

# REASONABLE EFFORTS

ISC CP SECTION C.L.E. PRESENTATION

Judge Andrew Ellis 5/24/24

# SOURCES

“REASONABLE  
EFFORTS: A JUDICIAL  
PERSPECTIVE, 2<sup>nd</sup>  
EDITION” by Judge  
Leonard Edwards

IDAHO CHILD  
PROTECTION  
MANUAL, 5<sup>th</sup> Edition

IDAHO CODE 16-1601  
- 1647

# A BRIEF HISTORY

In the 1960s and 1970s the U.S. Congress learned from substantial research that child welfare agencies around the nation were removing children from their families without attempting to preserve the family.

# A BRIEF HISTORY, cont.

To combat this, Congress passed the Adoption Assistance and Child Welfare Act (AACWA) in 1980.

# A BRIEF HISTORY, cont. II

AACWA requires Child Protection courts to review the facts surrounding the removal of a child from parental care and determine whether the child welfare agency used sufficient services and resources to prevent removal.

## A BRIEF HISTORY, cont. III

AACWA also requires the courts to determine whether an agency has provided services to assist parents in their efforts to reunify with their children.

## A BRIEF HISTORY, cont. IV

In 1997, Congress passed the Adoption and Safe Families Act (ASFA). ASFA added a third requirement for courts to review whether an agency made reasonable efforts to make and finalize alternate permanency plans for a foster child in a timely fashion.

**THERE ARE THREE  
SITUATIONS WHERE  
COURTS ARE  
REQUIRED TO MAKE  
SPECIFIC FINDINGS  
REGARDING  
REASONABLE  
EFFORTS**

- 1) At time of removal
- 2) During the CP case regarding reunification efforts
- 3) After DHW has developed a permanency plan



FEDERAL LAW  
ALLOWS CHILD  
PROTECTION  
COURTS TO MAKE  
THE INITIAL  
REASONABLE  
EFFORTS FINDING  
WITHIN 60 DAYS OF  
THE REMOVAL

No reasonable efforts finding regarding the removal of the child in the first 60 days results in permanent loss of Title IV-E funding from HHS to Idaho for the costs of foster care.

A “no reasonable efforts” finding regarding DHW’s reunification efforts during the CP case suspends Title IV-E funding until a subsequent order that reasonable efforts have been restored.

**THE INTENTION OF CONGRESS  
IN TYING FEDERAL FUNDING TO  
THE INITIAL FINDING OF  
REASONABLE EFFORTS TO  
PREVENT REMOVAL**

# IDAHO'S CONFLICT WITH FEDERAL POLICY

- Federal law allows a Child Protection court to make the initial reasonable efforts finding within 60 days.
- Idaho laws implementing AACWA, however, requires that a court make a finding at the SCH that "...it is shown...that the department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful" (I.C. 16-1615)(5)(b)(i) or "The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services." (I.C. 16-1615)(5)(b)(ii))
- FURTHER: 16-1615(10) says "If the court does not find reasonable cause pursuant to subsection (5)(b) of this section, the court shall dismiss the petition."

# IDAHO'S CONFLICT WITH FEDERAL POLICY – cont.

So... in Idaho if the court doesn't find reasonable efforts at SCH the case is dismissed. Which means no on-going foster care expenses, no financial penalty to the State, and arguably the intention of AACWA is thwarted...

**TWO FURTHER  
OBSERVATIONS  
ABOUT IDAHO  
COURTS' ABILITY  
TO HONOR THE  
POLICY OF  
AAWCA**

ONE: Idaho Code 16-1608. Idaho is in a minority of states where law enforcement have the authority to remove children – most states vest that authority with their child welfare agencies. The police have no statutory obligation to make reasonable efforts to prevent removal and often don't.

**TWO FURTHER  
OBSERVATIONS  
ABOUT IDAHO  
COURTS' ABILITY  
TO HONOR THE  
POLICY OF  
AAWCA**

ONE, cont. The ISC Child Protection Manual states that I.C. 16-1615(5)(b)(ii) (“The department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services.”) is the appropriate finding in this circumstance.

**TWO FURTHER  
OBSERVATIONS  
ABOUT IDAHO  
COURTS' ABILITY  
TO HONOR THE  
POLICY OF  
AAWCA**

TWO. In a post *Ingram v. Mouser* world, the majority of removals will be via Orders to Remove per I.C. 16-1611(4). That statute does not require a court to consider reasonable efforts to prevent removal. The only considerations are: based on facts presented to the court, does the court have jurisdiction, is continuation of the child in their present conditions contrary to the welfare of the child, and is vesting legal custody with DHW in the child's best interest?

**TWO FURTHER  
OBSERVATIONS  
ABOUT IDAHO  
COURTS' ABILITY  
TO HONOR THE  
POLICY OF  
AAWCA**

TWO cont. An observant DHW, prosecutor and judge will understand that at the SCH the court will need to rule on reasonable efforts made to prevent removal so they should be hesitant to proceed with an Order to Remove lacking such efforts.



# REASONABLE EFFORTS IS NOT DEFINED.

- “Reasonable efforts” is purposefully not defined in federal statutes as the intention is that judicial determinations of reasonable efforts be made on a case-by-case basis considering the individual circumstances of each child.
- Idaho has no statutory definition of “reasonable efforts.” The decision whether reasonable efforts have been made or not is within the discretion of the judge presiding over the CP case.

**REASONABLE  
EFFORTS ISSUES  
THAT COULD BE  
RAISED DURING  
A CP CASE**

- 1) HOUSING – what obligation does DHW have to assist parents in securing housing?
- 2) POVERTY RELATED CONCERNS – child-care, homemaking, financial assistance, parenting education, employment assistance, nutrition programs, counseling, health care, transportation?
- 3) PARENTING TIME – frequency, duration, location, quality, level of supervision, tailored to age of child?

**REASONABLE  
EFFORTS ISSUES  
THAT COULD BE  
RAISED DURING  
A CP CASE  
cont.**

- 4) PLACEMENT PRIORITY with relatives per 16-1629(11)
- 5) SUBSTANCE ABUSE TREATMENT
- 6) DOMESTIC VIOLENCE (perpetrators and victims)
- 7) MENTAL HEALTH and other disabilities

**REASONABLE  
EFFORTS ISSUES  
THAT COULD BE  
RAISED DURING  
A CP CASE  
cont. 2**

8) ENGAGING FATHERS

9) CULTURALLY COMPETENT  
SERVICES

10) INCARCERATED PARENTS