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CHILDREN'S LAW CENTER OF MINNESOTA

Reasonable Efforts in Child Protection Cases
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Overview of Reasonable Efforts

What are Reasonable Efforts?

“[R]efers to the activities of State social service agencies that aim to provide the assistance and services needed to preserve and reunify families.”

U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILDREN'S BUREAU, CHILD WELFARE INFO. GATEWAY, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN, 1 (2020) (hereinafter CHILD WELFARE INFO. GATEWAY)

<https://www.childwelfare.gov/resources/reasonable-efforts-preserve-or-reunify-families-and-achieve-permanency-children/>



Reasonable Efforts in Minnesota

The “nature of the services which constitute ‘reasonable efforts’ depends on the problem presents.” *In re Welfare of S.Z.*, 547 N.W. 2d 886,892 (Minn.1996).

“Once a child alleged to be in need of protection or services is under the court's jurisdiction, the court shall ensure that reasonable efforts, including culturally appropriate services and practices, by the social services agency are *made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time, and* the court must ensure that the responsible social services agency makes reasonable efforts *to finalize an alternative permanent plan for the child* as provided in paragraph (e). In determining reasonable efforts to be made with respect to a child and *in making those reasonable efforts, the child's best interests, health, and safety must be of paramount concern.*” Minn. Stat. §260.012 (a) 2023 (emphasis added).



Additional Clarification of Reasonable Efforts

Minn. Stat. Sec. 260.012(h) states:

The juvenile court, in proceedings under sections 260B.178, 260C.178, 260C.201, 260C.202, 260C.204, 260C.301, or 260C.503 to 260C.521, shall make findings and conclusions as to the provision of reasonable efforts. When determining whether reasonable efforts have been made by the agency, the court shall consider whether services to the child and family were:

- (1) selected in collaboration with the child's family and, if appropriate, the child;
- (2) tailored to the individualized needs of the child and child's family;
- (3) relevant to the safety, protection, and well-being of the child;
- (4) adequate to meet the individualized needs of the child and family;
- (5) culturally appropriate;
- (6) available and accessible;
- (7) consistent and timely; and
- (8) realistic under the circumstances.

Examples

- Services for the family may include family therapy, treatment for substance use, parent support groups, parenting classes, respite care and home visiting programs. CHILD WELFARE INFO. GATEWAY at 2.
- Additional examples of services for families may include the following: childcare; home services; individual, group and family counseling; health care services; behavioral health evaluations and treatment; and vocational assistance. *Id.*

Active Efforts

- Presently, Active Efforts are required on Indian Child Welfare Act (ICWA) cases and Reasonable Efforts are required on non ICWA cases.
- Minnesota's newly passed African American Family Prevention and Child Welfare Disproportionality Act (MAAFP & CWDA) will go into effect in Hennepin and Ramsey counties on January 1, 2025 and will require Active Efforts at all stages.
- Minnesota defines Active Efforts under 260.755, Subd.1a. as follows:

“Active efforts” means a rigorous and concerted level of effort that is ongoing throughout the involvement of the child-placing agency to continuously involve the Indian child's Tribe and that uses the prevailing social and cultural values, conditions, and way of life of the Indian child's Tribe to preserve the Indian child's family and prevent placement of an Indian child and, if placement occurs, to return the Indian child to the child's family at the earliest possible time. Active efforts under section 260.762 require *a higher standard than reasonable efforts to preserve the family, prevent breakup of the family, and reunify the family*. Active efforts include reasonable efforts as required by Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 679c.

Minn. Stat. § 260.755, Subd. 1.a. (2023) (emphasis added).

The Need to Understand Reasonable Efforts to Understand Active Efforts.

- Since Active Efforts require a higher standard, it's best to understand the standard of Reasonable Efforts as a base to compare to Active Efforts.
- How Ramsey and Hennepin counties will implement the African American Family Prevention and Child Welfare Disproportionality Act is still being finalized. CLC will update our volunteers as we learn more.

Why do Reasonable Efforts Matter

- It's Federal and State law!
- It's tied to Federal funding. In fact, Title IV-E funding to states require those state to make reasonable efforts to preserve and reunify families “(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home; and (ii) to make it possible for a child to safely return to the child’s home[.]” 42 U.S.C. § 671(a)(15)(B)(2023).
- It's consistent with the policy of reunification.

