COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
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MAR 06 2001

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Dear Colleague:

Enclosed please find a copy of the Office of Children, Youth and Families Bulletin Number 3130-01-01 entitled "The Second Revised Interim Implementation Guidelines for the Adoption and Safe Families Act of 1997 (P.L. 105-89)." This second revised bulletin reflects changes due to:

- regulations published in the Federal Register on 45 CFR Parts 1355, 1356 and 1357 "Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Form;" and
- a requirement of The Senator John H. Chafee Foster Care Independence Program (P.L. 106-169) regarding foster parent training.

The following summarizes the key additions/changes made to the previous bulletin issued on the Adoption and Safe Families Act (ASFA):

- final form regulations added another permanency goal for a child of placement with a fit and willing relative (see pages 39 and 45);
- additional requirements related to a reasonable effort finding that county agencies should request in the first judicial hearing removing the child from the home (see pages 41, 64 and 72);
- for a child who remains in out of home care, a judicial finding related to whether reasonable efforts were made to finalize the permanency plan (see pages 41 and 51);
- the clock for counting the 15 out of the past 22 months for the required filing of the petition to terminate parental rights (TPR) has certain specific circumstances that do not count (see pages 46, 50 and 56);
- a standard list of compelling reasons for not filing the petition to TPR is prohibited (see page 51 and 60);
- permanency hearings must continue for a child receiving Title IV-E placement maintenance reimbursement until permanency has been

achieved. Therefore, county agencies must continue to request a permanency hearing for a child in a pre-adoptive home until permanency is achieved (see pages 52);

- the nondiscrimination requirements of the Multiethnic Placement Act and its amendment have been incorporated in this document (see pages 16 and 23); and
- foster parents must be adequately prepared with adequate skills and knowledge to care for the children in their care (see page 79).

Please take the time to carefully review this bulletin for all the changes. If you have any questions, please contact your regional office.

Sincerely,

Jo Ann R. Lawer, Esq.

Enclosure

CHILDREN, YOUTH AND FAMILIES BULLETIN

COMMONWEALTH OF PENNSYLVANIA • DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE:	EFFECTIVE DATE:	NUMBER:
January 2, 2001	IMMEDIATELY	3130-01-01

SUBJECT: The Second Revised Interim Implementation Guidelines for the Adoption and Safe Families Act of 1997 (P. L. 105-89)

BY: Jo Ann R. Lawer, Esq.
Deputy Secretary for
Children, Youth and Families

SCOPE:

COUNTY CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
COUNTY CHILDREN AND YOUTH ADVISORY COMMITTEES
CHIEF JUVENILE PROBATION OFFICERS
COUNTY COMMISSIONERS AND EXECUTIVES
JUVENILE COURT JUDGES
JUVENILE COURT JUDGES' COMMISSION
ALLEGHENY COUNTY LAW DEPARTMENT
JUVENILE LAW CENTER
ORPHANS COURT JUDGES
PENNSYLVANIA STATE FOSTER PARENT ASSOCIATION
PRIVATE CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
CHILDREN, YOUTH AND FAMILY SERVICES, COUNCIL OF DELAWARE VALLEY

PURPOSE:

The purpose of this bulletin is to revise the revised interim guidelines for the implementation of the Adoption and Safe Families Act of 1997 (ASFA). The requirements of ASFA that were contained in the Juvenile Act effective January 1, 1999, were contained in bulletin number 3130-99-01. On January 25, 2000 The Department of Health and Human Services, Administration for Children and Families published regulations in the Federal Register on 45 CFR Parts 1355, 1356 and 1357 "Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Form." The regulations were effective March 27, 2000. This second revised interim bulletin provides guidelines and requirements for county children and youth agencies for the implementation of the federal regulations. These guidelines and requirements have been incorporated into existing ASFA implementation policy as reflected through out this bulletin. This bulletin also incorporates a requirement of The Senator John H. Chafee Foster Care Independence Program (P. L .106-169) that foster parents have adequate knowledge and skills to care for the foster child in their care.

REFER COMMENTS AND QUESTIONS REGARDING THIS BULLETIN TO:

Regional Children and Youth Directors

ORIGIN: Eileen West 717-783-7376

The following is rescinded:

- Office of Children, Youth and Families Bulletin (OCYF) number 3130-99-01, The Revised Interim Implementation and Guidelines for the Adoption and Safe Families Act of 1997 (P. L. 105-89).

This bulletin will remain in effect until regulations are promulgated. This bulletin modifies requirements in 55 PA Code Chapter 3130 Administration of County Children and Youth Social Service Programs; Chapter 3140 Planning and Financial Reimbursement Requirements for County Children and Youth Social Service Programs; and 55 PA Code Chapter 3700 Foster Family Care Agency.

The requirements in this bulletin will become incorporated in the OCYF survey and evaluation process.

The attachments to this document are as follows:

- Attachment A, House Bill 1897 Printer's Number 4149
(Note that the deleted language is in [ ] and new language is underlined.);
- Attachment B, Federal Register 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; Final Rule
- Attachment C, ACYF-CB-IM-99-02, The Adoption and Safe Families Act of 1997; Public Law 105-89, Title –IV-D Child Support Enforcement; Federal Parent Locator Service;
- Attachment D, Sample Letter to Caretakers Regarding Notice and Opportunity to be Heard;
- Attachment E, OCYF Bulletin 00-97-09, Access to Pennsylvania State Police Records;
- Attachment F, Aggravated Circumstances Flow Chart For a New Referral to a County Agency;
- Attachment G, Aggravated Circumstances Flow Chart For a Child Already Adjudicated Dependent;
- Attachment H, OCYF Bulletin 3490-99-01, Drug Convictions Prohibiting Hiring Child Care Employees/Approving Foster and Adoptive Parent Applicants;
- Attachment I, Juvenile Act with the incorporated amendments;
- Attachment J, ACYF-PI-CB-98-02, Adoption and Safe Families Act of 1997; Public Law 105-89; Amendments to Title IV-B Subparts 1 and 2 and Title IV-E of the Social Security Act; State Automated Child Welfare Information System (SACWIS); and
- Attachment K, Federal Register, Part II Department of Health and Human Services, Administration for Children and Families, 45 CFR Parts 1355, 1356 and 1357, Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews; Final Rule."

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Question and Answer Section

BACKGROUND:

- On November 19, 1997 President Clinton signed the Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, which amends Title IV-B and Title IV-E of the Social Security Act. ASFA establishes unequivocally that the goals for children in the child welfare system are safety, permanency and well-being. The law intends to make the child welfare system more responsive to the multiple, frequently complex, needs of children and their families. While affirming the need to forge linkages between the child welfare system, the courts and other support systems for families, the law reaffirms the need to assure the safety and well-being of children and their families. The law provides renewed impetus to dismantling the barriers to permanence existing for children in placement and the need to achieve permanency for these children.

- Pennsylvania's amendments to the Juvenile Act (Act 126 of 1998) and the Child Protective Services Law (Act 127 of 1998) embodies the key principles of ASFA. ASFA has been incorporated into Pennsylvania's overall policies for our child welfare program.

ASFA embodies several key principles that must be considered in implementing the law:

- **The child's safety is the paramount concern.** All decisions must be made based on the child's safety and well-being.

- **Substitute care is a temporary setting. It is not a place for children to grow up.** For children who cannot safely return home, the law provides for an expedited process to find these children permanent homes.

- **Permanency planning for children begins as soon as the child enters substitute care.** From the time a child enters placement, the county agency must be diligent in finding a permanent family for the child.

- **The practice of concurrent planning** is encouraged by ASFA to facilitate the timely considerations of all permanency options for the child.

- **Achieving permanency for children requires timely decisions from all parts of the child serving system.**

- **Innovative approaches are needed to produce change.** The law envisions real change in the child welfare programs.

DISCUSSION:

ASFA amended Title IV-B and Title IV-E of the Social Security Act in several important ways, to reflect the principles outlined above. Highlights of the changes which were included in the amendments to the Juvenile Act are:

- **Modifications to the "Reasonable Efforts" requirement** that agencies make reasonable efforts to prevent placement and to reunify families after placement occurs. However, ASFA specifies that in determining what efforts are reasonable and in making those efforts the **child's health and safety** must be the **paramount concern.**

- Specified circumstances in which a court may determine that a county agency is not required to make reasonable efforts to prevent the placement or to return the child home. The Juvenile Act was amended to include the following as **aggravated circumstances**:

  - certain crimes committed against a child (e.g. murder, voluntary manslaughter, aiding, abetting, soliciting or conspiring to commit any of the crimes);
  - state-specified aggravated circumstances (sexual violence, aggravated physical neglect, serious bodily injury, and when a child is in the custody of a county children and youth agency (county agency) and either of the following applies:
    - the whereabouts and identity of the parents remains unknown for three months, or
    - the whereabouts or identity of the parents may be known but the parents fail to maintain substantial and continuing contact with the child for six months; and
  - a previous involuntary termination of the parental rights to a sibling.

- Provides for an **expedited permanency** process when aggravated circumstances are found to exist and that no reasonable efforts (or no further reasonable efforts) for reunification will be made; if aggravated circumstances exist, a permanency hearing must be held within 30 days to determine the permanency plan for the child.

- The provision for **concurrent planning** is a practice that plans for family reunification but concurrently plans for an alternate permanency option. The practice is encouraged so that all permanency options for a child are considered in a timely manner.

- Requires that one of four goals be identified for a child's **permanency plan**: return home; adoption and the county agency will file a petition to terminate parental rights, placement with a permanent legal custodian; or another planned placement that is intended to be

permanent. Long term foster care is not recognized as a permanency option. A child needs a placement that is the most legally permanent. Therefore, "another planned placement that is intended to be permanent" is the least desirable goal for a child and the other goals must be ruled out before this goal can be approved by the court for a child. If a child cannot return home, ASFA allows an exception to the TPR requirement if a child is placed with a fit and willing relative.

- Permanency hearings will focus on the child's safety in relation to the permanency plan and goal for a child. In Pennsylvania, these hearings are now held every six months. Permanency hearings provide for greater judicial oversight on child welfare cases.

- To meet the requirement to initiate termination of parental rights (TPR), agencies must file a petition to TPR when:
  - the child has been in placement 15 out of the most recent 22 months;
  - the child is an abandoned infant (as defined in state law);
  - the court has determined aggravated circumstances exist and that no reasonable efforts (or no further reasonable efforts) will be made for reunification.

The exceptions to the TPR requirement are:
- the child is being cared for by a relative;
- a compelling reason why it is not in the child's best interest (this must be case specific); or
- the county agency has not provided the services specified in the permanency plan necessary for the child's safe return home.

A three part phase-in has been provided to accommodate the children who were in placement on November 19, 1997.

ASFA requirements apply to all children served by the county agency including adjudicated delinquent youth who are under shared case management.

ASFA requirements became effective November 19, 1997. It allowed for transition rules when a state needed to enact enabling legislation. Most of the legislative changes required for Pennsylvania to fully comply with ASFA requirements are contained in the Juvenile Act. State amendments implementing ASFA were effective January 1, 1999.

