care payment.

307

WORKER and SUPERVISOR attest that the following forms have also been reviewed/updated: 8204, 8308, E30C, E31.

| | | | |
|------------------|------|----------------------|------|
| WORKER SIGNATURE | DATE | SUPERVISOR SIGNATURE | DATE |
|------------------|------|----------------------|------|

Appendix II: Foster Care Regulations - COMAR 07.02.11

Table of Contents

| | |
|-------|--|
| .01 | Goals of Foster Care |
| .02 | Definitions |
| .03 | Rights and Responsibilities of Natural Parents |
| .04 | Application |
| .05 | Consent for Medical Care |
| .06 | Eligibility |
| .07 | Resources for Reimbursement towards Cost of Care |
| .08 | AFDC - Foster Care. (Agency Note: Federal Regulatory Reference 45 CFR 233,110) |
| .09 | Local Supplements |
| .09-1 | Provision of Reunification Services |
| .10 | State Standards |
| .11 | Payment to the Foster Care Provider |
| .12 | Liability Insurance |
| .13 | Placement of Child |
| .14 | Interstate Placement |
| .15 | Reconsideration |
| .16 | Permanent Separation of Child From Natural Parents |
| .17 | Return of Child to His Natural Parents |
| .18 | Post-Placement Supervision |
| .18-1 | Fair Hearing |

Title 07
DEPARTMENT OF HUMAN RESOURCES
Subtitle 02 SOCIAL SERVICES ADMINISTRATION

Chapter 11 Foster Care

Authority: Family Law Article, §§5-501—5-503; 5-524—5-531,
Annotated Code of Maryland
(Agency Note: Federal Regulatory Reference: 45 CFR 1358, 1367)

.01 Goals of Foster Care.

The goals of foster care include:

A. Placing the child who needs foster care in a stable living arrangement until a permanent plan is achieved.

B. Assuring that for every child for whom placement is necessary, the placement will be the least restrictive one available and in close proximity to the parent's or guardian's community.

C. Reunifying the family or achieving another permanent plan for a child through the provision of services to both the child and the child's family.

D. Implementing a permanent plan for the child. The plan options in order of preference are:

- (1) Return to the birth parent or the guardian;
- (2) Placement with a relative to whom custody, guardianship, or adoption is granted;
- (3) Adoption;
- (4) Emancipation or independent living;
- (5) Permanent foster care;
- (6) Continuing foster care with guardianship of the person granted to the foster parent and agency involvement limited to financial support;
- (7) Long term foster care.

E. Reducing the Number of Children Who Remain in Foster Care for a Period in Excess of 2 Years.

- (1) For the 12 month period beginning October 1, 1983, it is the goal of the Social Services Administration that not more than 70

07.02.11.01 DEPARTMENT OF HUMAN RESOURCES

percent of all children in foster care, in any given month of that year,
will have been in care for a period in excess of 2 years.

(2) For each subsequent 12 month period, it is the goal of the Social Services Administration that the percentage of all children in foster care who have been in care in excess of 2 years be reduced by an additional 2 percent.

.02 Definitions.

A. "Emergency foster care" means foster care provided to a child who requires immediate placement because of abandonment or other emergency which makes it impossible or dangerous for the child to remain in the home.

B. "Foster care" means a short-term service in a foster family home, group facility or semi-independent living arrangement which may provide:

(1) Care and services for the child who requires placement outside the home of the child's parent or guardian because the child is jeopardized by dependency, neglect, abuse, or abandonment which threatens the child's physical or emotional well-being;

(2) Reunification services to the child's parent or guardian in order to resolve the problems which necessitated foster care placement, to enable the parent or guardian to resume care of the child, or to achieve another permanent plan for the child;

(3) Services to the foster parents as well as supervision of the child in a foster family home or appropriate group facility to assure that the placement promotes the child's physical, emotional, and intellectual growth and well-being;

(4) Post placement care to a family after the child's return to the home of the parent or guardian.

C. "Long term foster care" means foster care provided for the child, for whom the department holds commitment and for whom the decision has been made that the child will remain in foster care for longer than 18 months.

D. "Permanent foster care" means foster care provided with the approval of the court for a child for whom the local department has guardianship with the right to consent to adoption or long term care short of adoption when the child is living with a foster family committed to caring for the child but unable to adopt the child.

E. "Permanent plan" means an appropriate living arrangement, individually developed for each child in care, that is intended to last

until the age of majority, and to assure a continuity of relationships for the child.

F. "Post placement care" means services and supervision provided to the family, after a child's return home, to facilitate the child's positive adjustment to the return and to insure that the placement is stable and likely to be permanent.

G. "Regular foster care" means foster care provided for a child until an appropriate permanent plan can be implemented.

.03 Rights and Responsibilities of Natural Parents.

A. Insofar as possible, natural parents shall participate in decisions regarding the child's placement. The local department shall advise them of their rights and responsibilities in regard to the child while he is in foster care. Parental rights should be carefully considered at all times, but when there is a direct conflict between the rights of the parent and those of the child, the child's best interest takes precedence in each incidence.

B. Parental Rights.

(1) Parental rights include the right to receive service from the department with the goal of enabling the natural parents to resume their parental responsibilities or make other long-range plans for the child.

(2) Right to Visit.

(a) Parental rights include the right to visit or otherwise contact the child regularly as planned with the department.

(b) The needs of the child, natural parents, and foster parents are to be taken into consideration in establishing a visiting plan, but most important is the goal of foster care placement for a particular child. Weekly visits should be the standard for parents who have an interest in maintaining regular contacts with their children and who may be expected to resume their parental role within 1 year. In other situations regular and frequent visiting is to be planned if not contrary to the best interest of the child. Parents must be offered visiting plans orally and in writing. The visiting plan is to be documented in the child's case record within 30 days after placement.

(c) If parents are separated and each plans to visit the child or children at different times, there shall be an equal opportunity for visiting by each parent. Visiting schedules will need to be modified in terms of individual circumstances.

(d) If weekly or regular visiting standards cannot or should not be applied in specific situations, the case record shall contain the reasons for this decision, showing why the visits are not feasible or contrary to the best interest of the child.

(3) Other parental rights include:

(a) The right to determine the religious affiliation of the child.

(b) The right to be involved in major changes in the life of the child — for example, change in placement plan, hospitalization for surgery or illness, religious affiliation, marriage, or entry into the armed forces. If parent or parents cannot be located, the department shall obtain approval from the court for certain changes unless the court has specifically delegated this authority to the department. A certified letter should be sent to the parent at his last known address informing him of the agency or court decision.

(c) The right to participate in planning for the child's future with the department including a plan for long-range substitute care if he cannot resume full-time parental responsibility.

(d) The right to appeal to the State Social Services Administration when dissatisfied with the services or any decision reached by the department, or to appeal to the court when there is disagreement concerning a change in custody of the committed child. The department shall provide the parent with written information as to how to do this as well as how to avail himself of legal counsel if he wishes same.

C. Parental Responsibilities. Parental responsibilities include:

(1) The responsibility to keep in regular touch with the department concerning the child's welfare and changes in the parent's own situation;

(2) The responsibility to maintain contacts with the child in care as agreed upon with the department;

(3) The responsibility to pay support in accordance with his means or as defined by a court order;

(4) The responsibility to make the decision with the department within 1 year for the return of the child to his own family or for other long-range plans for the child's care.

D. In addition to advising natural parents of their rights and responsibilities, the local department shall inform them that if their child remains in foster care for 2 consecutive years with no plan on the part of the parents to resume care, maintain regular interest or contact with the child, or to consent to other permanent plans for his care, the situation will be subject to court review. The purpose of the review will be to determine whether guardianship of the child is to be transferred from the parent to the local department. Under the present law (Article 16, §75, Annotated Code of Maryland), the court shall presume, in the above circumstances, that it is in the best interests of the child to award a decree granting guardianship with the right to consent to adoption or long-term care short of adoption to the department without the consent of the natural parent or parents unless they can present evidence to rebut this presumption. Before filing a petition for court review, the local department shall have made every effort to help the natural parents make a decision concerning their continuing relationship with their child or children in foster care towards the goal of eventual reunion of parents and children or, when this is not possible, towards placement of their child or children in a permanent home. The local department shall have made a conclusion as to how the child's best interests would be served based upon the parent's actions and definitive plans toward resuming care of their child. The law does not preclude filing a petition for guardianship for a child who has been in foster care less than 2 years if placement in a permanent home is indicated.

.04 Application.

A. A child may be placed in foster care only when:

(1) There is an application signed by the parent or the adult standing in place of the parent; or

(2) The local department has the authority by virtue of court commitment or emergency, such as abandonment, pending court action.

B. When an application is received, the local department shall promptly ascertain the facts and obtain any information as may be required to determine the need for the service. If a child is accepted for voluntary placement or committed to the department, the local department shall make a thorough case study and evaluation of both the child and his parents and shall record the study in the case records. The final decision concerning the placement plan shall be approved by the supervisor. The decision shall be made with reasonable

promptness and no longer than 60 days after date of signed application.

C. When a parent or parents apply for voluntary placement of a child, the local department shall carry through with the placement if the following conditions are met:

(1) If available, both parents sign the application, unless one parent has the authority to act alone. A parent is considered unavailable if his whereabouts are unknown. A parent has the authority to act alone when he has legal custody of the child or paternity has not been established in the case of an out of wedlock child.

(2) If available, both parents must agree to the child's placement if custody has not been clearly established as belonging to one or the other.