Why do Reasonable Efforts Matter

- Aside from the potential loss of federal funding, the effects of whether the agency met its burden of reasonable efforts vary by the stage of the proceedings. For example, in the early stages, the court may allow a child to remain in foster care, even if it finds the agency's efforts for prevention or reunification were unreasonable, *as long as it finds that further reasonable efforts would not allow the child to return home*. Minn. Stat. §§ 260C.178, subd.1 (f); 260C.201, subd. 2 (b)(2023)(emphasis added).
- However, at the permanency state if the courts finds that the agency did not perform reasonable efforts prior to a termination of parental rights, the termination can be reversed. See, *In re Welfare of the Children of T.R. T.M., P.P., and B.H., Parents* 750 N.W. 2d 656, 666 (Minn. 2008).

When are Reasonable Efforts Not Required

Reasonable efforts always are required except upon a determination by the court that a petition has been filed stating a prima facie case that:

- (1) the parent has subjected a child to egregious harm as defined in section 260C.007, subdivision 14;
- (2) the parental rights of the parent to another child have been terminated involuntarily;
- (3) the child is an abandoned infant under section 260C.301, subdivision 2, paragraph (a), clause (2);
- (4) the parent's custodial rights to another child have been involuntarily transferred to a relative under Minnesota Statutes 2010, section 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a similar law of another jurisdiction;
- (5) the parent has committed sexual abuse as defined in section 260E.03, against the child or another child of the parent;
- (6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b); or
- (7) the provision of services or further services for the purpose of reunification is futile and therefore unreasonable under the circumstances. Minn. Stat. § 260.012 (a) (2023).



When is a Reasonable Efforts Finding Required

Reasonable Efforts must be found at four different times in a child protection proceeding and are continually applied to certain agency obligations throughout the case.

The four different times Reasonable Efforts are required include the following:

- (1) to prevent an out-of-home placement into foster care or to eliminate the need for removal from the home;
- (2) to reunify the parent and child once removal has occurred;
- (3) to finalize and support a permanency plan for the child; and
- (4) to secure an adoptive home or finalize an adoption.

Minn. Stat. §§260.012 (f); 260C.178 subd. 1(e); 260C.201 subd. 2 (4); 260C.204 (a)(3); 260C.605; 260C.607 (1)© 2023.

Practice Tip

Remember that at each step of the proceeding, the agency must demonstrate its reasonable efforts. **Make sure the agency has made specific identified reasonable efforts.** Since reasonable efforts requires an ongoing burden, **the agency's past reasonable efforts are not enough.** If your client's wishes are not being realized, consider whether this is a result of the agency failing to provide appropriate services and supports to meet its reasonable efforts burden.

Prevent Placement

“Reasonable efforts to prevent placement” means:

- (1) the agency has made reasonable efforts to prevent the placement of the child in foster care by working with the family to develop and implement a safety plan that is individualized to the needs of the child and the child's family and may include support persons from the child's extended family, kin network, and community; or
- (2) the agency has demonstrated to the court that, given the particular circumstances of the child and family at the time of the child's removal, there are no services or efforts available that could allow the child to safely remain in the home. Minn. Stat. § 260.012 (d) (2023).

Prevent Placement

At the initial removal hearing, **court's written order must** briefly describe the agency's preventative and reunification efforts, why further efforts would not have prevented the child's removal, or that the agency was not required to perform reasonable efforts due to an exception under Minn. Stat. § 260.012 (a) or Minn. Stat. §260C.178 subd.1 (h)(emphasis added).

Reunify after Removal

At each review hearing after a child has been placed into foster care, the agency must show it is making continued reasonable efforts to reunify the child with her parents.

Minn. Stat. § 260C.201, subd. 2, (4) (2023).

Practice Tip

Ensure that you are aware of the case plans that have been approved for your client's parents AND that the agency is providing timely and appropriate services that specifically relate to the safety and protection of your client. If the services are not appropriate or timely, object and request the court find the agency is not providing reasonable efforts to reunify the family.

Concurrent Permanency Planning Reasonable Efforts

Reasonable Efforts for a child's permanency placement may be made concurrently with the agency's reasonable efforts to prevent placement or reunify the child with the parent or guardian from whom the child was removed. When this occurs, the agency shall disclose both plans for concurrent reasonable efforts to all parties and the court. The court's review of the agency's reasonable efforts shall include the agency's efforts under both plans. Minn. Stat. § 260.012 (k) (2023).

Practice Tip

If the agency is exploring a specific concurrent permanency plan for your client, ensure that your client's wishes regarding the proposed plan are being considered by the agency. If your client has concerns about reunification and would like the agency to consider a concurrent permanency plan, upon receiving your client's consent, inform the court and the agency of your clients wishes.