Final form regulations implementing requirements of the Adoption and Safe Families Act were published in the Federal Register on January 25, 2000 with most rules effective March 27, 2000. The impact of the regulations are under review with existing policy and legislation. The existing implementation

guidelines for ASFA have been reviewed and the impact of the regulations have been incorporated in the affected sections of this bulletin. Federal regulations address the following key areas:

- **Judicial findings related to reasonable efforts** must occur at certain times in a case. The initial judicial finding should be made at the first hearing which removes the child from the home but must be made within 60-days of the removal. If such a finding is not made within that 60-day period, the child is ineligible for federal Title IV-E funding for the duration of that out-of-home placement.

- A judicial finding is required as to whether **reasonable efforts were made to finalize the child's permanency plan.** This requirement applies to each permanency goal, whether the permanency plan is for the child to return home or be placed as per another of the goals in accordance with the requirements related to permanency hearings.

- **Permanency hearings must be held until the child achieves permanency** including finalization of adoption if adoption is the goal.

- Regulations qualify that **placement with a relative may be a permanency goal.**

- The time **clock for counting the fifteen months** of the last twenty-two months is cumulative with limited time episodes that do not count.

- **Predetermined categories as compelling reasons are prohibited.**

The Senator John H. Chafee Foster Care Independence Program (P. L. 106-169) amended the Social Security Act to require that foster parents have adequate knowledge and skills to care for the foster child in their care. A further discussion of this has been included in a new section starting on page 79.

Chart of Effective Dates

The following chart outlines the effective dates for the key provisions of ASFA. Note that some sections of ASFA take effect at different times.

EFFECTIVE DATE	ASFA SECTION	ASFA PROVISION
11-19-97	102	Safety in case plan relating to county agency responsibilities
11-19-97	103	TPR provisions for abandoned infant only
11-19-97	104	Notice of reviews/hearings only (not opportunity to be heard)
11-19-97	107	Documenting efforts to find permanent home
11-19-97	202	Fair hearing for cross-jurisdictional adoptions
11-19-97	306	Health insurance for children receiving adoption assistance
11-19-97	307	Continuing Title IV-E eligibility for adoption assistance if the adoption dissolves
1-1-99	PA *	Expanded grounds for dependency
1-1-99	101	Reasonable efforts requirement
1-1-99	102	Safety issues for the case review system relating to court responsibilities
1-1-99	103	TPR for aggravated circumstances
1-1-99	104	Opportunity to be heard
1-1-99	106	Criminal Records Checks
1-1-99	302	Permanency Hearings
1-1-99	PA*	Access to Drug and Alcohol Treatment Records
1-1-99	103	For children placed after November 19, 1997 and remain in care for 15 out of the last 22 months, petitions to TPR must be filed as the child meets the time requirement.
5-30-99	103	Phase-in requirement for children who were placed on or prior to November 19, 1997. TPR petitions must have been filed for first third of children in foster care the longest TPR petitions must also have been filed for children with goal of adoption
11-30-99	103	Phase-in requirement: TPR petitions must have been filed for the next third of children in foster care
10-1-99	P.L. 106-169 **	Requirement that foster parents have appropriate training
5-30-2000	103	Phase-in requirement: TPR petitions must have been filed for the last third of children

* PA amendment; not an ASFA requirement.

** Requirement of The Senator John H. Chafee Foster Care Independence Program; not an ASFA requirement.

INCLUDING CHILD SAFETY
IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS

REQUIREMENT OF FEDERAL LAW

Section 102 of the Adoption and Safe Families Act of 1997 requires that the child's safety be the paramount factor in all decisions made on behalf of the child throughout the case planning process. The necessity to provide reasonable efforts to prevent placement or to return the child home hinges on the child's safety.

For each child receiving services from an agency, safety must be considered at each step of the case plan and review process whether the child remains home or is in placement. This includes safety considerations and documentation in casework practice and supervision and in the case plan development and review process.

JUVENILE ACT

The Juvenile Act was amended to include the issue of a child's safety. The amendments are incorporated as follows:

- The purposes of the law are:

  "To provide for the care, protection and safety and wholesome mental and physical development of children coming within the provisions of this chapter" (§6301(B)(1.1)); and

  "To achieve the following purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety." (§6301(B)(3));

- Expansion of the grounds for dependency at:

  Ground number one has been expanded to include "A determination that there is lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk;" and

A new ground number ten has been added that when a child "Is born to a parent whose parental rights with regard to another child have been involuntarily terminated ... within three years immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child." (Definitions at §6302 Dependency.)

- The section on disposition of a dependent child addresses safety in several areas:

  The required preplacement findings to a permanency hearing requires that the court enter as one of its findings prior to removing a dependent child from his home "That continuation of the child in his home would be contrary to the welfare, safety or health of the child (§6351(B)(1));

  Within six months of a removal of a child, "The court shall conduct a Permanency Hearing for the purpose of determining or reviewing the permanency plan of the child ... and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child." (§6351(E)(1));

  One of the matters at a permanency hearing is that the court "determine whether the child is safe" (§6351(F)(6)); and

  Evidence presented at the permanency hearing includes "evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk shall be presented to the court ..." (§6351(F.1)).

IMPLEMENTATION GUIDELINES

Safety is a paramount concern that must be reflected throughout the case process. It must be considered for children who remain at home receiving services and for children who are in placement. Safety is an issue that has and continues to be addressed in child welfare practice. Safety issues addressed through out the regulations at Chapter 3130 remain in effect. In addition, safety matters are considered with each risk assessment that the county agency completes. (For additional guidance on safety assessment, see OCYF's Bulletin # 3490-00-02, "Safety Assessment and Safety Planning Protocol and Format.")

When the child remains at risk of placement and is still living in the family home, the preplacement preventive services must be designed to continually assess and assure the child's safety in that setting. Although safety is an ongoing assessment, the safety of the child must also be reviewed periodically

but no less often than once every 6 months during the county agency's family service plan review process.

For children entering placement, the case plan must reflect a goal to achieve placement in a safe setting that is the least restrictive and most appropriate for the child. At the case review, the county agency must now include safety issues. The projected date when a child may be returned home must be in relation to when the child can be safely maintained in his/her home.

The amendments to the Juvenile Act did not change the requirement to continue reviews at least every six months. The review hearings were replaced by the permanency hearings. In Pennsylvania the matters to be considered at the placement review (regulations at §3130.71) have been incorporated into the Permanency Hearing. Since the Permanency Hearings are held every six months, the hearings will also meet the requirement for the six month review. There are three situations when it is at the discretion of the court to discontinue Permanency Hearings. These are (§6351(H)):

(1) for a child who has been placed in a living arrangement that is intended to be permanent in nature and that is approved by the court;
(2) for a child who has been placed in an adoptive home pending finalization of adoption...; or
(3) for a child who has been placed with a permanent legal custodian appointed by the court....

Federal final form regulations require that permanency hearings be held until permanency is achieved for the child. Therefore, agencies must not request that the court exercise its discretion to discontinue permanency hearings for the child in an adoptive home awaiting finalization . (See 52 for further discussion on this.)

If the court exercises its discretion to not conduct further Permanency Hearings and the child remains in placement in the custody of the county agency, the county agency must conduct administrative reviews every six months. Please see a discussion related to this requirement on page 52 in the Permanency Hearings subsection entitled "Court Discretion to Hold Permanency Hearings." The review hearing must be held within six months of the last permanency hearing. Each successive review hearing must be held no later than six months from the previous review. Note that the child's safety must be determined during the review.

New Requirements Related to A Child in a Pre-adoptive Home Awaiting Finalization

Federal regulations at 45 CFR §1355.20 Definitions for Permanency Hearing require that:

"...permanency hearings must be held...during the continuation of foster care."

Therefore, permanency hearings must be held for every child in out-of-home care until permanency has been achieved for the child. In Pennsylvania, the Juvenile Act allows for the court to discontinue permanency hearings for a child in a pre-adoptive placement awaiting finalization of the adoption. This requirement of state law is currently under review by the Department in terms of possible recommendation for legislative change to meet the new federal requirements.

Until legislative changes are made, county agencies must assure that permanency hearings are held for children placed in pre-adoptive homes.

DEPENDENCY GROUNDS

REQUIREMENT OF LAW – JUVENILE ACT

As part of the ASFA legislative implementation process in Pennsylvania, two amendments were made to the grounds for dependency. Ground #1for dependency was expanded to read as follows:

A child who:
"Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals. A determination that there is a lack of proper parental care or control may be based upon evidence of conduct by the parent, guardian or other custodian that places the health, safety or welfare of the child at risk, including evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk...,"

The underlined language represents the amended language.

The second change in the grounds for dependency was the addition of ground #10 for a child who:

"is born to a parent whose parental rights with regard to another child have been involuntarily terminated under 23 Pa.C.S. §2511 (Relating to Grounds for Involuntary Termination) within three years

immediately preceding the date of birth of the child and conduct of the parent poses a risk to the health, safety or welfare of the child."

The grounds for dependency are found in the definition section, §6302, of the Juvenile Act. The amended language to expand ground # 1 and to add ground # 10 are not federal ASFA requirements. The amended language is the result of input during Pennsylvania's legislative process to enact the requirements of ASFA.

IMPLEMENTATION GUIDELINES

Ground # 1.

There are three key points to the additional language added to ground # 1:

- The lack of parental care and control may be based upon evidence of any conduct by the parent, guardian or other custodian;
- Conduct includes evidence of the parent's, guardian's or other custodian's use of alcohol or a controlled substance; and
- Parental conduct refers to conduct that places the health, safety or welfare of the child at risk.

This language emphasizes that parental (including guardian and custodian) behavior may impact on the control and care of the child. Parental behavior includes parental use of a controlled substance that rises to the level of placing the child at risk. For dependency purposes, the impact must place the health, safety or welfare of the child at risk.

The court must address the "safety and health" of the child in its preplacement findings (§6351(B)(1)). Therefore, sufficient evidence must be presented to the court to make a finding regarding the child's safety and health at the dispositional hearing. For related discussions on evidence and on drug and alcohol issues, see the section entitled "Evidence" and the section entitled "Drug and Alcohol Issues/ Access to Treatment Records."

Ground # 10.

Ground # 10 is a new ground for dependency. There are four points to this ground:

- the child is born to a parent whose rights to another child have been involuntarily terminated;
- the involuntary termination was done under Pennsylvania's Adoption Law (at §2511);

- the termination was done within three years of the birth of the subject child; and
- the conduct of the parent poses a risk to the health, safety or welfare of the child.

This ground applies to a child born within the three years from when the parent's rights to another child were involuntarily terminated in Pennsylvania. This does not apply to an older child or any other child who was born prior to the involuntary termination. It applies to a child born within the three year time frame. The statutory language references an involuntary termination under Pennsylvania law. It does not reference an involuntary termination under any other jurisdiction.

This ground may be used when the "conduct of the parent poses a risk to the health, safety or welfare of the child." "Conduct" here includes any parental behavior that places the child at risk including the use of alcohol or a controlled substance. This ground emphasizes the key points of the discussion above for ground # 1 for a very young child. See the previous discussion as it directly relates to this ground.

Note: When a county agency petitions on this ground and the court finds the child dependent, then the court must also make a finding whether aggravated circumstances exist and, if aggravated circumstances exist, whether reasonable efforts will be made to reunify the family. See the discussion on Aggravated Circumstances in the Reasonable Efforts Requirement Section.