(3) The local department should have indication that the parent or parents can function responsibly in relation to their children and the department. The financial status of the parent is not a determining factor in accepting his child for voluntary placement if the above conditions can be met. Parents are expected to contribute to the support of their children in accordance with Schedule A of Regulation .19 or through a court order.

.05 Consent for Medical Care.

A. The natural parent shall participate to the extent of his capability and availability in plans for the medical care of the child whether committed to the department or in voluntary placement.

B. If the agency holds guardianship with the right to consent to adoption or long-term care short of adoption, or guardianship of the person, the agency stands in loco parentis and has the authority to give whatever consent is needed for medical care.

C. For the committed child, a form granting the right to consent to medical care to the local department of social services shall be obtained, whenever possible, from the parent or other guardian from whom this custody is transferred by the commitment. This form shall give the local department the right to consent to ordinary medical care for the child, as well as hospitalization and any necessary emergency treatment. If further consent is required by a hospital or the attending physician for treatment, such as surgery, it shall be provided by the parent or obtained from the committing court. Effort shall always be made to notify the parents and keep them informed about the treatment regardless of who gives consent. The case record

shall document actions taken by the local department to involve or notify parents of the need for and the decisions concerning medical care for their children.

D. The parent who places a child voluntarily with the agency likewise shall give written consent for routine medical care and hospitalization and certain treatment in an emergency. Any further consent must be obtained from the parent when required.

E. Each child in the department's foster care program is to have an identification card for medical care. This card will enable the foster parents or child care facility to obtain emergency medical treatment for the child at times the local department is closed.

.08 Eligibility.

A. Residence. A child residing in the State may receive foster care if such a plan in the State is considered by the local department to be in the child's best interest, there being no durational residence requirement. Temporary absence from the State, or planned foster care out of State, may not interrupt continuity of residence.

B. Age. Foster care payments may be made for a child needing continuing care but not beyond the full month in which he becomes 21 years old. Foster care may not be initiated for a child who is 18 years old or older.

C. Need. A child is in need of foster care placement because he cannot be maintained in his own home or the home of relatives.

.07 Resources for Reimbursement towards Cost of Care.

A. All of the child's resources, including parental support, child's own earnings, benefits, cash assets, and trust accounts are considered in determining the amount available for reimbursement towards the cost of care.

B. These resources needing definitions for determining amounts are as follows:

(1) Parental Support.

(a) "Parent" as used here applies to the father (including natural father) and mother.

(b) For a child committed to the department the amount of support payments shall be set by order of the appropriate court. The local departments shall provide the court with an assessment of the parent's financial capacity to pay support in line with Schedule A of

Regulation .19. When the child is eligible for AFDC-FC, the Child Support Enforcement System requires that prompt action be taken against an absent parent within 30 days.

(c) For a child received by voluntary application without court commitment, a voluntary agreement to pay the amount determined by Schedule A of Regulation .19 may be accepted so long as there is evidence that it will be paid with regularity and so long as it is in fact paid.

(d) Income used for application of scale (Schedule A of Regulation .19) is regular income computed on the basis of current earnings and other income.

(e) If a parent has extraordinary expenses for necessities, they are to be considered a deductible expense in applying the scale. Extraordinary expenses may be high medical bills not covered by insurance, legal fees, expenses connected with reestablishing a household.

(f) Failure to pay the amount determined by the scale or by court order shall be brought to the Director's attention promptly when the fiscal records indicate any arrearage in payment. Within 30 days after the notice to the Director, unless payments have been made or resumed with some assurance that they will continue with regularity, legal action shall be initiated:

(i) To establish the amount by legal action to replace any voluntary agreement which is not carried out;

(ii) To refer for legal action to collect any amount due and unpaid under voluntary agreements;

(iii) To refer for collection or further legal action any court order not carried out.

(g) If adoption or permanent foster care is the plan being considered for the child, it is not required that legal action for support be taken against the father when:

(i) The child is born out of wedlock, unless paternity previously has been established;

(ii) Guardianship with right to consent to adoption or long term care short of adoption, or both, has been granted.

(2) Child's Earnings. The resource from the child's own earnings is determined in line with plans developed towards his eventually assuming responsibility for his own support within the following provisions:

(a) All of the earned income may be disregarded of the child who is a full-time student, or who is a part-time student and not full-time employed may be disregarded. A student is one who is attending school, college or university, or a course of vocational or technical training designed to prepare him for gainful employment. A full-time student shall have a school schedule that is equal to a full-time curriculum. A part-time student shall have a schedule that is equal to at least one-half of a full-time curriculum.

(b) For the child who is not in school or enrolled in a course of vocational or technical training, \$30 per month plus $\frac{1}{3}$ of the amount of earned income over \$30 per month may be disregarded. The cost of items required in order to earn are deducted from the remaining $\frac{2}{3}$ of income in excess of \$30 per month, in arriving at the available resource. In case of lump sum payment for services rendered over a period of more than 1 month, the amount is pro-rated over the period during which the amount is earned for purposes of applying the disregard.

(c) In a permanent foster care arrangement, the child's earnings may be disregarded.

(3) Other Resources. Other resources which may be available for the child may be in the form of cash assets, trust accounts, insurance (including survivor's disability insurance), or some type of benefit or supplemental security income for the handicapped child. While in foster care, if the child is over 18 years old and is beneficiary, the child makes the choice whether to receive benefits or to designate the agency payee. These resources shall be applied directly to the cost of care, with any excess applied to either the maintenance of the child to meet special needs or conserved for future needs related to employment, cultural, and educational pursuits, recreation, or the establishment of a home. Any potential benefits from other resources are to be cleared and made available if possible to the local department as payee. Any special need is to be documented in the case record. If benefits over the foster care rate have been conserved for the child and have not been spent before discharge from foster care, the conserved funds may be returned to the child upon discharge, conserved in a trust account if the child has not reached age 18, or be returned to the legal parent or guardian with whom the child will reside.

(4) Any child for whom funds have been conserved according to the policy in effect before September 1, 1981, may retain those funds so long as the child continues in foster care and holds to the plan.

New funds may not be added on or after this date. Income no longer conserved is applied directly to the cost of care.

(5) AFDC as a Resource. A child is not eligible for State foster care funds while living with a relative designated in the AFDC law, except when this relative is the child's mother who is herself in local department foster care or the relative has no legal responsibility to support the child. A non-legally responsible relative is eligible to receive foster care rates for care of a child who meets AFDC-FC criteria if the relative is approved as meeting the standards of a foster home.

.08 AFDC — Foster Care. (Agency Note: Federal Regulatory Reference 45 CFR 239.110)

A. Federal financial participation is available for maintenance and services to the foster child who meets the following requirements for AFDC-FC:

(1) The child was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination.

(2) Actual or Potential AFDC Status. The child shall have AFDC status, or shall be considered for eligibility of this status if the following conditions exist:

(a) The child was receiving AFDC or would have received AFDC if application had been made on his behalf in, or for the month in, which petition leading to his removal was initiated; or

(b) The child had, within 6 months before the month the petition was initiated, been living with (and removed from the home of) an AFDC relative and would have received AFDC in and/or for the months if application had been made on his behalf.

(3) The child is living in a foster family home approved by the local department of social services or an agency licensed by the Social Services Administration or a private non-profit child care institution licensed by SSA from which care is purchased. This includes the home of a non-legally responsible relative when the child is otherwise eligible for AFDC-FC.

(4) There are contacts by the service worker according to the casework plan to determine continued appropriateness of and need for placement. Periodic reviews will be made not less frequently than every 6 months.

(6) The services are provided to improve the conditions in the home from which the child was removed towards his return to his own home or placement with a relative; or to make appropriate placement plans in continued foster care including permanent foster care or in an adoptive home. When a local department obtains guardianship for a child who is eligible for AFDC-FC and the child continues to live in a regular foster home or is transferred to permanent foster care, he continues to be eligible for AFDC-FC. Deprivation factor would be permanent absence of the natural parent or parents. Placement of the child in an adoptive home cancels AFDC-FC eligibility.

B. Payments for foster care will be made according to Regulation .19, Schedule B1. AFDC funds may be used for payments only to the foster parent or to the agency or institution from which care is purchased. When a vendor payment is necessary, such as for initial clothing, AFDC funds may be authorized.

C. Maximum use will be made of the services of the staff (both local and State level) of the Department of Human Resources.

D. Foster children, 16 years old or older, who are eligible for AFDC funds will be required to register for the WIN-II program if they are not attending school and are employable.

E. Eligibility Determination for AFDC-FC. Eligibility determination for AFDC-FC will be made by the service worker in accordance with a cost allocation plan for income maintenance and service functions for federal reimbursement.

.09 Local Supplements.

A local department may establish a supplement to the State standard to be used for special needs, provided that:

A. The supplement is met by local funds;

B. The supplement is applied uniformly to homes located within the local department's jurisdiction and to specific homes located in the jurisdictions of other local departments only when a mutual agreement exists between the two local departments;

C. Special needs are items which are not included in the State standard;

D. The request for supplement is approved as local policy by the Social Services Administration before being put into effect. The request shall specify:

(1) The amount for supplement;

(2) The reasons for needing it; and

(3) The way in which it is assured that the amounts in excess of the State maximum are paid from local funds.

.09-1 Provision of Reunification Services.

A. To the extent that funds are available, services may be provided by the local department or purchased for a child's parent or guardian for a range of services that are needed to effect a successful reunification of the child and parent or guardian, when the director of the local department or a designee has approved the decision to purchase and there is documentation in the case record that:

(1) There is a parent or guardian available with whom the child can reunite;

(2) The child has returned home and is receiving post placement care or the permanency plan is for "return home"; and

(3) A need for the service has been established in the case plan.