Finalize a Permanent Plan

When a child is placed out of their home, the permanency clock begins, and the agency has 12 months to reunify the family or 11 months to file a permanency petition. Minn. Stat. §260C.505 (2023)

The agency's reasonable efforts to finalize a permanent plan for the child means the agency must use due diligence to

- (1) reunify the child with the parent or guardian from whom the child was removed;
- (2) assess a noncustodial parent's ability to provide day-to-day care for the child and, where appropriate, provide services necessary to enable the noncustodial parent to safely provide the care, as required by section 260C.219;
- (3) conduct a relative search to identify and provide notice to adult relatives, and engage relatives in case planning and permanency planning, as required under section 260C.221;
- (4) consider placing the child with relatives in the order specified in section 260C.212, subdivision 2, paragraph (a);
- (5) place siblings removed from their home in the same home for foster care or adoption, or transfer permanent legal and physical custody to a relative. Visitation between siblings who are not in the same foster care, adoption, or custodial placement or facility shall be consistent with section 260C.212, subdivision 2; and
- (6) when the child cannot return to the parent or guardian from whom the child was removed, to plan for and finalize a safe and legally permanent alternative home for the child, and considers permanent alternative homes for the child inside or outside of the state, preferably with a relative in the order specified in section 260C.212, subdivision 2, paragraph (a), through adoption or transfer of permanent legal and physical custody of the child.

Minn. Stat. §260.012 (e) (2023)



Due Diligence

Reasonable efforts are made upon the exercise of due diligence by the responsible social services agency **to use culturally appropriate and available services to meet the individualized needs of the child and the child's family.** Services may include those provided by the responsible social services agency and other culturally appropriate services available in the community. The responsible social services agency **must select services for a child and the child's family by collaborating with the child's family and, if appropriate, the child.** At each stage of the proceedings when the court is required to review the appropriateness of the responsible social services agency's reasonable efforts to prevent removal and out of home placement, to reunify the family and finalize a permanent plan and ...

Continued

the social services agency has the burden of demonstrating that:

- (1) the agency has made reasonable efforts to prevent placement of the child in foster care, including that the agency considered or established a safety plan according to paragraph (d), clause (1);
- (2) the agency has made reasonable efforts to eliminate the need for removal of the child from the child's home and to reunify the child with the child's family at the earliest possible time;
- (3) the agency has made reasonable efforts to finalize a permanent plan for the child pursuant to paragraph (e);
- (4) the agency has made reasonable efforts to finalize an alternative permanent home for the child, and considered permanent alternative homes for the child in or out of the state, preferably with a relative in the order specified in section 260C.212, subdivision 2, paragraph (a); or
- (5) reasonable efforts to prevent placement and to reunify the child with the parent or guardian are not required. The agency may meet this burden by stating facts in a sworn petition filed under section 260C.141, by filing an affidavit summarizing the agency's reasonable efforts or facts that the agency believes demonstrate that there is no need for reasonable efforts to reunify the parent and child, or through testimony or a certified report required under juvenile court rules. Minn. Stat. § 260.012 (f) (2023).

Practice Tip

The agency's due diligence requires culturally appropriate and available services to meet the ***individualized needs of the child*** and the child family. Additionally, the agency is ***to collaborate with the child's family and, if appropriate, the child***. As a result, your client's input into the kinds of services that are appropriate for her and her family is relevant. Ensure your client's wishes regarding the kinds of services are communicated to the court and the agency.

To Secure and Finalize an Adoption

Once parental rights have been terminated, the agency must perform reasonable efforts to finalize and adoption for the child. Minn. Stat. § 260C.605 (2023).

Reasonable efforts to make a placement in a home according to the placement considerations under section 260C.212, subdivision 2, with a relative or foster parent who will commit to being the permanent resource for the child in the event the child cannot be reunified with a parent are required under section 260.012 and may be made concurrently with reasonable, or if the child is an Indian child, active efforts to reunify the child with the parent. Additionally, reasonable efforts for relative placement must begin as soon as possible when the child is in foster care under this chapter, but not later than the hearing required under section 260C.204. Minn. Stat. § 260C.605 (b-c)(2023).