EVIDENCE

REQUIREMENT OF LAW - JUVENILE ACT

As part of the ASFA legislative implementation process in Pennsylvania, a new section, Evidence, was added in the Juvenile Act at §6351(F.1). This section requires that:

> **"Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency."**

IMPLEMENTATION GUIDELINES

This new section emphasizes that evidence related to parental conduct that "places the health, safety or welfare of the child at risk" is to be presented to the court. Parental conduct includes the use of alcohol or other drugs. The evidence may be presented by the county agency or another party. The evidence may be presented at the Disposition Hearing for the determination of dependency or at a permanency hearing.

The county agency may present the evidence relating to parental conduct or another party may present the evidence. Parental conduct includes any behavior negatively impacting on the child including the parent's use of controlled substances or alcohol. The language is "use." Specifically, "use" of controlled substances or alcohol must be related to its negative impact on the health, safety or welfare of the child. The negative impact on the child includes those situations where the parental use may place the child at risk. You will need to consult with your legal counsel. Legal consultation will be important to determine what type of evidence to present to the court.

DOCUMENTING EFFORTS TO FIND A PERMANENT HOME

REQUIREMENT OF FEDERAL LAW

Section 107 of the Adoption and Safe Families Act mandates that an agency document the steps taken to find a permanent home when the permanency plan for a child is adoption or placement in another permanent home. Specifically, agencies are required to document what they have done to "find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship."

At a minimum, documentation shall include the use of child specific recruitment efforts such as the use of adoption exchanges including electronic exchange systems. Agencies must also be careful to meet the requirements of the Multiethnic Placement Act of 1994 (MEPA) and the amendments as contained in the Small Business Job Protection Act of 1996, Interethnic Adoption, and Multiethnic Placement Act. Agencies may not use race, culture or ethnicity as factors in delaying or denying any foster or adoptive placement.

IMPLEMENTATION GUIDELINES

The federal final rule for ASFA included rules for MEPA. An alleged violation of MEPA will be investigated by the Office for Civil Rights Compliance. The following are considered a violation:

§1355.38(a)(2)(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color or national origin of the person, or the child involved;
(ii) Has delayed or denied the placement of a child for adoption into foster care on the basis of the race, color, or national origin of the adoptive child or foster parent, or the child involved; or
(iii) With respect to a state, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined..."

Note that a violation can occur by either a public agency or a private agency based on policies, practices, procedures, etc. that on its face is a violation without a specific incidence of discrimination occurring.

The case record must contain all steps taken by a county agency to comply with the child's permanency plan. To facilitate the process, a county agency should identify as soon as practical if a permanent home with a fit and willing relative is possible. If a relative placement is not an option, then other steps to comply with the permanency plan are required.

The case record must reflect the contacts and considerations for actions taken by the county agency in securing permanency for the child. These would include discussions with the child (if age appropriate), the parents, relatives and interested others (such as teachers, neighbors, counselors, religious or spiritual advisor, etc.)

Once a placement has been made, the placement should be legally recognized by adoption or a permanent legal custodianship. The county agency also needs to document the steps it has taken to finalize the caretaker and child's legal relationship. Any legal documents that reflect the requirements of this section would suffice as documentation. At a minimum, these efforts to document must be included in the family service plan and the child's permanency plan (placement amendment) as appropriate.

Federal law requires that geographical boundaries not interfere when making efforts to find a permanent family. Additional steps that a county agency can take to recruit a home for the child minimally include the use of the Statewide Adoption Network (SWAN) and registration with the Pennsylvania Adoption Exchange (PAE) including listing the child in the photo-listing book. This Network is part of Pennsylvania's plan to facilitate timely adoption of children across all geographical boundaries.

SWAN can help with child specific recruitment. Policies and procedures are described in the SWAN Bulletin, #3350-97-01. This bulletin also contains the policies and procedures for registering a child on PAE.

Documentation in the case record to reflect the use of SWAN should include the information required to register the child and the follow up contacts with SWAN, PAE, other agencies and prospective adoptive parents. If a prospective family is identified for a child but a placement is not made, documentation must reflect why the placement did not occur.

The last category of permanent living arrangements for a child is "in another planned permanent living arrangement." This status may be used only when no other arrangement can be made for the child. Documentation in the case record must fully support this. There may be rare instances when this may be the only alternative for a teenager. It is unlikely to be justified as an alternative for a young child.

ABANDONED INFANT

REQUIREMENT OF FEDERAL LAW

Section 103 requires agencies to file a petition to terminate parental rights (TPR) when a child has been determined to be an abandoned infant. Agencies are to seek to "be joined as a party to the petition" if another party has filed such a petition.

Federal law provides exceptions when a county agency does not have to file, or to join as a party to, a petition to terminate parental rights. The first exception is when a child is being cared for by a relative. The second exception is when there are compelling reasons for determining that filing such a petition would not be in the child's best interests. The third exception, if it applies, is for situations where services deemed necessary for the child to be safely returned home are not provided.

The requirements of Section 103 of ASFA is an extension of Public Law 103-432 of 1994 that amended the Social Security Act to:

- mandate that states review their policies and procedures for children who are abandoned at or shortly after birth; and
- require that by October 1, 1996 states must enact and implement policies and procedures as necessary to enable permanent decisions to be made expeditiously regarding the placement of children who are abandoned shortly after birth.

The implementing bulletin for Public Law 103-432, OCYF Bulletin # 00-97-07 issued October 1, 1997, is hereby rescinded and replaced with the policies and procedures in this bulletin.

IMPLEMENTATION GUIDELINES

In implementing this requirement, a county agency should follow these steps.

Identify eligible children:

Agencies should review children who are in the custody of the county agency to determine if an infant is abandoned as defined by law.

Make efforts to locate parents:

Agencies are required to make a diligent search to identify and to locate the parents. Depending on the circumstances of how the child was found, relatives or neighbors may help with providing some or all of this information. A birth certificate may provide the names of both parents. Use of the Federal Parent Locator Service may be helpful in locating the parent's whereabouts. The Federal Information Memorandum, ACYF-CB-IM-99-02 (Attachment C), specifies the information that the county agency may receive regarding an individual who has or may have parental rights to a child as the following information:

- the individual's social security number;
- address and location;
- employer's name and address
- employment wages, benefits or other income.

Petition to terminate parental rights:

Current Pennsylvania law provides grounds for involuntary termination of parental rights for infant children abandoned at, or shortly after, birth. The adoption law does not specifically reference infants in the abandonment provision. For our purposes here an infant is a newborn through 18 months of age. Sections 2511(a) (4) and (6) of the Pennsylvania Domestic Relations Code (Adoption Act) read as follows:

> " (a) The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:
>
> (4) The child is in the custody of an agency, having been found under such circumstances that the identity or whereabouts of the parent is unknown and cannot be ascertained by diligent search and the parent does not claim the child within three months after the child is found

(6) In the case of a newborn child, the parent knows or has reason to know of the child's birth, does not reside with the child, has not married the child's other parent, has failed for a period of four months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact with the child and has failed during the same four-month period to provide substantial financial support for the child."

The above-cited points from the Pennsylvania adoption law specify two of the eight grounds under which parental rights may be involuntarily terminated. Ground number 4 addresses the issue of abandonment. It allows agencies, when serving abandoned children, to petition to terminate parental rights, if after a diligent search, the parents are not located within three months.

Ground number 6 relates to newborn, or infant children. This ground permits filing a petition to terminate rights of a parent, if the parent is aware of his or her child and fails for a period of four consecutive months immediately preceding the filing of the petition to make reasonable efforts to maintain substantial and continuing contact and fails to provide substantial financial support for the child.

The following steps apply to infant children who are abandoned at or shortly after birth, to abandoned infants currently in county agency custody as well as abandoned infants who, subsequent to the issuance of this bulletin, enter county agency custody.

1. Review children in the custody of the county agency to determine if a child was either abandoned, as defined in ground # 4 above, or is a newborn child, meeting the conditions described in ground # 6 above.

2. For children who meet the conditions described in ground # 4, the county agency should immediately prepare a petition to involuntarily terminate parental rights. This petition should be filed with the orphans court within 60-days.

3. For ground # 6, when the birth mother has not identified a father, the county agency should contact the Bureau of Child Support Enforcement to determine if an acknowledgment of paternity has been filed. The address for the Bureau is as follows:

Bureau of Child Support Enforcement
Division of Central Operations
P.O. Box 8018
Harrisburg, Pennsylvania 17105-8108

4. If the parents can be located for children who appear to meet the conditions described in ground 6, the county agency should immediately offer services to

the parents, or if they refuse services, the opportunity to voluntarily terminate their parental rights. If unwilling to voluntarily terminate or if they can not be located, the county agency should immediately prepare a petition to involuntarily terminate parental rights. This petition should be filed with the orphans court within 60-days.

5. Consult with your legal counsel. Legal consultation will be important in deciding on the validity of cases that you identify as suitable to pursue. This consultation will also be helpful as you prepare relevant information needed by the court to accomplish a timely and fair decision. The child's guardian ad litem or legal counsel should be included in the consultation process.

Exceptions for filing a termination petition:

A county agency may decide that it believes that "a compelling reason for determining that filing such a petition would not be in the best interests of the child" exists or the child is being cared for by a relative. The county agency may not want to pursue the filing/joining of a petition to TPR. For example, if the child is with a relative who is willing and able to meet the needs of the child, but the relative cannot or is unable to adopt the child, the county agency may choose not to file a petition to TPR.

If the agency is not planning to file the petition to TPR, it must seek court approval of the exception. If the court has not approved the exception, then it must file the petition within 60-days after the child meets the criteria for being abandoned under either ground.

NOTICE AND OPPORTUNITY TO BE HEARD

REQUIREMENT OF FEDERAL LAW

Section 104 of the Adoption and Safe Families Act mandates that foster parents, adoptive parents and relatives providing care for a child must be provided with notice and an opportunity to be heard in any review or hearing to be held with respect to a child. The requirement shall not be construed to require that any foster parent, adoptive parent or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice.

JUVENILE ACT

Pennsylvania fully implemented this requirement by legislative amendment. A new section was added to the Juvenile Act at Section 6336.1, effective January 1, 1999 that requires:

> " The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent or relative providing care for the child timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative caring for the child the opportunity to be heard at any hearing under this chapter. Nothing in this section shall give the foster parent, preadoptive parent or relative caring for the child legal standing in the matter being heard by the court."

County agencies are required by federal law to provide notice to the child's caretakers of proceedings related to the child. This requirement has been in effect since November 19, 1997. To ensure that the caretakers would be provided an opportunity to be heard in court, the above legislative amendment was necessary.

IMPLEMENTATION GUIDELINES

When agencies petition the court for any proceeding under the Juvenile Act and when the county agency conducts administrative reviews, the county agency, as part of its case management responsibilities, must provide written notice to the substitute caregiver (foster parent, pre-adoptive parent or relative caring for the child) of the date, time, place and purpose of the review/hearing. Generally, the notice should be sent out 15 calendar days prior to the proceeding.

A courtesy copy of the notice to the substitute caregiver shall be provided to the court that will have jurisdiction at the review/hearing. In those cases where the county agency is purchasing services for a child, a courtesy copy of the notice sent to the substitute caretaker should also be provided to the private agency providing the service. A sample letter regarding notice and opportunity to be heard is included as Attachment D.

Juvenile Court proceedings now require that a child's foster parent, preadoptive parent or relative caring for the child be given the opportunity to be heard at any hearing concerning the child. The Juvenile Act amendment, like the provision in ASFA, specifically states that this requirement is not intended to provide standing to these caretakers. County agencies are encouraged to talk to

their juvenile court judges as to how each judge wants to implement this provision in his or her court proceedings.