B. Types of services to be provided may include but not be limited to:

(1) Transportation costs for family visits or other reasons;

(2) Rent deposits;

(3) Household items;

(4) Vocational counselling;

- (5) Alcohol/drug abuse counselling;
- (6) In-home-aide service;
- (7) Day care service; and
- (8) Individual and family counselling.

.10 State Standards

A. Board Rates and Monthly Clothing Allowances. The board rates and monthly clothing allowances are set forth in Schedule B-1 of Regulation .19. When rates vary by age groups, the rate is effective for the full month in which the child reaches the lower age specified for each group. The board rate is based on the cost of food and household maintenance items which actually represent additional cost for the child. The monthly clothing allowance covers the purchase and upkeep of clothing.

B. Rates for Foster Care under the direct supervision of a Local Department of Social Services.

(1) Regular Rate. The "regular rate" is for the care of the child who requires the usual and ordinary supervision in a foster family or preadoptive home.

(2) The "special care" rates are higher than the regular rates because the need for this implies greater demands on the foster homes both as to energies and out of pocket costs.

(3) Special Care Rate TYPE A. This rate is for the care of the child who requires unusual supervision and attention from a home which can provide this special care. A child who qualified for this rate and requires unusual supervision is a child with physical, mental, or emotional handicaps, learning disabilities or severe behavior problems. The child's special need is to be documented in the case record.

(4) Special Care Rate TYPE B.

(a) Special Care Rate TYPE B is to be used to prevent placement in intermediate or high rate facilities, or for the care of children discharged from public facilities that provide care to the emotionally disturbed or mentally retarded, or for the care of the child who is discharged from intermediate or high rate facilities and is placed with a foster family who can meet his special needs.

(b) Foster parents who qualify for Special Care Rate TYPE B shall:

(i) Have a high degree of patience and understanding for children who need to adjust to family and community living after a period of specialized group care. They should have the ability to accept and cope with difficult behaviors.

(ii) Take active part in social service, medical, or psychiatric treatment plans for the child.

(iii) Take part in training, arranged by the department, at no expense to the foster parents, which will enable them to increase their knowledge and ability to cope with children who are discharged from group care.

(5) Purchase of Supportive Services.

(a) In addition to the board payment, provision is made to purchase supportive services, as needed, in order to maintain the child in the community. Payment is according to Schedule B-4.

(b) These special support services may be purchased from two sources: either the foster family who by virtue of special training or experience is able to provide them; or through another resource appropriate to the special needs of the child.

(c) In either case, the services to be provided must be documented by the director of the local department or his designee, other than the caseworker. This documentation must confirm that:

(i) The child requires the identified supportive service because of a health (physical or mental) condition, or an emotional or behavioral problem; and

(ii) The service provider is capable, by virtue of special training, or experience, of providing the needed service.

(d) The services may not be purchased or authorized until the Director of the Social Services Administration or his designee has approved the decision to purchase the supportive services.

(6) Emergency Care Rate.

(a) **Emergency Care Rate.** This rate is for the care of the child who has been abandoned, abused, or because of some other crisis, is left without the care of a responsible adult, necessitating placement in a foster family home without the usual time essential to plan adequately for his future care. This care shall usually be less than 30 days, and may not exceed 60 days unless there is need, substantiated by the record.

(b) The per diem rate for Emergency Care as specified in Regulation .19, Schedule B-1, is funded with State funds.

(c) A separate amount may be set by local policy to be paid directly to foster parents to hold space available. The payment to hold space is separate from the basic care and shall be paid from local funds only. State funds are not available to fund this additional payment.

(7) Permanent Foster Care Rate. The appropriate foster care rates will be paid, unless the permanent foster care family requests a partial payment.

(8) Visits to Foster Family from Group Care. When a child in an institution makes a planned visit to a foster family for a weekend or other period, the local department shall pay the foster family the per diem rate in Schedule B-1 in Regulation .19, below, for each day the child is with the foster family. The transportation costs from and return to the residential care facility are paid by the local department. The child is covered by the medical assistance card also during the visit.

C. Rates for the purchase of care from agencies are provided for Special Family Care supervised through agencies for the care of a child who requires unusual supervision and attention in a home equipped to give this special care. This type of purchase may be used to prevent placement of a child in a group care facility, or to enable his discharge from a group care facility. There are two Licensed Child Placement Agency rates as follows:

(1) Family Foster Care purchased from agencies, which includes room and board, is paid according to Schedule B-1 of Regulation .19.

(2) Purchase of Supportive Services.

(a) In addition to the board payment, provision is made to purchase supportive services, as needed, in order to maintain the child in the community. Payment is according to Schedule B-4.

(b) These special support services may be purchased from two sources: either the foster family who by virtue of special training or experience is able to provide them; or through another resource appropriate to the special needs of the child.

(c) In either case, the services to be provided must be documented by the director of the licensed child placement agency or his designee, other than the caseworker. This documentation must confirm that the child requires the identified supportive service because

of a health (physical or mental) condition, or an emotional or behavioral problem, and that the service provider is capable, by virtue of special training, or experience, of providing the needed service.

(d) The services may not be purchased or authorized until the Director of the Social Services Administration or his designee has approved the decision to purchase the supportive services.

D. Group Care in an Institution or Group Home.

(1) The Administration shall negotiate rates for:

(a) Basic Care, which includes room and board.

(b) Social Work (Foster Care for Children). This is Social Work Service to a child in an appropriate group care facility. The foster care service deals with matters of a child's placement and needs. This includes provision of identified special services other than routine supervision or routine services provided by the facility.

(c) Health Related Services. These are psychological, psychiatric, medical, and dental services provided for a child as needed. Payment is made for health related services not otherwise provided under the Medical Assistance Program.

(d) Special Education. This is a full-time approved educational program needed as part of an individual treatment plan and not generally available. Reimbursement for this service will be made only for periods of actual attendance.

(2) Supplemental services are those services not included in the rates as negotiated for in §D(1), above, and not available from other resources, but needed to complete the treatment plan for a child. When the local department director, or a designee, agrees that supplemental services are needed, as documented in the child's case record, the services may be purchased by the local department, subject to available funds, on an individual basis. The services include, but are not limited to, speech therapy, transportation related to special education, or one-to-one staffing.

Welfare Services Self-Assessment Manual: Part I-Checklists, Part II-Resources, §§III, IV, V (1979) (DHEW Pub. Nos. (OHDS) 79-30177 and 79-30176)

15. National Resource Center on Family Based Services, Annotated Directory of Representative Family Based Programs and Annotated Bibliography (1981).
16. National Resource Center on Family Based Services, Family Centered Social Services: A Model for Public Child Welfare Agencies (available September 1983).
17. Maluccio and Sinangolu, Parents of Children in Foster Care: An Annotated Bibliography (1981).

B. Memoranda, Reports and Journal Articles

1. M. Hardin, Memo: The Required Judicial Determination of Reasonable Efforts to Prevent Removal and Reunify the Family. (May 20, 1983).
2. Howe, Development of a Model Act to Free Children for Permanent Placement: A Case Study in Law and Social Planning. 13 Fam. L.Q. 257 (1979).
3. M. Garrison, Why Terminate Parental Rights? 35 Stan. L. Rev. 423 (1983).
4. S. Leviton and Shuger, Maryland Exchangeable Children: A Critique of Maryland's System of Providing Services to Mentally Handicapped Children, 42 Md. L. Rev. 823 (1983).
5. Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stan. L. Rev. 985.
6. Wald, State Intervention on Behalf of "Neglected" Children: Standards for Removal From Their Homes, Monitoring the Status of Children in Foster Care and Termination of Parental Rights, 28 Stan. L. Rev. 625 (1976).
7. Wald, Thinking About Public Policy Toward Abuse and Neglect of Children: A Review of Before The Best Interests of The Child, 78 Mich. L. Rev. 645 (1980)
8. Areen, Intervention Between Parent and Child: A Reappraisal of the State's Role in Child-Neglect and Abuse Cases, 63 Geo. L.J. 887 (1975).
9. National Advisory Committee on Criminal Justice

(c) Beginning July 1, 1979, for costs not available through the Medical Care Program of the State and local health departments, reimbursement shall be made to foster parents for out-of-pocket medical expenses incurred after July 1, 1979, for foster children for prescribed drugs, non-prescribed drugs, the repair and replacement of eyeglasses as needed beyond the one pair covered under Medical Assistance, and other medical service that was covered by the Medical Assistance Program December 31, 1975, but not covered July 1, 1978. Documentation is required from a physician that non-prescription drugs are necessary for the child.

(2) Procedures for Reimbursement.

(a) Foster parents shall retain all non-reimbursed bills. Bills for non-prescription drugs shall be accompanied by a physician's statement concerning the child's need for the drugs.

(b) The foster parent shall submit bills to the local department. Expenditures (after deducting the entitlement for Medical Care Program reimbursement of costs) shall be submitted quarterly to the local social service department for reimbursement.

(c) Local departments are authorized to pay from their administrative funds the following items:

(i) Full cost of eyeglasses beyond the one pair per year covered by the Medical Care Program and for cost of eyeglass repair as needed;

(ii) Full cost of non-prescription drugs if accompanied by a physician's statement as to the child's need for them;

(iii) Any co-payment required for each prescription filled on behalf of a foster child;

(iv) Full cost of any other eligible medical service.

H. Transportation.

Agency Note: Cost of Transportation or meals furnished by a departmental staff member as part of the Foster Care Program is governed by Department of Human Resources travel and expense regulations.