To Secure and Finalize an Adoption

Reasonable efforts required to finalize an adoption include:

- (1) considering the child's preference for an adoptive family;
- (2) using age-appropriate engagement strategies to plan for adoption with the child;
- (3) identifying an appropriate prospective adoptive parent for the child by updating the child's identified needs using the factors in section 260C.212, subdivision 2.
- (4) making an adoptive placement that fits the child's needs including ensuring relatives who have been in touch with the agency and who indicated an interest in adopting the child as well as relatives located in updated relative searches are notified of the need for an adoptive home for the child and that relative searches are updated and ongoing;
- (5) updating and completing the social and medical history;
- (6) making, and keeping updated, appropriate referrals required by section 260.851, the Interstate Compact on the Placement of Children;
- (7) giving notice regarding the responsibilities of an adoptive parent to any prospective adoptive parent as required under section 259.35;
- (8) offering the adopting parent the opportunity to apply for or decline adoption assistance under chapter 256N;
- (9) certifying the child for adoption assistance, assessing the amount of adoption assistance, and ascertaining the status of the commissioner's decision on the level of payment if the adopting parent has applied for adoption assistance;
- (10) placing the child with siblings; and
- (11) working with the adopting parent to file a petition to adopt the child and with the court administrator to obtain a timely hearing to finalize the adoption. Minn. Stat. § 260C.605, subd.1 (d) (1-11)(2023).



To Secure and Finalize an Adoption

When there is no identified adoptive parent, the agency must:

- Register the child on the state adoption exchange as required in section 259.75 unless the agency documents to the court an exception to placing the child on the state adoption exchange reported to the commissioner;
- Review all families with approved adoption home studies associated with the responsible social services agency;
- Present the child to adoption agencies and adoption personnel who may assist with finding an adoptive home for the child;
- Use newspapers and other media to promote the particular child;
- Use a private agency under grant contract with the commissioner to provide adoption services for intensive child-specific recruitment efforts; and
- Make any other efforts or using any other resources reasonably calculated to identify a prospective adoption parent for the child. Minn. Stat. § 260C.605, subd.1 (d) (4) (iv) (2023).

Practice Tips

- Speak to your client about possible relative or caring adults they know and would like to be considered as an adoptive placement and upon your client's consent relay these names to the court and the agency for the agency to assess.
- Request the court order the agency to complete an updated relative search if one has not been completed in some time.
- If your client wants to be adopted, ensure that the agency is meeting its reasonable efforts burden to finalize an adoption and request the agency to detail its specific efforts to identify an adoptive home.

Reasonable Efforts and Siblings

- The child placing agency must continuously perform reasonable efforts to place siblings together both in foster care and in permanency placements such as adoption or transfer of permanent legal and physical custody to a relative. Minn. Stat. §§260.012 (e) (5); 260C.212, subd.2 (d).
- The court shall inquire what reasonable efforts were made to place siblings together at each hearing. Minn. Stat. § 260C.178 subd. 1(l)(2023).
- If siblings are not placed together the agency must create a visitation for the siblings, unless it is against the children's safety or wellbeing. *Id.*

Importance of Preserving Siblings Relationships

Minnesota's requirement of reasonable efforts to place and keep siblings together is consistent with Minnesota's stated priority of preserving sibling relationships. In addition to the previous statutes, Minnesota has enacted a Foster Care Sibling Bill of Rights which identifies specific rights that foster siblings have in Minnesota. Minn. Stat. § 260C.008 (2023). This statute identifies the rights of siblings to be placed together when possible and in the best interests of each sibling, to be placed near each other if placement together is not possible and to have continued contact with siblings while in care and whenever possible contact with sibling who are not in foster care. *Id.*

What are Reasonable Efforts to Place Siblings Together

- What constitutes reasonable efforts to place siblings together ultimately depends on the individual circumstances of the case. See, *In re Welfare of A.M.C.*, 920 N.W.2d 648, 663 (Minn. Ct. App. 2018).
- Reasonable efforts to prevent removal and finalize permanency are defined as the agency exercising due diligence to provide individualized and culturally appropriate services to meet the child and family's needs. MINN. STAT. § 260.012 (f) (2023).
- Since the individualized circumstances of the case define reasonable efforts to place siblings together, it is reasonable that the agency should engage in consistent efforts, tailored to each sibling's individual needs to place them together.
- Additionally, reasonable efforts should also include efforts to correct any circumstances that are preventing siblings from being placed together. For example, if a child has mental health or behavioral health concerns that make it difficult for them to be placed with their siblings, reasonable efforts may include providing services to the child to address these concerns so that they can be placed with their siblings in the future.

What are the Exceptions to Reasonable Efforts to Place Siblings Together?

- Under Minn. Stat. § 260C.178, subd.1(l)(2023), the agency is not required to place siblings together if one of the siblings is placed in treatment or is placed with their noncustodial parent who is not a parent to their other siblings. However, because reasonable efforts to place siblings together should last for the life of the case, the agency will be required to engage in reasonable efforts to place siblings together if a child moves from a treatment placement to a non-treatment foster care placement or is moved from placement with their noncustodial parent.
- Additionally, the agency is not required to place siblings together if it is documented that placement together would be contrary to the safety or well-being of one or more of the siblings or if it is not in the best interests of one or more of the siblings. MINN. STAT. § § 260C.212, subd. 2(d), 260C.193 (g) (2023).
- Finally, there is no requirement to place siblings together if one or more of the siblings are not under the jurisdiction of the juvenile protection court.