CROSS JURISDICTIONAL ADOPTIONS/ FAIR HEARING

REQUIREMENT OF FEDERAL LAW

Section 202 of the Adoption and Safe Families Act mandates that states "shall develop plans for the effective use of cross jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children."

States are subject to a financial penalty if, after November 19, 1997, they are found to deny or delay the placement of a child for adoption with an approved available family located outside the jurisdiction with responsibility for handling the case of the child when the denial or delay is because of jurisdictional or geographic boundaries.

States must also provide the opportunity for a fair hearing to an individual who alleges being denied or delayed adoption because of a jurisdictional boundary. States must act with reasonable promptness to respond to an adoptive applicant appeal request.

This provision to eliminate geographic boundaries is an extension of the Multiethnic Placement Act (MEPA) which eliminated race and ethnicity as barriers to timely adoptions. Neither geography, race nor ethnicity may be used to delay or to deny adoptions. If a home is identified as a match for a child, then the placement must be made in a timely manner. An agency may not delay or deny the placement in anticipation of finding a home that is closer, the same race or the same ethnicity.

IMPLEMENTATION GUIDELINES

The federal final rule for ASFA included rules for MEPA. <u>An alleged violation of MEPA will be investigated by the Office for Civil Rights Compliance. The following are considered a violation:</u>

> §1355.38(a)(2)(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color or national origin of the person, or the child involved;
> (ii) Has delayed or denied the placement of a child for adoption into foster care on the basis of the race, color, or national origin of the adoptive child or foster parent, or the child involved; or

(iii) With respect to a state, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined..."

Note that a violation can occur by either a public agency or a private agency based on policies, practices, procedures, etc. that on its face is a violation without a specific incidence of discrimination occurring.

The Statewide Adoption Network (SWAN) Policies and Procedures Bulletin # 3350-97-01, as issued January 15, 1998 constitutes Pennsylvania's plan to assure that no Pennsylvania child is denied the opportunity for a permanent adoptive family because of a jurisdictional boundary. This bulletin also addresses the issue of adoptive applicants being denied or delayed in their adoption interests. The (SWAN) bulletin describes policy and procedure to assure timely adoption for children regardless of jurisdictional authority. The requirements of this bulletin apply to the 67 Pennsylvania county children and youth agencies, as well as, the private agencies that make up the adoption network.

In addition, these requirements are similar to the requirements of the Multi-Ethnic Placement Act (MEPA) that eliminates race and ethnicity barriers in adoption and placement. The following MEPA documents will provide guidance to be used for the cross-jurisdictional requirements:

- OCYF Bulletin, 3140-98-03, on the Multi-Ethnic Placement Act of 1994/Small Business Job Protection Act of 1996; and
- July 22, 1998 letter to Child Placement Providers and Advocates with a federal question and answer document regarding MEPA attached.

During the process of preparing a family to adopt (Family Profile), agencies must inform families of their right to appeal denied or delayed adoptive placement because of jurisdictional considerations. Adoptive applicants shall be informed that the process to appeal is as follows:

1. The adoptive parent applicant files a written appeal to the county with child custody. The appeal must be filed within 45 calendar days of being denied placement. The written appeal should contain a description of any facts that lead to the conclusion that adoption is being denied or delayed based on jurisdictional/geographical considerations.

2. The county agency that receives such an appeal must appoint a person(s) who is not directly connected to the case to make an objective decision regarding whether the appeal has merit. The county agency has 30 calendar days to render a written decision on the appeal.

3. If the appeal is upheld, the adoptive applicant will be notified in writing by the county agency regarding what action will be taken to correct the problem.

4. If the appeal is denied, the county agency must notify the applicant of the basis for the decision and of their right to pursue their appeal through the Department of Public Welfare's Office of Hearing and Appeals. The address is as follows:

Office of Hearing and Appeals
P.O. Box 2675
1401 North 7th Street, Bertolino Building
Harrisburg, Pennsylvania 17105-2675

Adopting applicants must file their appeal to the Office of Hearings and Appeals within 15 calendar days of receiving notice of the denial from the county agency.

HEALTH COVERAGE

REQUIREMENT OF FEDERAL LAW

Section 306 of the federal law mandates that States provide health coverage for any child for whom there is an adoption assistance agreement in place. This coverage applies to Title IV-E and non-Title IV-E eligible children.

IMPLEMENTATION GUIDELINES

In order to comply with Section 306 of P. L. 105-89 the following guidelines must now be followed:

1. Any child who has special needs and for whom an adoption assistance agreement has been entered into will be entitled to Medicaid (formerly known as Medical Assistance) (MA), regardless of the child's income.

2. The county agency must continue to notify the county assistance office (CAO) when a child is under an adoption assistance agreement, using Form CY-61. This will enable the CAO to issue the appropriate MA card for the child to the adoptive parents and to identify those children who are eligible for Title IV-E and for whom the State can claim FFP for their MA benefits.

3. Redetermination of MA eligibility will no longer be necessary for adoption assistance cases, as Section 306 of P.L. 105-89 mandates that these children will continue to remain eligible for MA benefits until one of the following as outlined in OCYF regulations at §3140.204(e)(1-4) occurs:

(1) The child reaches 18 years of age.
(2) The adoptive parents are no longer providing for the financial support of the child.
(3) The parents are determined by court action to no longer be legally responsible for the child.
(4) The adoptive parents request termination of adoption assistance.

4. The CAOs have already implemented these requirements.

TITLE IV-E ELIGIBILITY - ADOPTION ASSISTANCE

REQUIREMENT OF FEDERAL LAW

Section 307 of ASFA applies to all children who are adopted on or after October 1, 1997 and who are originally determined eligible for Title IV-E adoption assistance payments. If the child is now again available for adoption because their original adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, future adoption assistance payments will still be available and the child will be treated as if the prior adoption had never occurred. The same financial circumstances the child was in during the child's initial determination for adoption assistance will be used upon a reapplication for Adoption Assistance.

IMPLEMENTATION GUIDELINES

Current regulations are silent on this issue. This is a new requirement that adds further direction to states and allows states to claim Federal Financial Participation (FFP) under Title IV-E adoption assistance for the future adoption of children who initially met the Title IV-E adoption assistance eligibility requirements but whose initial adoption is dissolved. This provision directs states to consider the financial and other circumstances in the original home from which the child was removed in determining Title IV-E adoption assistance eligibility, rather than the financial and other circumstances in the child's previous adoptive home. The following guidelines must now be followed for children who are initially determined eligible for Title IV-E adoption assistance on or after October 1, 1997:

1. If the child's adoption disrupts and the parental rights of the adoptive parents have been terminated or if the child's adoptive parents have died

and the child is again available for adoption DO NOT TERMINATE THE CHILD'S TITLE IV-E ADOPTION ASSISTANCE ELIGIBILITY.

2. The county agency must notify the county assistance office (CAO) of the change in the child's circumstances by checking the Change/Adoption Assistance block of Section III on Form CY-61 and indicating in the Reason Section that the child's initial adoption was dissolved.

3. If the child is placed in substitute care, as defined in OCYF regulations at §3140.102 (1) pending another adoption or other permanent arrangements, the child's Medicaid (formerly known as Medical Assistance) (MA) eligibility will need to be redetermined.

- The county agency must request the CAO to complete a new MA redetermination for the child based solely on the child's income. The county agency would request this by checking the MA Redetermination block on Form CY-61 and completing Section VIII "Income Available to the Child" when notifying the CAO of the change in the child's circumstances.

- The CAO will be instructed to determine if the child continues to remain eligible for MA benefits based on the information the county agency submits on Form CY-61.

- If the child continues to be MA eligible, the CAO will change the child's address from that of the adoptive family to the county agency.

4. If the child is adopted again and the county agency where the child is residing enters into an adoption assistance agreement with new adoptive parents, the county agency must again certify the child eligible for Title IV-E adoption assistance benefits.

- The county agency must notify the CAO of the change by completing Section II and checking the Reapplication/Adoption Assistance block in Section III of Form CY-61. The county agency must also indicate in the Reason section: "This child was previously Title IV-E Adoption Assistance eligible."

- The CAO will be instructed to again change the child's address from the county agency's address to the adoptive family's address and issue a new MA card for the child to the adoptive family.

Please note: Once re-adopted, the child's MA eligibility will continue as per Section 306 of ASFA. (See Section 306 requirements/guidelines discussed above.)

The Office of Children, Youth and Families (OCYF) is currently in the process of revising the Title IV-E adoption assistance policies and procedures which will incorporate this new requirement of the law.

REASONABLE EFFORTS REQUIREMENT

AGGRAVATED CIRCUMSTANCES DEFINED

REQUIREMENT OF FEDERAL LAW

Section 101 of ASFA amended Section 471(a)(15) of the Social Security Act to clarify the reasonable efforts requirement. It provided that the child's health and safety shall be the paramount concern. Reasonable efforts must still be made to preserve and reunify families. Reasonable efforts still need to be made to prevent or to eliminate the need to remove the child from the child's home or, if the child has been removed from the home, to make it possible for the child to safely return home.

There are times though when reasonable efforts to prevent placement or to reunify may not be necessary. ASFA specified that when a parent subjected a child to state-specified aggravated circumstances; aided, abetted, attempted conspired, solicited or committed certain crimes against a child; or when parental rights to a sibling were involuntarily terminated, that reasonable efforts may not be necessary to prevent placement or to reunify. The court would need to determine whether such circumstances exist and whether reasonable efforts to reunify the family will be made.

AFSA leaves intact the requirement that the status of each child be **reviewed** no less frequently than once every 6 months "to determine the safety of the child, 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 substitute care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship [permanent legal custodianship]." (Note that Pennsylvania has replaced administrative reviews with permanency hearings. In those cases where the court opts out of permanency hearings, an administrative review must be held within six months of the last permanency hearing and then not more than six months from the previous review. See the discussion on 52 under subsection "Court Discretion to Hold Permanency Hearings.")

Section (101)(a)(E)(ii) states that "reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of

the child...." This is a new requirement for reasonable efforts. It extends reasonable efforts from the requirement related to return home to placing the child in a permanent home.

JUVENILE ACT

The Juvenile Act was amended to reflect the requirements related to reasonable efforts. The amendments specified that when a parent subjected a child to Pennsylvania defined aggravated circumstances; aided, abetted, attempted conspired, solicited or committed certain crimes against a child; or when parental rights to a sibling were involuntarily terminated, that reasonable efforts may not be necessary to prevent placement or to reunify. The court will need to determine whether such circumstances exist and whether reasonable efforts to reunify the family will be made. The balance of this section provides the detail to the reasonable efforts requirement.

IMPLEMENTATION GUIDELINES

Definition of Aggravated Circumstances.

Aggravated circumstances, defined at §6301 in the Juvenile Act, are considered any of the following:

1. child in county agency custody whose parents are unknown or who do not maintain substantial and continuing contact with the child (hereafter referred to as an abandoned child);
2. serious bodily injury;
3. sexual violence;
4. aggravated physical neglect;
5. parental conviction for certain crimes; and
6. involuntary termination of parental rights to another child.

Each of these aggravated circumstances are discussed below.