(1) Transportation for, or on behalf of, the foster child, as reimbursement to a foster parent or as payment to a vendor, may be allowed when necessary under the following circumstances:

- (a) To carry out a special plan for the child;
- (b) To provide regular transportation required over a period of time;
- (c) To provide essential transportation when the distance or the means of transportation or the time of day entails unusual cost.

(2) The amount may include:

- (a) Public transportation costs for the child or for the adult to accompany him when necessary, or both; provided, however, that the costs may not be met when the adult is an employee of another agency;
- (b) Incidental expenses such as meals;
- (c) Cab fare when necessary because of emergency need or lack of less expensive means of transportation;
- (d) 12 cents per mile, when a foster parent furnishes transportation in a personally owned car.

I. Burial Expense. Burial expenses not exceeding the State standard of \$400 may be allowed for a child who dies while in the Social Services Administration's Foster Care Program. The local department may establish a higher standard upon approval of the Social Services Administration. Any resources of the foster child are to be taken into account in determining the amount of local department payments. Special direct burial expenses such as the cost of a burial lot, vault when required, grave digging and burial clothing, which are met by family or friends are exempt from this requirement. Permanent foster parents are to be encouraged to secure life insurance on the child to cover burial expenses.

.11 Payment To The Foster Care Provider.

A. Amount.

(1) The amount paid for the child is the amount for requirements as determined by the standards established in this chapter, less any amount to be paid by the child direct to the foster home from the child's own earnings.

(2) Except for the child's own earnings and public benefits, all resources are handled through payments directly to the local department as reimbursement against the cost of care for the individual child. Thus, the amount of payment within allowable standards to the foster parent or appropriate payee is not affected by any resource except that of the child's own earnings.

B. The payee is:

- (1) The foster parent in whose home the child has been placed;
- (2) The agency or institution from which care is being purchased for the child; or
- (3) A vendor from whom purchase of certain goods or services has been authorized for the child according to established standards, except that the vendor payment may not be made from AFDC funds by the local department.

C. Period Covered and Method of Payment.

(1) The period covered for regular payments shall be the calendar month or that part of the calendar month for which the local department is obligated for the child's care.

(2) Temporary absence of the child from foster home, such as for hospitalization, with the intent for the child to return to the home, requires no recalculation of the amount of monthly board allowance unless the absence exceeds 30 days, in which case the allowance for board for any additional days' absence is not included in the amount.

(3) The amount is calculated on a monthly basis and shall be paid by check. In calculating the amount for a partial month's care, the following shall apply:

(a) **Board.** The amount for board shall be the per diem board rate times the number of days of care, counting the day the child goes into care, but not counting the day he leaves care.

(b) **Clothing and Other Items for Foster Family Care.**

(i) For the child who is entering care, the full monthly amount may be allowed so long as the child is in the home for any part of the month; except that if an amount is allowed for initial clothing, then no other allowance for clothing may be made for that month.

(ii) For the child who has moved during the month from one foster home to another, the full monthly amount is allowed to only one, generally the new home.

(iii) For the child leaving care, the full monthly amount may be allowed for the month in which he leaves.

(c) **Board and Clothing for Group Care.**

(i) The monthly clothing allowance for group care is combined with board and stated as a single rate. Payment is for actual monthly costs not to exceed this rate.

(ii) The amount of board and clothing allowance for care for a partial month is the actual cost per diem rate times the number of days of care but not counting the day the child leaves care. The actual cost per diem rate is the actual monthly cost times 12 divided by 365.

(iii) The initial clothing allowance is not available to group care.

D. Local Department Which Pays.

(1) Payment shall be made by the local department which has accepted responsibility for the child's placement through the application process as set forth in these regulations.

(2) When a child is placed in another local department through inter-county placement, the local department in whose care the child is placed will make the payment to the foster home and be reimbursed by the department which has legal responsibility for the child.

.12 Liability Insurance.

The Department shall provide liability insurance for foster parents who care for children under the direct supervision of the local departments of social services under certain conditions, with payment for the insurance coming from State funds. The conditions are:

A. If a foster child is injured and a claim or lawsuit is brought against the State or the foster family by the child's natural parents or guardians.

B. Against claims for bodily injury or property damage to other persons or property of others because of any act of the foster child.

C. For any liability claim for bodily injury or property damage caused by the foster parents as a result of any activity directly related to their provision of foster care service or injury to someone in the foster home who is not a household member, provided that the foster parents are not already covered under their own household or personal liability policy.

D. Against claims for personal injury resulting from offenses either committed or sustained by a foster child such as false arrest, detention or imprisonment, malicious prosecution, etc.

E. Against incidental malpractice claims for failure to provide

needed medical care, therapy, diet or other special needs. The following are not covered by the policy:

(1) Any loss already covered by an existing policy owned by the foster parent;

(2) Claims for damage to property which is owned, rented, or occupied by the foster parent;

(3) Claims for property damage caused intentionally by any foster child over 12 years old.

.13 Placement of Child.

A. Children accepted for foster care shall be placed in foster family homes or other facilities approved by and under the supervision of the local department, except that for the child needing foster care facilities not available within its own program, the local department may purchase care from private child-caring agencies or institutions.

B. A foster or pre-adoptive foster home or a permanent foster home, to be used by the local department, shall be approved as meeting the Social Services Administration's standards (in line with the standards established for family homes used by private child-care agencies under the License for the Care of Children Regulations), and shall be located within the State, except as outlined under conditions for interstate placement in Regulation .14.

C. Transfer of a child's care from one local department to another shall be made only if a suitable placement resource is not available in the sub-division responsible for the child and the child's family ties will not be affected adversely by the transfer.

D. There are to be regular contacts between the department concerning the child's placement, family situation and long range plans for the child's care.

E. Another agency or institution to be used by the local department shall meet licensing, accreditation, or other standards applicable under the law or under an established standard setting authority, and shall be located in the State, except as indicated below.

F. A child who is between 18 and 21 years old, for whom a local department has continuing responsibility, may be placed in a semi-independent living arrangement upon approval of the living arrangement by the local department. An eligible child would be one for whom there is no suitable resource with relatives or within the Department's foster care program. Acceptable independent living ar-

arrangements may be half-way houses, business lodges or other arrangements which meet the needs of an individual child. The rate paid for semi-independent living arrangements will be based on actual cost of the residence up to \$447 a month.

G. If the non-legally responsible relative's home does not meet Foster Care standards and the child has developed close ties with the family, an exception can be made for the particular child or children if the home meets Protective Service standards. Under certain circumstances, a home can be approved for a specific child if the home meets the child's particular needs, even though the home may not meet all Foster Care standards, provided further placements are not planned with the family.

.14 Interstate Placement.

A. The only conditions under which foster child may be placed in a foster or adoptive home located out of the State or by purchase of care from an agency or institution located in another state are:

(1) When the foster family which has the child moves to another state and consideration of all pertinent factors shows the importance of maintaining the relationship between the foster family and the child. Pertinent factors are:

- (a) Age of child;
- (b) His relationship to foster family over a long period of time;
- (c) Lack of active family connections here and imminence of discharge from care.

(2) When the adoptive family which has the child moves to another state before completion of adoption.

(3) When a local department has a plan approved by the Social Services Administration, to use foster or adoptive homes in bordering states. This plan shall assure that responsible supervision of the placement can be provided by the local department and that the child's educational and other needs may be adequately met.

(4) When the facility of an agency or institution in another state, licensed or approved for child care under the laws of that state, can meet the special needs of the child which cannot be met by facilities within this State. Any plan requires clearance with the other state as to its interstate placement requirements, and clearance with the Social Services Administration as to any contract or agreement to be entered into with the other state.

(5) When a private agency within the state from which a local department purchases care and the local department concurs in the private agency's use of a specialized treatment resource to meet the needs of the child which cannot be met by facilities within this State. Under such a plan, the local department of social services has responsibility for necessary clearance as to interstate placement requirements.

B. Interstate Compact.

(1) All placements of children for foster care or as a preliminary to possible adoption in Maryland from another state are to be made in accordance with requirements of the Inter State Compact for the Placement of Children. The same holds true for placement of Maryland children in states which are members of the Compact.

(2) The purpose of the Interstate Compact is to facilitate cooperation of states in interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

(3) Conditions for placement of children under the Interstate Compact are as follows:

(a) A sending agency may not send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending shall comply with each and every requirement set forth in the Interstate Compact and with applicable laws of the receiving state governing the placement of children therein. "Sending agency" and "receiving state" are defined as follows:

(i) A "sending agency" means a party state, officer, or employee thereof; a sub-division of a party, state, or officer or employee

thereof, a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(ii) "A receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(b) Prior approval shall be given before any child can be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption. The sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to place the child in the receiving state. In Maryland, the appropriate public authority is the Social Services Administration. The notice shall contain:

(i) The name, date, and place of birth of the child;

(ii) The identity and address or addresses of the parents or legal guardian;

(iii) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child;

(iv) A full statement of the reasons for the proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to §B(3)(b) above, may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive from it, supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child may not be sent, brought or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state notify the sending agency, in writing to the effect that the proposed placement does not appear to be contrary to the interests of the child.

.15 Reconsideration.

A. Reconsideration -- Child in Foster Care.

(1) The local department of social services shall make an initial

reconsideration of each child's service plan to determine the child's continuing need for regular foster care. This initial reconsideration shall be made whenever the local department has knowledge of a substantial change in the child's circumstances but may not be later than 90 days after placement.

(2) The local department of social services shall make a subsequent reconsideration of the Foster Care plan no later than 90 days after the initial reconsideration. Subsequent reconsiderations shall be made when there is substantial change in the child's circumstances or at least once in 6 months.