What are the Exceptions to Reasonable Efforts to Place Siblings Together?

Minnesota's Department of Children, Youth, and Families (formerly Department of Human Services) has identified the following exceptional circumstances which **may** allow sibling separations:

- (1) a sibling in treatment,
- (2) a sibling currently placed with a previously noncustodial parent that is not a parent to all siblings (but, if parental rights were previously terminated for one sibling but not the other, the statute prioritizing sibling connection still applies),
- (3) one sibling has sexually, physically, or emotionally abused another,
- (4) residing in the house would have a harmful physical, mental, or psychological effect on one or more of the siblings,
- (5) the siblings' relation is neither close nor supportive,
- (6) a sibling has a physical or mental disability that could be accommodated by separate placement,
- (7) a sibling who is old enough to state a preference expressed a preference that would result in sibling separation, and
- (8) the biological parents have executed consents to adoption that identify different adoptive families for the siblings.

Policy on Sibling Placement, Separation, Visitation, and Contact, MINN. DEP'T OF HUM. SERVS., https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=DHS16170595 (last visited July 31, 2024).

Practice Tips

- If your client is separated from their siblings, ask the county agency on the record to explain why the siblings are not placed together and to identify the agency's anticipated visitation plan for the siblings. If the rationale does not appear to involve considerable effort, challenge the agency's efforts as unreasonable and request further efforts to place the siblings together. If authorized by your client, provide specific suggestions for placement options and concrete, case-specific actions that the agency could take to demonstrate reasonable efforts to place your client with their siblings.
- Remind the court of its role in determining whether or not the agency has made reasonable efforts and request the court to hold the agency accountable in placing siblings together.
- Remind the court of Minnesota's statutory priority to have siblings placed together.
- If your client expresses that they do not wish to be placed with their siblings, check in through the case about their wishes for sibling contact and notify the court and agency of any changes in these wishes.

Practice Tips

- Review your client's Out-of-Home Placement Plan (OHPP) to ensure the agency has detailed details of how often your client will have contact with their siblings and what forms of contact will be used (in-person, FaceTime, phone, etc). If the plan is vague request the court find the agency has not made reasonable efforts to place the children together.
- If in-person visitation between your client and their siblings is not an option, consult with your client about other contact options, including phone calls, text messages, and video calls, and ask the court to order contact between your client and their siblings.
- If your client's foster care provider or your client's sibling's foster care provider is not cooperating with sibling visits, bring it to the court and agency's attention and remind the court of the agency and foster care provider's duty to work together to coordinate visitation.



Reasonable Efforts for Siblings and Adoption

- The agency's reasonable efforts to finalize a child's adoption require the agency to place the child with siblings. If the child is not placed with siblings, the agency must document reasonable efforts to place the siblings together, as well as the reason for separation. The agency may not cease reasonable efforts to place siblings together for final adoption until the court finds further reasonable efforts would be futile or that placement together for purposes of adoption is not in the best interests of one of the siblings. Minn. Stat. § 260C.605, subd. 1(d)(10)(2023)
- The responsible social services agency ***shall*** make every effort to place siblings together for adoption. Minn. Stat. § 260C.617(a)(2023) (emphasis added).

Reasonable Efforts for Siblings and Adoption

The agency may motion the court to separate sibling for the purpose of adoption. Minnesota requires the agency give proper notice to the child's tribe if the child is an Indian child, the child's guardian ad litem, the child if age 10 or older, the child's attorney, the foster or prospective adoptive parent of the child, and any foster, adopting, or adoptive parents of the child's siblings, or relatives with permanent legal and physical custody of the child's sibling, and upon hearing, the court may determine that a child under the court's jurisdiction may be separated from the child's sibling for adoption when:

- (1) the responsible social services agency has made reasonable efforts to place the siblings together, and after finding reasonable efforts have been made, the court finds further efforts would significantly delay the adoption of one or more of the siblings and are therefore not in the best interests of one or more of the siblings; or
- (2) the court determines it is not in the best interests of one or more of the siblings to be placed together after reasonable efforts by the responsible social services agency to place the siblings together.

Minn. Stat. § 260C.617 (d)(2023)

Practice Tip

As permanency and adoption proceedings approach, ensure the parties and the court are aware of your client's wishes regarding sibling contact and visitation, so that sibling contact agreements or visitation schedules may be prepared and included in court orders.

Questions?

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