1. Abandoned child.

Definition: The child is in the custody of a county agency and either:

(I) The identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody; or

(II) The identity or whereabouts of the parents is known and the parents have failed to maintain substantial and continuing contact with the child for a period of six months.

Discussion of Abandoned Child:

When a child is in the custody of a county agency and the identity or whereabouts of the parents are unknown, the county agency must make diligent efforts to identify and to locate the parents. These efforts must be documented in the case record. Examples of such efforts include use of the Federal Parent Locator Service, the County Assistance Office, Bureau of Motor Vehicles, Social Security Administration and local contacts that can help in obtaining information on missing persons such as the police, school records, etc.

For a child whose parents are known but who have failed to maintain substantial and continuing contact with the child, the quality and frequency of the contact must be documented in the record. Substantial contact needs to consider the circumstances and abilities of the parents in relationship to the extent, quality and affect of their contact with the child. Continuing contact needs to consider the frequency, the type of contact (e.g., visit, phone contact, etc.) the length of contact and the pattern of contacts. Some of the considerations for "substantial and continuing" include the following:

- Are the parents regularly keeping their scheduled visitation?
- Are the parents visiting for the entire period of time scheduled for visitation or are they cutting the visit short?
- Do the parents interact with the child? If so, how?
- Do the parents apply the new parenting skills they have learned?
- Do the parents have appropriate expectations of the visit?

2. **Serious bodily injury.**
   Definition: The child or another child of the parent has been the victim of physical abuse by the parent resulting in serious bodily injury. Serious bodily injury is bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Discussion of Serious Bodily Injury:

This definition is the same as that in the Child Protective Services Law for the purposes of reporting cases to law enforcement officials. **A criminal conviction is not required for serious bodily injury as an aggravated circumstance.**

3. **Sexual violence.**
   Definition: The child or another child of the parent has been the victim of sexual violence by the parent. Sexual violence is rape, indecent contact as defined in 18 Pa.C.S. §3101 (Relating to Definitions), incest or using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined in 18 Pa C.S. §6312(A) (Relating to Sexual Abuse of Children)

or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, depicting on computer or filming involving the child.

Discussion of Sexual Violence:

Sexual violence includes the terms rape, indecent contact, incest, or a prohibited sexual act which are defined as:

Rape (Section 3121 of 18 Pa. C.S.) is engaging in sexual intercourse with a child:

- by forcible compulsion;
- by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- who is unconscious or where the perpetrator knows that the child is unaware that the sexual intercourse is occurring;
- where the alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing, without the knowledge of the child, drugs, intoxicants or other means for the purpose of preventing resistance;
- who suffers from a mental disability which renders the child incapable of consent; or
- who is less than 13 years of age.

Indecent Contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

Incest (Section 4302 of 18 Pa. C.S.) occurs when an alleged perpetrator knowingly marries, cohabits, or has sexual intercourse with an ancestor, descendent, a brother or sister of the whole or half blood, or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to in this section include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

Prohibited Sexual Act (Section 6312(a) of 18 Pa. C.S.) is intercourse by mouth or rectum or penile/vaginal intercourse, with any penetration, however slight, masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

A prohibited sexual act includes using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, depicting on computer or filming involving the child.

Sexual violence does not require a criminal conviction of the perpetrator. The standard for the juvenile courts for sexual violence is "clear and convincing."

Sexual exploitation is not considered to be sexual violence. It is sexual abuse under the Child Protective Services Law. Final form regulations define sexual exploitation as:

- looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying the sexual desire in either person;
- engaging or encouraging a child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying the sexual desire in any person involved; or
- engaging or encouraging a child to engage in any sexually explicit conversation either in person, by telephone, by computer or by a computer aided device.

4. Aggravated physical neglect.
Definition: The child or another child of the parent has been the victim of aggravated physical neglect by the parent. Aggravated physical neglect is any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning.

Discussion of aggravated physical neglect:
The definition of aggravated physical neglect is intended to include within its scope those acts on the part of parents that are the most egregious. **Aggravated physical neglect does not require a criminal conviction of the perpetrator.** Aggravated physical neglect may arise out of any omission in the care of a child that results in:

- the child's life being threatened; or
- the child's functioning being seriously impaired.

The standard of evidence for the juvenile court is "clear and convincing."

5. Parental conviction for certain specified crimes.
This situation occurs when a parent has been convicted of any of the following crimes where the victim was a child:

- Criminal homicide under 18 Pa C.S. Ch. 25 (relating to Criminal Homicide);
- Felony under 18 Pa. C.S. §2702 (Relating to Aggravated assault), §3121 (Relating to Rape), §3122.1 (Relating to Statutory Sexual Assault), §3123 (Relating to Involuntary Deviate Sexual Intercourse), §3124.1 (Relating to Sexual Assault) or §3125 (Relating to Aggravated Indecent Assault);
- Misdemeanor under 18 Pa. C.S. §3126 (Relating to Indecent Assault);

- An equivalent crime in another jurisdiction.

In addition, a conviction also includes the attempt, solicitation or conspiracy to commit any of the above offenses set forth in the above paragraph.

Discussion of parental conviction for certain specified crimes.
The crimes listed above are defined below as per the specified chapter in the Pennsylvania Consolidated Statutes (Pa. C.S. Ch.):

Criminal Homicide (18 Pa. C.S. Ch. 25)

A person is guilty of criminal homicide (§2501) if he intentionally, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter.

Murder (§2502) is first degree when it is committed by an intentional killing; second degree when it is committed while the perpetrator was engaged as a perpetrator or an accomplice in the perpetration of a felony; or third degree for all other kinds of murder. "Perpetration of a felony" is the act of the perpetrator in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

Voluntary manslaughter (§2503) occurs when a perpetrator who kills a person without lawful justification if, at the time of the killing, he is acting under a sudden and intense passion resulting from serious provocations: by the individual killed or from another whom the perpetrator endeavors to kill, but the perpetrator negligently or accidentally causes the death of the individual killed. Voluntary manslaughter can also occur when a perpetrator intentionally or knowingly kills an individual while holding the unreasonable belief that the killing is justified.

Involuntary manslaughter (§2504) occurs when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, the perpetrator causes the death of another person.

Causing or aiding suicide (§2505) is criminal homicide if the perpetrator causes another to commit suicide if the perpetrator intentionally causes such suicide by force, duress or deception.

Drug delivery resulting in death (§2506) is criminal homicide when a perpetrator administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P. L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

Felony under Aggravated Assault (18 Pa. C.S. 2702)

1. Attempting to cause serious bodily injury to another, or causing such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life;
2. attempting to cause or intentionally, knowingly or recklessly causing serious bodily injury to any of the officers, agents, employees or other persons enumerated below or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty;
3. attempting to cause or intentionally or knowingly causing bodily injury to any officers, agents, employees or other persons enumerated below in the performance of duty;
4. attempting to cause or intentionally or knowingly causing bodily injury to another with a deadly weapon;
5. attempting to cause or intentionally or knowingly causing bodily injury to a teaching staff member, school board member, other employee or student of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school;
6. attempting by physical menace to put any of the officers, agents, employees or other persons enumerated below, while in the performance of duty, in fear of imminent serious bodily injury.

The officers, agents, employees and other persons referred to above are as follows:

- Police Officer
- Firefighter
- County adult probation or parole officer
- County juvenile probation or parole officer
- An agent of the Pennsylvania Board of Probation and Parole
- Sheriff
- Deputy sheriff
- Liquor control enforcement agent
- Officer or employee of a correctional institution, county jail or prison, juvenile detention center or any other facility to which the person has been ordered by the court pursuant to a petition alleging delinquency under 42. Pa.C.S. Ch. 63 (relating to juvenile matters).
- Judge of any court in the unified judicial system
- The Attorney General
- A deputy attorney general
- A district attorney
- An assistant district attorney
- A public defender
- An assistant public defender

- A Federal law enforcement official
- A State law enforcement official
- A local law enforcement official
- Any person employed to assist or who assists any Federal, State or local law enforcement official
- Emergency medical services personnel – This includes, but is not limited to, doctors, residents, interns, registered nurses, licensed practical nurses, nurse aides, ambulance attendants and operators, paramedics, emergency medical technicians and members of a hospital security force while working within the scope of their employment.
- Parking enforcement officer
- A district justice
- A constable
- A deputy constable
- A psychiatric aide

Felony under Rape (18 Pa. C.S. 3121)

Engaging in sexual intercourse with a child:

- by forcible compulsion;
- by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- who is unconscious or where the perpetrator knows that the child is unaware that the sexual intercourse is occurring;
- where the alleged perpetrator has substantially impaired the child's power to appraise or control his or her conduct by administering or employing, without the knowledge of the child, drugs, intoxicants or other means for the purpose of preventing resistance;
- who suffers from a mental disability which renders the child incapable of consent; or
- who is less than 13 years of age.

Felony under Statutory Sexual Assault (18 Pa. C.S. 3122.1)

Except as provided for in §3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older that the complainant and the complainant and the person are not married to each other.

Felony under Involuntary Deviate Sexual Intercourse (18 Pa.C.S. 3123)

Engages in deviate sexual intercourse:

- by forcible compulsion (compulsion includes, but is not limited to, compulsion in another person's death, whether the death occurred before, during or after the sexual intercourse);
- by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- who is unconscious or where the perpetrator knows that the victim is unaware that the sexual intercourse is occurring;
- where the perpetrator has substantially impaired the victim's power to appraise or control his or her conduct by administering or employing, without the knowledge of the victim, drugs, intoxicants or other means for the purpose of preventing resistance;
- who is less than 13 years of age; or
- who is less than 16 years of age and the person is four or more years older than the victim and the victim and perpetrator are not married to each other.

Felony under Sexual Assault (18 Pa. C.S. 3124.1)

Except as provided for in section 3121 (relating to rape) or in section 3123 (relating to involuntary deviate sexual intercourse), a perpetrator commits a felony when the perpetrator engages in sexual intercourse or deviate sexual intercourse with a victim without the victim's consent.

Felony under Aggravated Indecent Assault (18 Pa.C.S. 3125)

Except as provided for in sections 3121 (relating to rape). 3122.1 (relating to statutory sexual intercourse). 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a perpetrator who engages in the penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical hygienic or law enforcement procedures commits felony aggravated indecent assault, if:

- the perpetrator does so without the victim's consent;
- the perpetrator does so by forcible compulsion;
- the perpetrator does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- the perpetrator has substantially impaired the victim's power to appraise or control his or her conduct by administering or employing, without the knowledge of the victim, drugs, intoxicants or other means for the purpose of preventing resistance;
- the victim suffers from a mental disability which renders him or her incapable of consent;
- the victim is less than 13 years of age; or
- the victim is less than 16 years of age and the perpetrator is four or more years older than the victim and the victim and the perpetrator are not married to each other.

Misdemeanor under Indecent Assault (18 Pa. C.S. 3126)

A perpetrator who has indecent contact with the victim or causes the victim to have indecent contact with the perpetrator is guilty of indecent assault if:

- the perpetrator does so without the victim's consent;
- the perpetrator does so by forcible compulsion;
- the perpetrator does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- the victim is unconscious or the perpetrator knows that the victim is unaware that the indecent contact is occurring;
- the perpetrator has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the victim, drugs, intoxicants or other means for the purpose of preventing resistance;
- the victim suffers from a mental disability which renders him or her incapable of consent;
- the victim is less than 13 years of age; or
- the victim is less than 16 years of age and the perpetrator is four or more years older than the victim and the victim and the perpetrator are not married to each other.

