

## REASONABLE EFFORTS IN TENNESSEE

**Hosted by:**

Administrative Office of the Courts

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## HISTORY OF REASONABLE EFFORTS

- Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. 671
  - Congress offered federal funds to states who required state agencies to make reasonable efforts to keep children in their parents' homes. If foster care was necessary, reasonable efforts were required to reunify the family.
  - Federal Law does not define what qualifies as "reasonable efforts" and instead left it to the states to determine

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## HISTORY OF REASONABLE EFFORTS

- Tenn. Code Ann. 37-1-166
  - At any proceeding of a juvenile court, prior to ordering a child committed to or retained within the custody of the department of children's services, the court shall first determine whether reasonable efforts have been made to:
    - (1) prevent the need for removal of the child from such child's family; OR
    - (2) Make it possible for the child to return home

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## HISTORY OF REASONABLE EFFORTS

- *In re C.M.M.*, 2004 Tenn. App. LEXIS 160 (Tenn. Ct. App. March 9, 2004)
  - Department's employee must use their superior insight and training to assist parents with the problems the Department has identified in the permanency plan, whether the parents ask for assistance or not
  - Department's efforts, however, need to be "Herculean"

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## HISTORY OF REASONABLE EFFORTS

- *In re Kaliyah S.*, 455 S.W. 3d 533 (Tenn. 2015).
  - Completely overturns *In re CMM* and its progeny
  - Lack of reasonable efforts no longer a true defense
  - Reasonable efforts no longer an essential component of its petition to terminate parental rights
  - Reasonable efforts now considering part of best interest analysis

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## HISTORY OF REASONABLE EFFORTS

- In past two years, two cases have been overturned due to lack of reasonable efforts
- *In re Dezeray H.*, 2024 Tenn. App. LEXIS 214 (Tenn. Ct. App. May 14, 2024)
  - Although DCS is relieved of reasonable efforts due to severe abuse finding, COA found that reasonable efforts are still required when alleging failure to provide a suitable home
- *In re Abraham S.*, 2023 Tenn. App. LEXIS 210 (Tenn. Ct. App. May 17, 2023)
  - Sending a single housing application did not rise to reasonable efforts


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## WHEN TO USE REASONABLE EFFORTS ARGUMENT

- Preliminary Hearing
  - CFTMs
  - Ratification Hearing
  - Adjudication Hearing
  - Disposition Hearing
  - Post-Dispositional Review
  - Termination of Parental Rights Petition
  - Responding to TPR Petition
  - Appeal
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## PRELIMINARY HEARING

- Questions to ask per 37-1-166
    - Is removal of the child from such child's family necessary in order to protect the child; and, if so, then what is the specific risk or risks to the child or family that necessitates removal of the child?
    - What specific services are necessary to allow the child to remain in the home or to be returned to the home?
    - What services have been provided to assist the family and the child so as to prevent removal or to reunify the family?
    - Has the Department had the opportunity to provide services to the family and the child, and, if not, then what are the specific reasons why services could not be provided?
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## PRELIMINARY HEARING

- Specific Questions of Case Worker:
  - What services did you offer / provide to the respondent prior to removal?
  - Did you ask the respondent whether any other family was available?
  - Did you seek out any other possible relatives or friends vs. state custody?
  - What are the issues preventing these children from returning (this is setting them up for a record and the CFTM)



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## CFTMs

- Initial CFTM – Drafting Permanency Plan
  - What services are required of Department; don't let them get away with doing nothing.
  - What is the most important issue preventing return of custody. They will say everything is important. This is not true under the case law. *See e.g. In re Valentine*, 79 S.W.3d 539 (Tenn. 2002). Some things are more important than others.
  - Try to narrow down the specific tasks need. It is one thing to say “treatment for psychological issues” and it is another thing to say “Undergo psychological evaluation with parenting component provided by a Ph.D. level psychologist and follow recommendations”



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## CFTMs

- At the end of every CFTM, ask for a copy of the CFTM notes
- You will need this for future hearings when the Department forgets that you requested services
- If someone is not taking notes, ask that the FSW provide his/her notes at the conclusion of the CFTM so that everyone is on the same page for services
- If there is a heated issue, ask that your position be included in the CFTM notes

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## RATIFICATION HEARING

- T.C.A. 37-1-166 – At any proceeding before the court prior to ordering or retaining a child into the custody of the Department, the court shall first determine whether reasonable efforts have been made.
- This is one of the first opportunities for you to make a record for something that will be brought up in the TPR case
- At the CFTM, you can “agree to disagree,” but this is your opportunity to advocate for what needs to be on the Perm Plan requirements