(3) The initial reconsideration and subsequent reconsiderations shall include the following reviews:

(a) Review of the child's own family in regard to resources for payment, contacts with the child and agency, and ability to resume care of the child or make some other long range plan for his care.

(b) Review of the child, in regard to contacts with his own family and agency, relation to foster home, his health status, any resources from the child's own earnings or other income, and continuing plans or anticipated changes in plans for his care including a long range plan for his care.

(c) Review of the foster home, in regard to its use for fostering the child's growth and development as evidenced by the relationship to the child in such matters as everyday care, school experience, recreation and discipline. Foster parents shall participate in the evaluation process.

B. Reconsideration — Child in Pre-Adoptive Care.

(1) Reconsideration of a child in pre-adoptive care shall be made at least once each 60 days if the child has not been placed in an adoptive home.

(2) If an adoption petition for the child has not been filed within a year from the date of the local department's being granted guardianship with the right to consent to adoption, a written report shall be made to the court explaining reasons for the delay.

C. Reconsideration — Child in Permanent Foster Care.

(1) Reconsideration of permanent foster care placement shall be made at the end of the initial period of 6 months following placement. After that the emphasis shall be on availability of the local department on a consultative basis as needed by the foster family or the

child. Periodic reconsideration shall be made at least annually, and encompass the following areas:

(a) Child. Integration of the child into the family group, including relations with various family members, progress or problems in family relationships, and other significant areas of growth and development.

(b) Family. Review of the shared responsibility between the foster parents and the agency, in order to preserve the stability and security of the home for the child with emphasis upon the foster parents' ability to carry out parental functions in major areas of responsibility for the child and important changes in family life with respect to relationships, health, finances, etc.

(2) If a specific problem is revealed in the course of the annual evaluation, regular social services contacts will be resumed in an effort to resolve the difficulty.

(3) Consideration of whether the family wishes to take the final step of adoption and whether this would be appropriate to the needs of the child and the foster family shall be reviewed at reconsiderations.

.16 Permanent Separation of Child From Natural Parents.

A. When permanent separation from the child's own family is indicated, the appropriateness of the planning is to be determined as soon as possible and steps taken to obtain guardianship with right to consent to adoption or to long-term foster care short of adoption. The child's adoption is to be planned promptly. If adoption is neither feasible nor available, permanent foster care is to be planned. If the child is receiving Social Security benefits, he will continue to be eligible for these benefits, even after he is legally adopted. Any prospective adoptive parents and the court should be apprised of this and participate in the decision as to whether or not the benefits are to continue after legal finalization.

B. Either adoption or permanent foster care should be achieved within 1 year after the Department has received permanent guardianship with the right to consent to adoption or other permanent placement.

.17 Return of Child to His Natural Parents.

A. The decision by the local department, with parental participation, to return a foster child to the care of his natural parents shall be

07.02.11.18 DEPARTMENT OF HUMAN RESOURCES

made after a careful evaluation of the parents' living situation and capacity to resume their parental responsibilities. This determination shall be based on actual data and observations that the parent can provide care for the child which meets the needs of the child.

B. If the local department plans to return a child who has been committed to a local department by a court to his natural parents, the local department shall notify the court of this plan with a report of the pertinent changes in the family or child's situation which justify return.

C. The local department shall request approval of the court to return a child to natural parents when the child was committed to the local department for reasons of actual or suspected child abuse.

.18 Post-Placement Supervision.

The local department shall continue services to natural parents and child after the child has returned to his home from foster care for a period of 6 months. Determination will be made at this time as to whether the family can provide adequate standards of child care without supportive help from the department. If adequate child care has been provided, the local department shall make a final report to the court concerning progress that the family has achieved in meeting adequate standards of child care and request rescission of the commitment. If it is necessary for the local department to continue services to the family beyond 6 months, the case record shall show justification for the extension of time. Services should not be provided beyond 1 year.

.18-1 Fair Hearing.

A. Appeals for a fair hearing and the conduct of the hearing are according to the fair hearing regulations in COMAR 07.02.02.

B. The local department shall give written and oral notification of the right and methods of requesting and obtaining a fair hearing to each applicant for, and to each recipient of, foster care services at application and whenever the local department notifies the applicant or recipient of any pending action that may deny, suspend, reduce, or terminate this service.

Appendix III: Petition to Modify or Review Court Order

MATTER OF _____ : IN THE
: CIRCUIT COURT
BORN: APRIL 20, 1983 : FOR
: BALTIMORE CITY
: DIVISION FOR JUVENILE CAUSES
: DOCKET NUMBER: _____

PETITION FOR REVIEW OF COURT ORDER

The Department of Social Services of Baltimore City respectfully represents that:

1. On June 29, 1983, the Respondent child, _____, was found to be a Child in Need of Assistance and placed under an Order of Protective Supervision to the Baltimore City Department of Social Services with the following conditions: a) The mother must continue in drug therapy; b) The mother must keep all medical appointments for the respondent; c) The mother must continue to live with her aunt and must give BCDSS notice of any plans to move; d) The mother is to participate in parenting class; e) The mother is to participate in an infant stimulation program as arranged by BCDSS; f) The mother is to continue to utilize the same physician (Dr. _____ at Chesapeake) until the doctor says she can change physicians; g) BCDSS is to submit progress reports 90 days and every six months thereafter.

2. BCDSS has been unable to confirm the mother's participation in drug therapy because she has not consented to the release of that information.

3. The Respondent's mother has not made or kept any medical appointments with Dr. _____ at Chesapeake Health Plan since August 15, 1983. It is not known whether the Respondent has received any medical care since that time because the family's whereabouts were unknown.

4. The Respondent's mother did not continue to live with her aunt, and did not notify BCDSS when she moved. She left the aunt's home in October, 1983, and her whereabouts were unknown to BCDSS from then until February 1, 1984.

5. To BCDSS knowledge the Respondent's mother has not participated in any parenting classes or infant stimulation program.

6. It is alleged that the Respondent's mother has stated to her mother that she did not want her whereabouts known to BCDSS because she is afraid of losing her children.

7. It is alleged that the Respondent's mother is unwilling to work with BCDSS under an Order of Protective Supervision, and that she continues to be unable to provide adequate care and supervision for the Respondent.

8. The Respondent's mother has failed to establish any stable home for herself and the Respondent. She is currently staying with her mother, but this is only a temporary arrangement.

Wherefore the Petitioner asks that the OPS to BCDSS be rescinded that the Respondent be committed to BCDSS for placement, and that the Respondent be continued in Shelter Care pending further Review.

XXXXXX XXXXXXXX
Caseworker
Department of Social Services
of Baltimore City

XXXXXX XXXXXXXX
Special Assistant City Solicitor

PETITIONER

XXXXXX XXXXXXXX
Departmental Attorney
Department of Social Services
of Baltimore City
Legal Services Division
1510 Guilford Avenue
Baltimore, Maryland 21202
Telephone: 234-2357

WITNESSES

-
-
-
- Glenwood Life Counselling
 - Records, BCH
 - Union Memorial Hosp.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____, 1984, a copy of the foregoing Petition for Review of Court Order was mailed to the following:

1. XXXXX XXXXXX, Esquire
Legal Aid Bureau, Inc.
714 E. Pratt Street
Baltimore, Maryland 21202
Counsel for Respondent

2. XXXXXXXX XXXXXX, Esquire
Public Defender's Office
222 E. Baltimore Street
Baltimore, Maryland 21202
Counsel for Mother, _____

XXXXX XXXXXX
Departmental Attorney
Department of Social Services
of Baltimore City
Legal Services Division
Room 231
1510 Guilford Avenue
Baltimore, Maryland 21202
Telephone: 234-2357

Appendix IV: Federal (IV-E) Independent Living Initiative

DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES ADMINISTRATION
311 WEST SARATOGA STREET
BALTIMORE, MARYLAND 21201

Circular Letter SSA #91 - 16

PROGRAM DIRECTIVE
November 20, 1990

TO: Directors, Local Departments of Social Services
Foster Care Supervisors, Local Departments of
Social Services

SUBJECT: Federal (IV-E) Independent Living Initiative
Federal Fiscal Year 1990
To be used 10/1/90-9/30/91

EFFECTIVE: Immediately Upon Receipt
REPLACES: Circular Letter; #87-5 and #87-22

INQUIRIES TO: XXXXX XXXX, Foster Care Program Manager, SSA
(301) 333-0217

XXXX XXXXXX, Independent Living Coordinator
(301) 333-0240

XXXXXXXXXX XXXX
Executive Director
Social Services Administration

DISTRIBUTION: TYPE II

PURPOSE

This letter provides the local allocations for Federal Independent Living Grant Funds FFY 1990 for direct services for the period 10/1/90 - 9/30/91, as well as guidelines for their use.

The purpose of these funds is to assist older children in foster care to prepare for independence and to promote the development of a continuum of services to assist these youth in making the transition from foster care into independence.

BACKGROUND

As in past years, Federal funds are available to States for service programs and activities to assist children in foster care to make the transition from foster care to independent living.

GUIDELINES FOR EXPENDITURE

1. Eligibility Requirements

All youth 16 years of age and older, for whom foster care payments are made, are eligible to have independent living direct services funds expended on their behalf.

2. Independent Living Skills Assessment

All foster care youth 16 and older must have an Independent Living Skills Assessment prior to the expenditure of funds. A copy of this Assessment should be filed in the youth's foster care record. The Independent Living Skills Assessment must include, but is not limited to the following:

- Youth's Maturity Level
- Presence of any Handicaps
- Persons to Provide Emotional/Social Support
- Existence of Any Financial Resources Available to the Youth
- Education:
 - current status
 - ability to obtain high school diploma or equivalent
 - future educational goals
- Employment:
 - current status
 - short term goals
 - long term goals
- Youth's Life Goals
 - i.e., occupation, housing
- Basic Living Skills

i.e., budgeting, household management.