The above definitions are from Pennsylvania's Consolidated Crimes Code. In addition, aggravated circumstances also applies to a parent who has been convicted of an attempt, solicitation or conspiracy to commit any of these offenses. The aggravated circumstances for the parental crimes conviction also applies to a parent who has been convicted of an equivalent crime in another jurisdiction.

County agencies need to be routinely screening their caseloads starting at intake for these types of convictions. When a county agency accepts a case for investigation for protective services or receives a referral alleging child abuse, it must access the Pennsylvania State Police Criminal History Record Information to determine if there is a parental conviction for any of the above crimes. (The procedures for this are contained in OCYF Bulletin # 00-97-09. (Attachment E).

If there is a parental conviction, county agencies should obtain official information satisfactory to be entered in evidence. If the allegations involve an out-of-state conviction, then the county agency should consult with the child welfare agency and/or the criminal justice agency in the state or states where the conviction was alleged to have occurred. If the jurisdiction of where the conviction occurred is unknown, the parents should be asked for previous addresses. In addition, other family members or other agencies involved with the family may have information where such a conviction occurred. County agencies need to consult with their legal counsel as to what information is satisfactory to be admitted into evidence.

In addition, agencies also need to screen current cases, whether the child is dependent or not, receiving services in-home or in out-of-home placement. OCYF recommends that each county agency develop written policy regarding when it will query the Pennsylvania State Police Criminal History Record Information for children already receiving services from the agency. Parental convictions may occur after the child has been placed in out-of-home care.

If there is a parental conviction for any of these crimes, agencies need to consider filing the appropriate petition. These convictions include all those where ***a child*** was the victim. "A child" could be another child of the parent, a child who resided in the neighborhood, a child not known to the perpetrator, etc. There does not need to be any type of caretaker relationship between the parent and the child victim.

The OCYF Bulletin (# 00-97-09) requires county agencies to develop written county agency policies as to when they query the Criminal History Record Information registry. County agencies need to review and revise county agency policy as necessary to address the parental convictions under this section. Policy should, at a minimum, address the following situations:

- a referral that has been accepted for investigation;
- when the county agency suspects the existence of aggravated circumstances;
- a petition for dependency will be filed; and
- when a case has been accepted for services.

6. Parental rights involuntarily terminated on a sibling.
Definition: The parental rights of the parent have been involuntarily terminated with respect to a child of the parent.

Discussion of parental rights involuntarily terminated on a sibling.

Parental rights must have been involuntarily terminated on another child. There is no time limit on when this involuntary termination would have occurred. Although adoption records are sealed, this information may be available from other sources such as juvenile probation or other agencies involved with the family at the time, court orders discharging the child from county agency custody, etc. County agencies need to consult with their legal counsel.

AGGRAVATED CIRCUMSTANCES PROCESS

There are two times when aggravated circumstances may arise in the history of a case: when the case first comes to the attention of the county agency or when the county agency is providing services to the child and family. Agencies need to be alert to the existence of aggravated circumstances. They should routinely be scanning their caseloads whether a case is at intake or

receiving services, either in-home or out-of-home, and consider whether to file the appropriate petition.

New Case.

When a case is at intake and the county agency learns of aggravated circumstances, it still must determine if the case is one where the county agency will be petitioning the court for dependency for the protection of the child. While the issue is dependency, aggravated circumstances may be an influencing factor. When the county agency assessment determines the child is safe and the county agency would not otherwise proceed with a dependency petition, aggravated circumstances would not apply as an allegation of dependency must be present to proceed with an allegation of aggravated circumstances. The concern is for those children whose situation is such that the agency needs to petition for dependency.

If the county agency determines that it will file a petition for dependency for the safety of the child and it "reasonably believes" that aggravated circumstances exist, the agency must also include in the petition a request for a finding from the court whether or not aggravated circumstances exist. As with any petition for dependency, the petition must include a request for a reasonable efforts determination. The reasonable efforts finding will determine whether:

- reasonable efforts to reunify the family are not necessary; or
- reasonable efforts will be made or continue to be made to preserve and reunify the family.

If the court finds that a child is not dependent, then there is no finding on aggravated circumstances.

New Case with A Finding of Dependency and Aggravated Circumstances and that Reasonable Efforts Will Be Made to Preserve and Reunify the Family.

If the court finds the child is dependent, the court may also find, based on clear and convincing evidence, that aggravated circumstances exist. In such a case, the court may also decide that reasonable efforts will be made to reunify the family. The county agency and the family will develop a Permanency Plan that addresses the issues that led to the placement of the child. Until regulations are finalized, the document that the county agency presents to the court is known as a Permanency Plan. For the dependent child, the family service plan and the child's permanency plan (the latter was the existing placement amendment to the family service plan) will be the documents presented to the court as the Permanency Plan. The Permanency Plan must identify one of the permanency goals for the child.

Final form federal regulations (45 CFR §1355.20 Definitions for Permanency Hearings) list the following as permanency goals:

- return home;
- adoption and the county agency will file a petition for termination of parental rights;
- placement with a permanent legal custodian;
- placed permanently with a fit and willing relative; or
- another planned permanent living arrangement that is approved by the court.

These goals are hierarchical. For a fuller discussion on the goals, particularly in terms of a relative placement, see page 43.

The next hearing will be a Permanency Hearing held within six months from the date the child entered placement.

New Case with A Finding of Dependency and Aggravated Circumstances and A Determination That Reasonable Efforts Will NOT Be Made to Preserve or Reunify the Family.

If the court finds the child is dependent, the court may also find, based on clear and convincing evidence that aggravated circumstances exist. The court may also find that reasonable efforts will not be made to reunify the family. This finding triggers an expedited Permanency Hearing process. Within 30 days a permanency hearing must be held to address the permanency plan for the child. (See the Permanency Hearing Section.)

Existing Case

The county agency may learn of aggravated circumstances for a child previously adjudicated dependent. When the county agency reasonably believes that aggravated circumstances exist, it must file a petition within 21 days requesting a permanency hearing for the court to determine if:

- aggravated circumstances exist; and
- if aggravated circumstances exist, whether reasonable efforts to preserve and reunify the family will be made.

The court may enter the following findings:

- aggravated circumstances do not exist;
- aggravated circumstances exist and reasonable efforts to preserve and reunify the family will be made (note that the permanency goal for the child will be return home in this scenario); or
- aggravated circumstances exist and that no further efforts will be made to preserve or reunify the family.

In the latter scenario, a permanency hearing must be held within 30 days to determine the permanency plan for the child. Since no further efforts will be

made to reunify the family, the permanency goal will not be return home. See the Permanency Hearings Section.

Attachments F and G are flow charts that show flow of a new case with aggravated circumstances alleged and a case of a child already dependent and aggravated circumstances are alleged.

Aggravated Circumstances and Risk Assessment

When a county agency reasonably believes that aggravated circumstances exists, a risk assessment must be completed and all safety issues addressed. Whenever a risk assessment is completed on a case, the county agency should also check for the existence of aggravated circumstances. If safety is an issue (a moderate or high risk assessment) or the child is already dependent, the appropriate petition, as described above should be filed. The Department, through the Risk Assessment Task Force, has provided additional detail relating to this practice. See OCYF's Bulletin # 3490-00-02, "Safety Assessment and Safety Planning Protocol and Format."

Additional Requirements Related to Reasonable Efforts

County agencies must continue to make reasonable efforts to prevent the removal of a child from the home; or, if the child has been removed from the home, to return the child home unless there has been a judicial finding that no reasonable efforts to reunify will be made. A court order must specifically address the reasonable efforts requirement when a child is being removed from the home. The county agency should request this finding at the first hearing on the petition requesting the child's removal from the home. Federal final form regulations (45 CFR §1356.21(b)(1)(i)) require that a judicial finding related to reasonable efforts must be made no later than 60-days from the date the child is removed from the home for a child to be eligible for Title IV-E placement maintenance.

Additionally, final form federal regulations require judicial reasonable efforts determinations through out the period that a child remains in out-of-home placement. If a child has a permanency goal of return home, then a judicial finding must be requested whether reasonable efforts are being made to reunify the family. If the permanency plan has another goal, then the county agency must request a judicial finding at each permanency hearing as to whether reasonable efforts were made to finalize the child's permanency plan. To implement the federal requirement and in being consistent with Pennsylvania's requirement for permanency hearings to be held no less that every six months, the county agency, in addition to the other matters to be determined at a permanency hearing (42 Pa.C.S. §6351(f)), must also request a judicial

determination regarding whether reasonable efforts have been made to finalize the child's permanency plan.

PERMANENCY HEARINGS

REQUIREMENT OF FEDERAL LAW

Section 302 of ASFA amended Section 475(5)(c) of the Social Security Act by deleting the requirements for dispositional hearings for children in placement and replacing them with redefined permanency hearings. Permanency hearings are to be held to determine the Permanency Plan for the child which includes whether, and when, if applicable:

(1) the child can be safely returned to the home of his or her parents;
(2) the child will be placed for adoption and the public agency will file a petition for termination of parental rights;
(3) the public agency will seek a legal guardian for the child; or
(4) where the public agency has documented to the court a compelling reason for determining that it would not be in the best interest of the child:
    (i) to return home;
    (ii) to be placed for adoption and referred for termination of parental rights; or
    (iii) to be placed with a fit and willing relative; then
placed in another planned permanent living arrangement.

JUVENILE ACT

Pennsylvania implemented these requirements in the Juvenile Act in the following sections:

- §6351(E) Permanency Hearings (This replaces Disposition Review Hearings. This section addresses the purpose of permanency hearings and when the hearings are held.);
- §6351(F) Matters to be Determined at a Permanency Hearing; and
- §6351(G) Court Order.

These sections cover the purpose of the permanency hearing; the permanency goal for the child; timelines for the permanency hearings; the matters the court determines at each hearing; and when such hearings are discretionary. Each of these will be discussed in detail in Implementation Guidelines.

IMPLEMENTATION GUIDELINES

Generally, most cases will have the first permanency hearing six months from the date the child entered placement. "Date child entered placement" is defined as the date of the first judicial finding where the court orders that the child enter out-of-home placement. (See Timelines for Permanency Hearings for other times when permanency hearings are held.) If a child has been removed from the home and there is not a judicial finding in the 60-days following the removal, then the date the child enters placement is the sixtieth day after the child was removed from the home. For a child who entered placement under a voluntary agreement, the date the child entered placement is the date the agreement was signed. If the child remains in placement beyond 30 days, there must be a judicial determination. In Pennsylvania the purpose of the permanency hearing is:

> "to determine or to review the permanency plan for the child, the date that the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety protection and physical, mental and moral welfare of the child." (Juvenile Act §6351(e)(1))

These hearings must be held at a minimum every six months from the previous permanency hearing until permanency for the child has been achieved.

Final form federal regulations (45 CFR §1355.20 Definitions/ Permanency Hearing) emphasize permanency while recognizing the importance of a relative placement for a child if a fit and willing relative is available for the child. **Federal final form regulations list the following hierarchical permanency goals for a child:**

(1) Return to the parent;
(2) Place for adoption and the agency will file a petition to terminate parental rights;
(3) Place with a permanent legal custodian;
(4) Place permanently with a fit and willing relative; or
(5) Place in another planned permanent living arrangement but only when the other four goals have been ruled out.