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## RATIFICATION HEARING

- Examples:
  - Housing: The Department shall actively provide assistance to the Respondent to obtain stable housing; *active assistance should be more than providing a list*
  - Alcohol and Drug Assessment: The Department *shall* provide access to a A/D assessment by a date certain
  - Psychological Evaluation: The Department should provide access to a **qualified** assessor by a date certain.
  - Housing of child is less drastic alternative (TCA 37-1-166)


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## REASONABLE EFFORTS IN EFFECT

- Housing of Child
- Tenn. Code Ann. 37-1-129(c)
  - Court cannot tell DCS where to place the child
  - Court CAN find that current placement does not meet the needs of the child
    - Court shall provide notice of the hearing to DCS, the parents, and any person who has been responsible for the child in the last 12 months
    - Court must wait 30 days to hold hearing
    - Court shall issue placement recommendation within 10 days after hearing
    - DCS shall issue a determination within 15 days after receipt of Court's recommendation


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## ADJUDICATION HEARING

- Remember adjudication is “did your client do what they are accused of doing” and disposition is “what does your client have to do in order to get their children back”
  - The findings at adjudication will lead to disposition and what services are required. You don’t need an A/D assessment for disposition if there are no drug issues
  - Be careful...the judge may find your client committed an issue which is not plead due to the facts presented
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## ADJUDICATION HEARING

- Questions to the CPS Investigator:
    - You received a referral, but you did not do an immediate removal. Correct?
    - You did an immediate removal, but you did not provide any resources for the family? Correct?
    - The primary issue with my client per your petition is allegations of drug abuse and nothing further, right? (this narrows down the issues for disposition)
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## DISPOSITIONAL HEARING

- The ultimate question in disposition is has your client resolved the issues found in adjudication
- The secondary question is what services has the department provided in order to resolve those issues.
  - The Department may argue they do not have to provide services until after adjudication. This is not correct under either Federal law (42 U.S.C. 671(a)(15)D) or Tennessee law (TCA 37-1-166). There are only a few exceptions and those generally require a finding by the court to be excused.
  - If you are good at what you do, you can get those services in place prior to disposition and completed

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## DISPOSITIONAL HEARING

- Questions to ask the FSW
  - DCS has a CPS investigator who removes the child and an FSW who provides help for the family
  - Per the DCS policy, that FSW should be seeing the child every thirty days to determine status
  - Look at the TFACTS to determine what services have been provided
  - Look at the TFACTS to determine what actions have been taken by the FSW in order to provide permanency.
  - If it is not in TFACTS, it does not exist.

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## POST-DISPOSITIONAL REVIEW HEARINGS

- If the child remains in DCS custody, your primary goal is to determine what actions are necessary to move the case forward
- The Department is extremely overworked and if you do not request a CFTM, they generally will not provide a CFTM. If you request a CFTM and they fail to provide one, prepare to file a Motion for Failure to Provide Reasonable Efforts
- At the end of every CFTM, go ahead and schedule the next one. If you do not, the email scheduling will not work.
- During every CFTM, ask what services are necessary to move to permanency

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## POST-DISPOSITIONAL REVIEW HEARINGS

- Reasonable Efforts re: Placement of Child(ren)
  - Refer to T.C.A. 37-1-129(c)(2)
    - The court may make a finding that placement is not appropriate and make a recommendation to the Department regarding placement
    - What happens if DCS does not follow recommendations of court
    - Is that a lack of reasonable efforts?

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## TERMINATION OF PARENTAL RIGHTS PETITION

- The Department will allege the parents have substantially failed to comply with the requirements of the permanency plan
- This is when you get to use all the records you have built during the previous hearings and CFTMs
- Remember that the D/N Petition is a separate record from the TPR petition. You must build the record in the TPR

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## RESPONDING TO TERMINATION OF PARENTAL RIGHTS PETITION

- Psychological Issues
  - *In re N.E.*, 2010 Tenn. App. LEXIS 370 (Tenn. Ct. App. May 28, 2010)
    - DCS failed to provide reasonable efforts to help father overcome his psychological issues; therefore TPR reversed
    - Be careful citing this one, it went up again and father's rights were terminated because he didn't want help
- Housing:
  - *In re Abraham S.* 2023 Tenn. App. LEXIS 210 (Tenn. Ct. App. May 17, 2023)
  - DCS could only provide one example where they assisted father with obtaining housing. TPR reversed.

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## COURT OF APPEALS

- You have made your record. Now it is time to use it.
- Remember that the COA is compiled of only the record in the termination proceeding.
- If you see that the Department is missing an element, DON'T HELP THEM...unless you are GAL.
- Many people will argue that reasonable efforts is no longer a defense to a TPR. If you use it properly, you may never get that far.