3. Transitional Independent Living Plan

(Currently Federal Independent Living case plan, Form 327).

Each foster care youth 16 and older for whom independent living expenditures are made, must have a written transitional independent living plan. The transitional independent living plan shall be based on the youth's needs as determined by the Independent Living Skills Assessment and shall be attached to the youth's caseplan (Form 830). These plans should initiate the transitional independent living plan after the Independent Living Skills Assessment is completed. Updates and changes in the transitional independent living plan should be incorporated at the six month reconsideration. A redesigned 327 form is forthcoming. (See Attachment B for current 327 form).

4. Service Agreement

Each foster care youth must have a signed service agreement in order for independent living funds to be expended. The service agreement shall follow the requirements as stipulated in the Foster Care Regulations. It shall include a statement that the youth's failure to sign the service agreement or meet the requirements may result in funds being returned to the Local Department of Social Services or non expenditure of funds in the future.

5. Appropriate Use of Federal Independent Living Funds

Federal independent living funds may be used for activities designed to:

* Enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, such as: counseling and other similar assistance related educational and vocational training, preparation for a General Equivalency Diploma (GED) or for higher education, job readiness, job search assistance and placement programs, tuition, books, tutorial services.

* Provide training in daily living skills, counseling and instruction in basic living skills, such as: money management, home management, consumer skills, parenting, health care, access to community resources, transportation, housing options and location and career planning.

* Provide for individual and group counseling, such as: psychological assessments, psychiatric evaluations, drug or alcohol rehabilitative services, individual and group

counseling, workshops and conferences for improved self esteem and self confidence, grooming classes, interpersonal and social skills training and development including professional and social organization membership dues.

* Provide participants with other services and assistance designed to improve their transitions to independent living, such as: daily living expenses; security deposits, utility deposits, down payments on furniture and appliances, and household supplies.

* Federal independent living funds may not be used to pay for room (rent) or board (food).

6. Identify No Cost Service Resources

Prior to expenditure of independent living funds, reasonable attempts must be made to use existing resources:

- Local school programs, through their Special Education and Vocational/Technical Education programs;
- development Disabilities Administration (DHMH) programs;
- Vocational Rehabilitation programs;
- Job Training Partnership Act (JTPA) programs, through activities of local private industry councils;
- Other Department of Employment and Training programs;
- Community colleges
- Other public or private community resources.

7. Budget Codes for Expenditures

Expenditures shall be charged to the following budget code: 33.02.00.03.0304.38.0819. All expenditures shall be made in accordance with the guidelines presented below.

The authorization to expend Federal Fiscal Year 1990 independent living funds expires September 30, 1991. Therefore all funds must be obligated and spent by that date.

QUARTERLY REPORT

In Order to assure that all funds are utilized appropriately and in a timely manner a Quarterly Report is required. The Quarterly Report will provide an accurate description of foster care youth, type of services provided and expenditures per youth by type of service. It will track each Local Department of Social Services allocation, expenditures, and balance. The report will also include a client exit status update. The Quarterly Report form is forthcoming.

The report is due:

1st Quarter (Oct. 1 - Dec. 31) by Jan. 11, 1991
2nd Quarter (Jan. 1 - March 31) by April 12, 1991
3rd Quarter (April 1 - June 30) by July 12, 1991*
4th Quarter (July 1 - Sept. 30) by Oct. 11, 1991

* SSA will review expenditures after the third quarter report and, if necessary, reallocate funds.

Please send Reports to:

XXXX XXXXXX
Independent Living Coordinator
Social Services Administration
311 West Saratoga Street
Baltimore, Maryland 21201

If you have any questions please contact XXXXX XXXX (301-333-0217) or XXXX XXXXXX (301-333-0240).

ALLOCATION OF FEDERAL FISCAL YEAR 1990 INDEPENDENT LIVING FUNDS

| <u>Local Departments</u> | <u>Youths 16 Years of Age and Older</u> | <u>Allocation Amount</u> |
|--------------------------|---|------------------------------|
| Allegany | 12 | 4,296 |
| Anne Arundel | 60 | 2,480 |
| Baltimore | 100 | 35,800 |
| Calvert | 10 | 3,580 |
| Caroline | 1 | 358 |
| Carroll | 21 | 7,518 |
| Cecil | 11 | 3,398 |
| Charles | 8 | 2,864 |
| Dorchester | 3 | 1,074 |
| Frederick | 22 | 7,876 |
| Garrett | 5 | 1,790 |
| Harford | 36 | 12,888 |
| Howard | 14 | 5,012 |
| Kent | 2 | 316 |
| Montgomery | 103 | 36,874 |
| Prince George's | 160 | 57,280 |
| Queen Anne's | 1 | 358 |
| St. Mary's | 10 | 3,580 |
| Somerset | 3 | 1,074 |
| Talbot | 3 | 1,074 |
| Washington | 13 | 4,654 |
| Wicomico | 1 | 358 |
| Worcester | 3 | 1,074 |
| | <hr/> | <hr/> |
| Total Counties | 602 | 215,516 |
| Baltimore City | 437 | 156,446 |
| State | 1,039 | 371,962 |

Instructions For The Completion of The
Independent Living Case Plan

Items 1-8: Self Explanatory

Part 1: Assessment of Readiness for Independent Living

The purpose of this section is to provide an indicator of the Youth's readiness to function independent of the foster care system. The level of readiness is measured in five areas of Needs. The Verification column is used to indicate the basis upon which the assessment was made. The Service Objective column is used to state the expected outcome of the services activities specified in Part II.

The youth who is prepared for independence will have Satisfactory checked for all five Needs. The description of each need is as follows:

Employment: Youth has a job, either part-time or full-time, which provides sufficient income to meet his/her minimal budgetary needs.

Psychological/Social: Youth is able to function effectively in terms of personal decision making, interaction with others, incorporation of self and community, and has an appropriate network of community supports which will sustain him/her in a time of crises.

Educational/Vocational: Youth has set and achieved or is in the process of achieving an educational/vocational goal.

Acquisition of Basic Living Skills: Youth has acquired a range of basic skills which will permit him/her to function as an adult.

Housing: Youth has found adequate housing which meets his/her psychological and budgetary needs.

Part II: Plan for Independent Living

The purpose of this section is to specify the Services/Activities which are intended to meet the Need(s) identified in Part I, and to show the Amount and Source of funds (if any) used to provide the service/activity. The Needs are the same as described in Part I.

State of Maryland
Foster Care Program
INDEPENDENT LIVING CASE PLAN
(Predecessor of Form 1)

| | | | | | | |
|-----------------|---|---------------------|---------------------|--------------------|--|---------|
| SEND TO: | Social Services Administration, 311 West Saratoga Street Baltimore, Md. 21201 Attn: Independent Living Coordinator | 1. CASE NAME | | 2. CARE NUMBER | | |
| | | 3. DATE OF BIRTH | 4. DATE F.C. OPENED | 5. WORKER | | |
| | | 6. WORKER TELEPHONE | | 7. DATE OF REQUEST | | 8. LOSS |

I. ASSESSMENT OF READINESS FOR INDEPENDENT LIVING

| NEEDS | DEVELOPMENT LEVEL | VERIFICATION | SERVICE OBJECTIVE |
|------------------------------------|--|--------------|-------------------|
| EMPLOYMENT | <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory | | |
| PSYCHOLOGICAL SOCIAL | <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory | | |
| EDUCATIONAL VOCATIONAL | <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory | | |
| ACQUISITION OF BASIC LIVING SKILLS | <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory | | |
| HOUSING | <input type="checkbox"/> Satisfactory <input type="checkbox"/> Unsatisfactory | | |

II. PLAN FOR INDEPENDENT LIVING

| NEED(S) | SERVICES/ACTIVITIES | OUTCOME/DATE | AMOUNT REQ. | SOURCE | |
|---------|---------------------|--------------|-------------|--------|-------|
| | | | | FED. | STATE |
| | | | | | |

| | | | |
|------------------|------|---|------|
| WORKER SIGNATURE | DATE | LOCAL DSS DIRECTOR OR DESIGNATE SIGNATURE | DATE |
|------------------|------|---|------|

OFFICES OF

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL
UDSON P. GARRETT, JR.
DEPUTY ATTORNEYS GENERAL



NANCY B. SHUGER
PRINCIPAL COUNSEL
DEPARTMENT OF HUMAN RESOURCES
CATHERINE M. SHULTZ
DEPUTY COUNSEL
DEPARTMENT OF HUMAN RESOURCES

THE ATTORNEY GENERAL
Saratoga State Center
Suite 1015
311 W. Saratoga Street
Baltimore, Maryland 21201
(301) 333-0019

April 4, 1991

TELEFAXED

Mitchell Y. Mirviss, Esq.
Venable, Baetjer & Howard
1800 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201

Re: L.J. v. Massinga

Dear Mitch:

You have asked whether children placed with relatives may participate in the independent living initiatives. We have discussed this question with our clients and set forth here their response.

Social work practice and policy dictate that all caseworkers working with children in out-of-home placements assist those children in adjusting to their life situation. Thus, caseworkers routinely work with all older youth in out-of-home care concerning planning for their future, including their education, employment goals, skills development, self-sufficiency and the like.