The ordering of the goals lists relative placement separately. When a child is not returning home, county agencies must determine if a fit and willing relative is available for the child. If such a relative can be found for the child, then the county agency must discuss with the relative and the child, if age appropriate, legally sanctioning the arrangement. Adoption provides the most legal security for the child and relative. If, after fully reviewing this option, adoption is not an option, then permanent legal custodianship should be explored with the family. If that option, too is ruled out, then placement with a fit and

willing relative in a foster care placement, is a permanency goal for the child that should be the exception. Further discussion on the permanency goals follows.

The primary permanency goal is still for a child to **return home**. This goal must be met such that a child can safely return home in a timely manner. The reasons which led to the placement will need to be promptly and fully identified. Services must be offered and provided to the family to address the needs of the family. This must be documented in the family service plan and the child's permanency plan. Both the family service plan and the child's permanency plan are jointly considered the Permanency Plan. The Plan must reflect what services are needed, who will provide them and what the target dates are for accomplishing or meeting the goals. Parents should be active participants in the drafting of the Permanency Plan. Parents need to clearly understand what the expectations are of them.

The Permanency Plan (family service plan and the child's permanency plan) is the document that is used to determine whether the parents accomplished or did not accomplish the goals as set forth for reunification. If the family refused or partially complied with the plan, the court will need to take this into consideration when it reviews the progress and the permanency goal for the child. The time a family has in which to comply with reunification requirements is now time limited.

The Permanency Plan (family service plan and the child's permanency plan) is also the document that must be used in support of the exception related to services not provided. The Juvenile Act at §6351(F)(9)(iii) allows for the exception:

> "the child's family has not been provided with necessary services to achieve the safe return to the child's home with the time frames set forth in the permanency plan."

The county agency must identify the problems in the family in the Permanency Plan (family service plan and child's permanency plan) and ensure that the services needed to reunify the family or to prevent placement have been offered/provided to the family in a timely manner. The exception for services not provided is tied to the services identified in the Permanency Plan (family service plan and child's permanency plan).

The goals reflect the intent of ASFA that children need a permanent home. If a child cannot return home safely and in a timely manner, then one of the other goals must be considered. If the court approved goal is **adoption, then the agency is required to file a petition for termination of parental rights within 60-days** unless otherwise specified by court order.

The Adoption Law in the Domestic Relations Code at §2711(a)(1) requires that an adoptee over the age of 12 must consent to the adoption. If an age appropriate child refuses adoption, county agency staff must fully explore what the child's reasons are for refusing this option. For example, a child may refuse adoption thinking that his or her surname would have to be changed to that of the adoptive family. Once the child learns that the surname does not have to change, the child may reconsider his or her opposition to adoption. If a child refuses adoption after the matter has been fully explored with the child, another permanency goal will have to be determined for the child.

Another permanency option is placement with a **permanent legal custodian** (§6357). The Juvenile Act uses the term "permanent legal custodian" for the ASFA term "legal guardian." A court may award legal custody of a child to an individual, including a relative (§6351(A)(2)), that the court finds to be qualified as the child's permanent legal custodian. This custodian will have the right to the physical custody of the child, the right to secure ordinary medical care for the child and to provide for the "care, protection, training and education, and the physical, mental, and moral welfare of the child." At the same time the court will define additional conditions around the relationship, including addressing temporary visitation rights of the parents. The parents will be referred to the Court of Common Pleas/Domestic Relations for child support and for continuing visitation matters (§6351(A)(2.1)).

Another option for a child is **another living arrangement intended to be permanent in nature** and is approved by the court. This arrangement is less preferable and the other permanency options must first be explored and the record documented why those options were ruled out. There must be a compelling reason that it would not serve the child's physical, mental or emotional health, safety or morals to be referred for a termination of parental rights. Examples of this category could be:

- an older child who refuses adoption, has bonded with a foster family who will not adopt or agree to become the permanent legal custodian of the child and the child wants to remain with the family who commits to provide a home for the child; or
- a child 16 years of age or older who refuses adoption and will transition to an independent living program.

The permanency goal to return home is the preferred goal when the child can return home in a safe and timely manner. If the child cannot safely return home and other permanency options are to be considered, the goal of another planned living arrangement that is intended to be permanent in nature can be recommended to the court only after documentation in the record reflects why the following are not suitable placements the for the child:

- adoption;

- placement with a permanent legal custodian; or
- placement with a fit and willing relative.

Once the county agency makes the recommendation to the court for another planned living arrangement, the court makes a determination whether to approve the living arrangement for the child.

The requirements related to permanency hearings apply to children adjudicated dependent and who enter out-of-home placement. Permanency hearings do not apply to children adjudicated dependent and who remain in their home. Do not file a petition to terminate parental rights for these children based on time adjudicated dependent. When a child is adjudicated dependent, remains in the home initially and is subsequently placed out of the home, the clock for counting the 15 out of the last 22 months starts when the child enters out-of-home placement. Note that children adjudicated dependent and remaining in their home must have an administrative review at least once every six months.

Timelines for Permanency Hearings (§6351(E)).

There are several times when permanency hearings are held. These depend on the circumstances and are discussed below.

1. The first permanency hearing is held six months from the date of the first judicial hearing where the court orders that the child enter out-of-home placement. Thereafter, each hearing is held within six months of the previous permanency hearing. (For a child who enters out-of-home placement under a voluntary placement, the date is the date of the agreement. For a child who has been in out-of-home care for 60-days without a judicial finding, the permanency hearing is held six months from the sixtieth day.)

2. When a court determines that a child is dependent, has been subjected to aggravated circumstances and that no reasonable efforts will be made to preserve and reunify the family, the first permanency hearing must be held within 30 days of this judicial finding. If the child has not achieved permanency, hearings will continue every six months from the previous hearing until permanency is achieved.

3. When a court determines at a permanency hearing for a previously adjudicated dependent child:

- who has been subjected to aggravated circumstances;
- that no reasonable efforts will be made to preserve or reunify the family; and
- the permanency plan is incomplete or inconsistent with the court's determination; then

another permanency hearing is held within 30 days of the permanency hearing.

4. When a child was previously adjudicated dependent and aggravated circumstances are alleged after the adjudication, the county agency must file a petition within 21 days of when it reasonably believes that aggravated circumstances exist. The permanency hearing must be held within 30 days of the filing of the petition. The hearing will determine if aggravated circumstances exist and if reasonable efforts will be made to preserve or reunify the family. If the court finds that aggravated circumstances do not exist, the next permanency hearing is scheduled for six months. If the court finds that aggravated circumstances exist and that reasonable efforts will be made to preserve and reunify the family, the next permanency hearing is scheduled for six months. If the court finds that aggravated circumstances exist and that reasonable efforts to preserve and reunify the family will not be made, the next permanency hearing is held within 30 days.

5. A permanency hearing is held within 30 days anytime that a petition is filed alleging a hearing is necessary to protect the physical, mental or moral welfare of a dependent child. Please note that this timeline means that the county agency can petition the court at <u>any time</u> that a permanency hearing is necessary for a child.

<u>Matters to be Determined at a Permanency Hearing (§6351(F)):</u>

The amendments to the Juvenile Act included the matters that the court shall review at each Permanency Hearing:

MATTER: **determine the continuing necessity for and appropriateness of the placement;**

DISCUSSION: This matter has not changed. County agencies must still present the court with the reasons related for continued placement, including the appropriateness of the placement and risks to the safety of the child.

MATTER: **determine the appropriateness, feasibility and extent of compliance with the Permanency Plan developed for the child;**

DISCUSSION: This matter was changed to include the appropriateness and feasibility of the plan developed for each child. The plan for each child is known as the child's permanency plan. The document presented to the court must be presented as the Permanency Plan; the permanency plan consists of the family service plan and the child's permanency plan.

MATTER: **determine the extent of progress made toward alleviating the circumstances which necessitated the original placement;**

DISCUSSION: This matter is not new. The family's progress in meeting the goals in the Permanency Plan must be reviewed. This matter is very important since families now have a limited time in which to make reunification efforts.

MATTER: **determine the appropriateness and feasibility of the current placement goal for the child;**

DISCUSSION: This matter is not new. This matter is very important since families now have a limited time in which to make reunification efforts.

MATTER: **project a likely date by which the goal for the child might be achieved;**

DISCUSSION: This matter is not new. This matter is very important since families now have a limited time in which to make reunification efforts.

MATTER: **determine whether the child is safe;**

DISCUSSION: This is a new matter. Agencies must be prepared to present sufficient evidence to the court so that the court can make a finding as to whether the child is safe. The child's safety must be addressed when the child remains at home or wherever the child is placed, including but not limited to foster home placement or institutional placement. Refer to the section on Child Safety.

MATTER: **determine, if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the protection and physical, mental and moral welfare of the child;**

DISCUSSION: This matter is new and was required by Public Law 103-432 which amended Sections 475(A) and (C) of the Social Security Act. The requirements related to this matter apply as follows:

- If a child is placed in foster care a substantial distance from the home of the parents of the child, or in a state other than the state in which the parents' home is located, the child's permanency plan shall set forth the reasons why such a placement is in the best interests of the child. "Substantial distance" is considered to exist when the boundaries of the county where the parents reside is 150 miles or more away from the boundaries of the county where the child is placed.
- If a child is placed in foster care outside the state in which the home of the parents of the child is located, or a substantial distance from the birth parents' home county, a public agency representative shall visit the child in the home or facility where the

child is residing no less frequently than once every 12 months. A report, that describes whether the placement continues to be appropriate in meeting the child's needs, must be included in the child's placement record.

- The visit as described above must be made by a staff person of the state or county child welfare agency from the state where the child is residing or by a staff person of the county agency with custody of the child. The involved agencies through mutual agreement shall decide which agency will conduct the visit.
- The visits required under this matter do not alter the requirements pertaining to parent/child visits.

MATTER: **determine the services needed to assist a child who is 16 years of age or older to make the transition to independent living; and**

DISCUSSION: This is a new matter. The court determines what services a child, age 16 or older who is in out-of-home care, needs to transition to independent living.

MATTER: **if the child has been in placement for at least 15 out of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the home or to preserve and reunify the family need not be made or continue to be made, determine whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:**

- **the child is being cared for by a relative best suited to the welfare of the child;**
- **the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or**
- **the child's family has not been provided with necessary services to achieve the safe return to the child's home within the time frames set forth in the Permanency Plan.**

For children placed in foster care on or before November 19, 1997, the county agency shall file or join a petition for termination of parental rights under this subsection in accordance with section 102(c)(2) of the Adoption and Safe Families Act of 1997 (Public Law 105-89, 42 U. S. C. §675 Et Seq.).

DISCUSSION: This matter is new and is discussed in its parts.

1. At each permanency hearing the court must determine whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child:

- once the child has been in placement at least 15 out of the most recent 22 months; or
- when the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the home or to preserve and reunify the family need not be made or continue to be made.

At each permanency hearing after a child has been in placement 15 out of the last 22 months, the court is required to provide this additional oversight to cases to ensure that progress towards permanency for the child continues to be made in a timely manner.

New qualifications to this requirement: Final form federal regulations require that the calculation of the 15 out of the most recent 22 months be cumulative. The only exceptions to this calculation are that trial visits home and runaway episodes do not count toward the 15 months.