The federal Independent Living Program administered by the State is for children for whom foster care maintenance payments are being made under Title IV-E. The State of Maryland has selected an option that allows service to all foster children regardless of Title IV-E eligibility. Children in restricted foster homes are eligible if they meet the criteria. The criteria are set forth in circular letter 91-18, which is attached.

The BCDSS semi-independent living program, which provides rent assistance, is designed to assist foster children 18 years or older who were in licensed care, have no family resource for

Letter to Mitchell Y. Mirviss, Esq.
April 4, 1991
Page 2

shelter, are enrolled in school or a training program and are determined to be of sufficient maturity to benefit from the program. Thus, children placed with relatives do not meet the requirements of this program, because these children have family resources.

In sum, older youth placed with relatives receive transitional services and supportive funds through their caseworkers. If a youth's status should change, that youth may be eligible for the independent living program provided program requisites are met.

With respect to your question of when plaintiffs' counsel can expect a response to your letter of March 22, 1991, you can expect an answer by Tuesday.

Very truly yours,



Catherine M. Shultz
Assistant Attorney General

CMS:mph
CMS921

cc: Wendy J. Greenberg, Esq.
M. Gayle Hafner, Esq.
Gary Posner, Esq.

Appendix V: Sample Service Agreement and Checklist re: Characteristics of a Good Service Agreement and Excerpt from Circular Letter 82-81 re: Service Agreements.

SERVICE AGREEMENT
EXAMPLE

90 Day Agreement Between XXXX XXXXXXXX and County Department
Of Social Services

Due to injuries received by XXXXX and XXXXXXXXX XXXXXXXX on May 3, 1984 and to the hazardous condition of their home, the two children have been placed in foster care and committed to the Department of Social Services in order to:

- insure their protection and
- develop and implement a plan for their reunification with their mother.

The goal of this service agreement is the return of the children to their mother XXXX XXXXXXXX. In order to accomplish the above goal, Mrs. XXXXXXXX and Mrs. XXXXXXXX of the County Department of Social Services agree to the following objectives and tasks:

Objective #1

Provide a safe physical environment for the children and learn housekeeping skills

XXXX XXXXXXXX

XXXXX XXXXXXX, D.S.S

- | | |
|--|--|
| 1. I will be at my apartment the first month from 3:00 to 5:00 p.m. to visit with my children. | 1. I will arrange transportation for the children to visit. |
| 2. I will be responsible for having the apartment clean (garbage in can; dishes washed; broken bottles removed; medicine and cleansers out of reach, clothes put away, etc). | 2. I will assist Mrs. XXXXXXX in getting her apartment exterminated. |
| 3. I will accept the services of a homemaker and meet with her at the apartment as scheduled. | 3. I will make an application for a homemaker to be provided by DSS and will follow through to ensure that this service is provided. |

Objective #2

Learn and use alternative methods of discipline.

- | | |
|---|--|
| 1. I will not curse, slap, or hit my children. | 1. I will discuss with Mrs. XXXXXX every other Friday her record of discipline for the visit. |
| 2. I will keep a record of the type of discipline I use on the children during the visits. | 2. I will help Mrs. XXXXXXX with registration for the parenting course. |
| 3. I will attend at least six of the eight parenting classes at the Community Center and complete the course satisfactorily as evaluated by the program director. | 3. I will attend the first session of the parenting course with Mrs. XXXXXXX. |
| 4. I will regularly attend meetings of Parents Anonymous. | 4. I will provide Mrs. XXXXXXX with information about Parents Anonymous and facilitate her participation in the group. |

XXXX XXXXXXX

Date

XXXX XXXXXXX

Date

Department of
Social Services

It is jointly understood and agreed between XXXX XXXXXXX and XXXXX XXXXXX that this agreement will continue in effect for a period of 90 days (unless jointly modified) and will be reviewed by October 15, 1984 to evaluate progress toward meeting the stated goal and objectives.

CHARACTERISTICS OF A GOOD SERVICE AGREEMENT

A checklist is a useful method of evaluating the quality of a service agreement or contracts used with the parents of a child in foster care. If the contract is a good one, "yes" will be the answer to the following questions:

- ___ Was the agreement negotiated at the time of placement?
- ___ Is the agreement in writing?
- ___ Has the agreement been dated and signed by all persons affected by the agreement (e.g., parents, child, social worker, foster parents, etc.)?
- ___ Does everyone affected by the plan have a copy of the agreement?
- ___ Was the agreement mutually negotiated and did the parents actively contribute to the process of deciding what went into the agreement?
- ___ Was the negotiation process open and honest and free of coercion?
- ___ Is the language clear and simple; can two or more people agree on the meaning of all words and statements?
- ___ Do the target problems selected for resolution have a clear and direct relationship to the achievement of permanency for the child in foster care?
- ___ Does the agreement explain the need for permanency?
- ___ Do the parents understand how the target problem(s) is related to permanency and why the problem(s) stands in the way of

restoration?

- ___ Were the parents involved in the definition and selection of the target problem(s)?
- ___ Is the target problem(s) so serious that restoration will be impossible unless the problem(s) is resolved?
- ___ Would a judge keep the child in placement if the target problem(s) is not resolved?
- ___ If the target problem(s) is not resolved, would the child be harmed if returned to the parents?
- ___ Does the agreement encourage and facilitate visitation?
- ___ Does the agreement provide for ongoing assessment and negotiation, if necessary?
- ___ Are the expectations of and objectives for the parents realistic and achievable within the time frame?
- ___ Do parents and the worker agree not only on what the problem(s) is but on how the problem(s) can be resolved?
- ___ Do the expectations and objectives identified in the agreement reflect an awareness of and a respect for the parents' cultural and religious values and family tradition?
- ___ Do the expectations and objectives identified in the agreement reflect an awareness of and a respect for basic parental rights and responsibilities?
- ___ Are the objectives for and expectations of the child, foster parents, social workers, and others affected by the agreement clearly described and realistic?
- ___ Does the agreement call for small step-by-step movement toward

a desired outcome rather than a large, dramatic, or complete change in behavior or situation?

___ Are the expectations of other agencies, professionals, and community resources clearly described and realistic?

___ Does the agreement build upon the parents' assets and strengths?

___ Is there a clear time limit and time line for the achievement of each task and objective?

___ Is there provision for a team review of progress toward the objective?

___ Is there a clear statement of the consequences if objectives are not met?

___ Do the parents understand that court actions or the termination of parental rights is a possible consequence of failure to reach the goals and objectives outlined in the service agreement?

___ Is the service agreement positive in the sense of what the parents should do rather than what they should not do?

___ Does the service agreement include, where possible, the utilization and participation of informal resources and natural helpers from the parents' own network of family, friends, groups, or organizations?

___ Has the parents' attorney had an opportunity to participate in the development of the service agreement?

___ Does the research and professional literature indicate that the specific methods of intervention described in the

agreement are the ones most likely to succeed?

_____ Is there an agreed upon and objective method of measuring the parents' progress toward the goals and objectives?

_____ Does the agreement reflect an attitude of hopefulness, encouragement, and helpfulness rather than pessimism and an expectation of failure?

APPENDIX VI: SAMPLE FCRB AGENDA - FOSTER CARE REVIEW BOARD

SAMPLE AGENDA

5 minutes Read Case Plan Form (830)

10 minutes Interview Caseworker

- Clarify any items on case plan form.
- What is your permanency plan?
- What is your rationale for choosing this plan?
- How were higher-priority types of permanency plans ruled out?
- Have you contacted all appropriate family members to discuss permanence?
- Does the case record have a complete history of child's involvement with child welfare authorities?
- What steps must be taken to achieve this plan?
- What steps have already been accomplished?
- What steps will be accomplished by the next review?
- What obstacles have been encountered and/or are anticipated?
- Is there a written service agreement?

5 minutes (each)

Interview interested persons

(Biological parents, foster parents, child, attorneys, therapists)

- Are they aware of the permanency plan?
- Do they agree with the plan?
- What is your proposed alternate plan if you disagree and why?
- What has to be done to achieve this permanency plan? By you? By others?
- how long of you think it will take to do these things?
- What help do you need from DSS?
- What is the frequency and reliability of visits between the child, siblings, parents, or significant others?

Adults may be asked:

- How does the child react to visits?

Children may be asked?

- How does your visiting with parents/relatives go?
- Where would you like to live and call your permanent home?

10 minutes Discuss permanency plan; vote and make recommendation.

Discuss adequacy of progress; vote and give rationale if inadequate.

Discuss current living arrangement; vote and give rationale if inappropriate.

Discuss DSS placement plan; vote and make recommendation.

Identify barriers and use other data-gathering checklists as appropriate



Foster Care Review Board

September 12, 1990

Ms. Sxxxxx Bxxxxxx
2602 Uxxxx Avenue 1st Fl.
Baltimore, Md. 21215

re: Sxxxxx Childxx

Dear Ms. Bxxxxxx:

I am sorry you were unable to attend the Baltimore City Northwest #8 Foster Care Review Board meeting on July 25, 1990.

The Department of Social Services presented the following goal for Sxxxxx Childxx's future: she will be prepared for independent living by age twenty-one. The board agrees with that goal and recommends that this plan be pursued in the child's best interest. After considering the obstacles in this case and the efforts made to acquire a permanent living arrangement for this child, the board finds that progress toward the Department of Social Services' goal is adequate.

At the time of the review, this child was placed with her grandmother who does not want to become a restricted foster home. The board finds that the current living arrangement is inappropriate. This grandmother is not a licensed resource and she is unable to provide adequate care and guidance to this young woman. The DSS presented the following plan for where Sxxxxx should live: she will remain with her grandmother and the Juvenile Service Administration will be responsible for presenting a placement plan to the court. The board disagrees with the Department's placement plan. The Board recommends a residential treatment center.

These recommendations are advisory. They will be sent to the Department of Social Services and then to the Juvenile Court. The board's recommendation does not necessarily change the plans for Sxxxxx. If you have further questions about these recommendations, please call me in Baltimore at (301) 554-5691. If you have questions about the plans for Sxxxxx, please call Sharon Hall at 361-4335.

Sincerely,

Staff Assistant

MLC/stj



CASE RECOMMENDATION REPORT FORM

Baltimore City Northwest #8 Foster Care Review Board
Department of Human Resources

Child's Name: Sxxxxx Childxx Review Date: July 25, 1990
Caseworker: DSS Case Number: 442442
Legal Status: DSS Commitment Docket Number:
Judge/Master: Date Next Review: January, 1991

On the above date the review board reviewed the permanency planning and current placement for Sxxxxx Childxx in accordance with the Family Law Article (Section 5-544) of the Maryland Code and Title IV-B (Section 427) of the Social Security Act.

The Department of Social Services presented the following goal for permanence for Sxxxxx Childxx: she will be prepared for independent living by age twenty-one. The board agrees with that goal and recommends that this plan be pursued in the child's best interest. After considering the obstacles in this case and the efforts made to acquire a permanent living arrangement for this child, the board finds that progress toward the Department of Social Services' goal is adequate.

At the time of the review, this child was placed with her grandmother who does not want to become a restricted foster home. The board finds that the current living arrangement is inappropriate. This grandmother is not a licensed resource and she is unable to provide adequate care and guidance to this young woman. The DSS presented the following plan for where Sxxxxx should live: she will remain with her grandmother and the Juvenile Service Administration will be responsible for presenting a placement plan to the court. The board disagrees with the Department's placement plan. The Board recommends a residential treatment center.

Staff Assistant

Date

- () The Department of Social Services accepts the review board's recommendation.
() The Department of Social Services does not accept the review board's recommendation.
() Explanation attached.

Comments (use reverse side if necessary):

DSS Designee

Date

Appendix VIII: Sample Motion for Leave to Intervene.

| | | |
|------------------|-----|-----------------|
| IN THE MATTER OF | : | IN THE |
| | : | CIRCUIT COURT |
| | : | FOR |
| | : | BALTIMORE CITY |
| | : | DIVISION FOR |
| | : | JUVENILE CAUSES |
| | : | Petition No(s): |
| | ooo | |

MOTION FOR LEAVE TO INTERVENE

_____, "foster mother" of the Respondent, _____, hereby applies to intervene in the above-captioned matter pursuant to Maryland Rule 922b and states the following in support:

1. _____ seeks legal custody and guardianship of the Respondent, _____.
2. _____ is the paternal aunt of the Respondent.
3. _____ has been in the care and custody of _____ since on or about February 113, 1977.
4. _____ has provided a home and assumed parental responsibilities for _____ since _____'s father voluntarily placed her with _____.
5. A "Case Plan" from the Baltimore City Department of Social Services, dated _____ and signed XXXXXXXXXX XXXX and X. XXXXXXXXXX by D. B., states that the agency (DSS) is recommending adoption by the present foster mother.
6. The whereabouts of the natural parents of _____ are unknown.
7. _____ wishes to adopt _____.

For the foregoing reasons, _____ applies for leave to intervene as a defendant for dispositional purposes.

Respectfully submitted,

 XXXXXX XXXXXX by her Attorney
 XXXXX X. XXXXXX
 Staff Attorney
 Legal Aid Bureau, Inc.
 714 East Pratt Street
 Baltimore, Maryland 21202

Telephone: 539-5340

CERTIFICATE OF SERVICE

I, _____, hereby certify that copies of the
aforegoing Motion for Leave to Intervene and attached Order were
mailed first class, postage prepaid this _____ day of November,
1983 to _____, Esq., Baltimore City Department of
Social Services, 1510 Guilford Avenue, Baltimore, Maryland 21202
and _____, Esq., University of Maryland Law School,
Clinical Program, 510 West Baltimore Street, Baltimore, Maryland
21201.

XXXX X. XXXXXX

Appendix IX: Court Order Appointing Counsel and Giving Counsel the Right to Inspect All Records.

IN THE MATTER OF : IN THE
: CIRCUIT COURT
: FOR
: BALTIMORE CITY
: DIVISION FOR
: JUVENILE CAUSES
: Petition No(s).:
ooo

ORDER

It is this _____ day of _____, 1984, by the Circuit Court for Baltimore City, Division for Juvenile Causes, ORDERED, that _____ be appointed to represent _____ and _____, the minor children, subject of these petitions.

IT IS FURTHER ORDERED, that _____ is authorized and empowered to investigate fully the facts of these children's case, and to inspect and obtain copies of all medical records, social summaries, psychiatric and/or psychological evaluations, or other records they deem necessary or relevant to these children's case.

JUDGE

Recommended By:

Juvenile Master

True Copy Test

Appendix X: Shelter Care Order

DATE: / /

MATTER OF:

* CIRUCIT COURT FOR
* BALTIMORE CITY
*
* DIVISION FOR JEVENILE CAUSES
*
* PETITION
*

I.D. #

O R D E R
SHEILTER CARE ORDER

WHEREAS, IT HAS BEEN DULY DETERMINED BY THE CIRCUIT COURT FOR BALTIMORE CITY, DIVISION FOR JUVENILE CAUSES, THAT CONTINUED RESIDENCE IN THE HOME IS CONTRARY TO THE WELFARE OF THE RESPONDENT CHILDREN: AND THAT THE FOLLOWING CIRCUMSTANCES EXIST:

REASONABLE EFFORTS REQUIRED BY 42 U.S.C. SECTION 672 (A) (1) AND DEFINED BY 42 U.S.C. SECTION 671 (A) (15) WERE MADE; OR

REASONABLE EFFORTS REQUIRED BY 42 U.S.C. SECTION 672 (A) (1) AND DEFINED BY 42 U.S.C. SECTION 671 (A) (15) WERE NOT MADE BECAUSE OF THE EMERGENT NATURE OF THE SITUATION.

THE COURT HAS NOT DETERMINED WHETHER SUCH REASONABLE EFFORTS WERE MADE,

THE COURT HAS DETERMINED THAT REASONABLE EFFORTS WERE NOT MADE,

IT IS HEREBY ORDERED, ON THIS ___ DAY OF ___, 19___, THAT IS EMPOWERE KEPT IN SHELTER CARE UNDER CARE AND CUSTODY, PENDING HEARING ON THE ABOVE-ENTITLED CAUSE AND FOR A PERIOD NOT TO EXCEED 30 DAYS.

IT IS FURTHER ORDER THAT:

THE PARENT OR GUARDIAN RETAIN MEDICAL GUARDIANSHIP OF RESPONDENT(S); OR

IS HEREBY GRANTED THE AUTHORITY TO CONSENT TO THE PROVISION OF ROUTINE AND EVALUATIVE MEDICAL CARE, INCLUDING OUTPATIENT MENTAL HEALTH AND DENTAL CARE, FOR RESPONDENT(S).

MASTER

**CIRCUIT COURT FOR BALTIMORE CITY
DIVISION FOR JUVENILE CAUSES
ADJUDICATORY
STIPULATION**

RESPONDENT (S) : _____

PETITION (S) : _____

DATE: _____

The parties stipulate to the following facts.

FACTS:

1. Reasonable efforts required by 42 United States Code Annotated, Section 672 (a) (1) and defined by 42 United States Code Annotated, Section 671 (a) (15) have been made.

2. _____

**PENDING
DISPOSITION:**

1. The Respondent (s) parent (s) shall notify the Court, their attorney (s) and the Department of Social Services of any change in their address.

2.

3.

COUNSEL FOR PETITIONER

COUNSEL FOR RESPONDENT (S)

COUNSEL FOR MOTHER

COUNSEL FOR FATHER

APPROVED:

MASTER

DATE

**CIRCUIT COURT FOR BALTIMORE CITY
DIVISION FOR JUVENILE CAUSES
STIPULATION
ADJUDICATORY WITH DISPOSITION**

RESPONDENT (S) : _____

PETITION NUMBERS (S) : _____

DATE: _____

The parties stipulate to the following facts and disposition. The parties also stipulate and agree that these facts render Respondent (s) as Child(ren) in Need of Assistance as defined in Courts Article 3-810 of the MARYLAND CODE ANNOTATED and the proposed disposition is in Respondent (s) best interest. The parties further consent to an Order being issued effectuating the proposed disposition.

FACTS:

1. Reasonable efforts required by 42 United States Code Annotated, Section 672 (a) (1) and defined by 4 United States Code Annotated, Section 671 (a) (15) have been made.

2.

DISPOSITION

1. The Respondent (s) Parent (s) shall notify the Court, their attorney (s) and the Department of Social Services of any change in their address.

2. The Court shall be requested to sign a Certificate of Hearing.

3.

COUNSEL FOR PETITIONER

COUNSEL FOR RESPONDENT (S)

COUNSEL FOR MOTHER

COUNSEL FOR FATHER

APPROVED:

MASTER

DATE

Pending further review

1. The Respondent (s) Parent (s) shall notify the Court, their attorney (s) and the Department of Social Services of any change in their address.

2. The Court shall be requested to sign a Certificate of Hearing.

3.

COUNSEL FOR PETITIONER

COUNSEL FOR RESPONDENT (S)

COUNSEL FOR MOTHER

COUNSEL FOR FATHER

APPROVED:

MASTER

DATE