2. The exceptions to the requirement to filing/joining a petition to TPR must be approved by the court at each permanency hearing. These exceptions are:

   - the child is with a relative;
   - there is a compelling reason why it is not in the child's best interests for a petition to terminate parental rights be filed; or
   - services consistent with the permanency plan were not provided.

If a child is with a relative, the county agency should encourage the most permanent relationship the relative is willing to provide for the child. Adoption or permanent legal custodianship should be encouraged. If neither adoption nor permanent legal custodianship is an option, the county agency may request that the court approve the placement as permanent in nature and to waive additional permanency hearings.

A second exception is when there is a compelling reason why it is not in the child's best interests for a petition to terminate parental rights be filed. This exception is to be case specific. A case may not be considered as a compelling reason because it falls into an arbitrary category. For example, a child may not be considered for this exception solely because of the child being medically fragile. There are families who are looking for and willing to adopt a child with or without serous medical conditions. There must be a reason why this case has specific reasons/circumstances why the reason not to file is compelling. It will help in assessing whether this exception applies if one remembers that the compelling reason must be directly related to the best interests of the child. If the agency wants the court to continue this exception, then it must present the case for the continuance of the compelling reason. If the court does not agree with the county agency, then the agency must file a petition to terminate parental rights.

Final Form federal regulations, via commentary, contain the following prohibition in the Preamble:

> "...States may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis."

The exception for services not provided must be documented in the case record and must connect to supporting the current goal. County agencies must identify problems which lead to the child's placement or which can prevent a child's placement and offer services to the family to address the problems. Agencies may provide the services directly or through another provider. The county agency remains responsible for seeing that the services are provided.

> **It the court does not approve the exception,**
> **the county agency must file the petition to terminate parental rights.**

3. There is a time-limited exception for children who were in placement prior to November 19, 1997. These children may be subject to the phase-in requirement for the filing of petitions to TPR. The matters/requirements related to the requirement for filing a petition to terminate parental rights are discussed in the section entitled "Clarification of Federal Requirement to Initiate or Join Proceedings to Terminate Parental Rights for Certain Children in Substitute Care."

NEW - ADDITIONAL MATTER: **Determine whether reasonable efforts have been made to finalize the permanency plan in effect.**

DISCUSSION: This is a new matter and is not in the Juvenile Act. Federal final form regulations at 45 CFR 1356.21(d) require:

> **"The judicial determinations regarding...reasonable efforts to finalize the permanency plan in effect ...must be explicitly documented and must be made on a case-by-case basis and so stated in the court order."**

While the Juvenile Act is under review for amendatory language and as long as the child's placement costs are reimbursed under Title IV-E placement maintenance, county agencies are required to request a judicial finding as to whether or not reasonable efforts to finalize the permanency plan in effect have been made. This should be done at each permanency hearing. This finding is required whether the goal is for the child to return home, be adopted, or another permanency goal. Failure to secure this judicial finding will result in the child's placement costs not being reimbursable under Title IV-E placement maintenance until such a judicial finding is made. Title IV-E reimbursement may resume when

such a judicial determination is made. The findings must be explicitly stated in the court order for each child. Court orders that reference state law without an explicit finding, affidavits or nunc pro tunc orders are prohibited.

Court Discretion to Hold Permanency Hearings.

The court has the discretion to not hold further permanency hearings when any of the following circumstances exist:

- when the court has placed the child in a living arrangement that is intended to be permanent in nature and that the court has approved;
- when the child has been placed in an adoptive home pending finalization of the adoption; or
- when a child has been placed with a permanent legal custodian.

The court may discontinue permanency hearings when it approves a living arrangement for a child that is intended to be permanent in nature. For example, the court may approve a child's placement with a relative as permanent and discontinue permanency hearings.

Prior to the amendments, the Juvenile Act allowed for the court to exercise discretion as to whether or not dispositional hearings should continue when a child has been placed in an adoptive home. The amendments allow for this option to discontinue Permanency Hearings when a child is placed in a home pending finalization of the adoption.

Federal regulations require that permanency hearings must continue to be held until permanency has been achieved for a child. A pre-adoptive placement does not meet this criterion; only a finalized adoption does. Therefore, county agencies cannot request the court to exercise its discretion to discontinue permanency hearings for a child in a pre-adoptive home. Placement in another living arrangement for a child that is intended to be permanent in nature or placement with a permanent legal custodian are permanency placements. For those two permanency options, the county agency may ask the court to exercise its discretion and not hold further permanency hearings.

Pennsylvania also recognizes another situation when a child has achieved permanency and the court may find that further permanency hearings are no longer necessary. This situation is when the court places the child with a permanent legal custodian. Using the above example of a relative placement, the county agency should first explore whether the relative is fit and willing to become the child's adoptive parent; or, if not as an adoptive parent, then as the child's permanent legal custodian.

Note that, if the court opts out of permanency hearings and the county agency retains custody of the child, an administrative review must

be held no later than six months from the last permanency hearing. These reviews must continue to be held no later than six months from the last review until the child is no longer in county agency custody. The county agency may petition the court to hold a review any time between the six month intervals.

The county agency must conduct the administrative review. The county agency shall establish a panel of at least three persons, one of whom is a staff person employed by the county agency and one of whom is not employed by or providing service for the county agency. The administrative review panel shall be provided a copy of the child's permanency plan. The panel shall:

- determine the continuing necessity for and appropriateness of the placement;
- determine the extent of compliance with the child's permanency plan;
- determine whether the child is safe; and
- determine the extent of progress made toward achieving the goal and project a likely date when the goal might be achieved.

In addition, the following requirements apply to county agencies when conducting administrative reviews:

- require that the panel make changes as necessary to the child's permanency plan excepting that it is not authorized to change the permanency goal for the child ordered by the Juvenile Court;
- ensure that each member of the panel shall have a copy of the most recent information about the child, including the permanency plan and reports from service providers, at least ten days prior to the review;
- ensure that family members, including the child, if 14 years of age or older, and the child's representatives have the opportunity to be present and heard in any administrative review of the child's placement;
- ensure that at least 15 calendar days prior to the review, the child, if age appropriate, the child's attorney and the child's parents or legal guardians and their counsel, if known to the county agency, and the child's caretakers (See the section on Notice and Opportunity to be Heard) get written notice of the date, location and purpose of the review, including the agency's recommendations, if any, and of their right to be represented;
- ensure that the child's caretakers (See the section on Notice and Opportunity to be Heard) and the child, if 14 years of age or older, and the child's representatives have the opportunity to be heard in any administrative review of the child's placement;

FILING FOR TERMINATION OF PARENTAL RIGHTS (TPR)

REQUIREMENT OF FEDERAL LAW

Section 103 requires agencies to file petitions to terminate parental rights (TPR) when a child has been in substitute care 15 out of 22 months. There are three exceptions to this requirement:

- when the child is being cared for by a relative;
- the county agency has documented a compelling reason (subject to court approval at the next review) for determining why such a petition is not in the child's best interests; or
- if reasonable efforts to return the child home applies, the county agency has not provided the family with services consistent with the permanency plan as the county agency deems necessary for the child to return home.

If grounds for TPR exist for any of the children, the county agency should proceed with TPR without waiting for the deadlines in this section. In addition, agencies may proceed with termination proceedings prior to the specified dates where appropriate.

The requirements related to TPR also provided for a three part phase-in for children who were in out-of-home care on or prior to November 19, 1997. The above exceptions also apply to the children who fall in these timeframes.

JUVENIILE ACT

Pennsylvania implemented this requirement by adding Section 6351(F)(9) of the Juvenile Act which reads as follows:

" if the child has been in placement for at least 15 out of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the home or to preserve and reunify the family need not be made or continue to be made, determine whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

- **the child is being cared for by a relative best suited to the welfare of the child;**
- **the county agency has documented a compelling reason for determining that filing a petition to terminate parental**

rights would not serve the needs and welfare of the child; or

- **the child's family has not been provided with necessary services to achieve the safe return to the child's home within the time frames set forth in the Permanency Plan.**

For children placed in foster care on or before November 19, 1997, the county agency shall file or join a petition for termination of parental rights under this subsection in accordance with section 103(C)(2) of the Adoption and Safe Families Act of 1997 (Public Law 105-89, 42 U.S.C. §675 et seq.)

If a child cannot safely return home, then the county agency must make reasonable efforts to find the child a permanent home. Unless the child falls within one of the three exceptions listed above, TPR petitions must be filed according to the deadlines listed below for the following children:

- children who enter substitute care after November 19, 1997; or
- children in substitute care as of November 19, 1997.

This provision does not intend to delay or to defer the filing of petitions to TPR when it is appropriate. When grounds exist for a child whom the county agency would file for TPR, then the county agency must file the petition at that point in time and **not wait** until the child has been in out-of-home care to meet the 15 out of 22 month requirement.

The requirements under this section are for the filing of the petition. The requirements do not presuppose any court action or place a burden on the court to act within a specified time.

IMPLEMENTATION GUIDELINES

The implementation of the requirements under this section will be discussed by when children entered care starting with those children who enter substitute care after November 19, 1997. The next discussion will address the phase-in requirements for children who were in substitute care on or before November 19, 1997.

Children Entering Substitute Care After November 19, 1997

When a child has been in substitute care 15 of the most recent 22 months, the county agency must file or join a petition to TPR. The date is calculated from the date the child enters substitute care. If there are interruptions in placement such as when the child goes home, those time periods may not count as part of the 15 months. Fifteen months only applies to the time the child is in substitute

care. Fifteen months of actual substitute care time can accrue over a 22 month period to trigger the requirements of this section. A month is defined as 30 days.

New qualifications to this requirement: Final form federal regulations require that the calculation of the 15 out of the most recent 22 months be cumulative. The only exceptions to this calculation are that trial visits home and runaway episodes do not count toward the 15 months.

For example, a child enters substitute care on December 1, 1997 and remains in care, uninterrupted. The 15 month date for a TPR petition would fall on March 1, 1999.

As another example, a child enters substitute care on December 1, 1997 and goes home on April 1, 1998. Child re-enters substitute care on July 1, 1998. Child remains in care. The 15 months for this child would occur at June 1, 1999.

As a final example, a child enters substitute care on December 1, 1997, goes home April 1, 1998. This child re-enters substitute care on January 1, 1999. The child continues in care. The 22 month mark is October 1, 1999, but the child is only in care 13 months out of that 22 period. The filing of a petition to TPR is not required based on time alone during this time period. If the child continues in substitute care uninterrupted, the date from when the 22 month period is counted will shift every month. In this example, if the child remains in substitute care from the January 1, 1999 placement, the earliest the child would have 15 out of 22 months is April 1, 2000.

Permanency should be achieved for a child before the time the child has been in out-of-home placement for 12 months. If permanency has not been achieved for the child by the time a child has been in placement 15 out of the most recent 22 months, the court must determine at a permanency hearing whether the county agency filed or has sought to join a petition to TPR AND to identify, recruit, process and approve a qualified family for the child unless one of the three exceptions apply. After the initial fifteenth month determination, the court must make the determination regarding TPR and the agency's attempts to provide a permanent family for the child at each permanency hearing that takes place after the initial fifteenth month court determination.

Children in Substitute Care On or Prior to November 19, 1997

ASFA provides for a phase-in process for children who entered substitute care prior to the enactment of federal law. The federal phase-in process was incorporated into the Juvenile Act at §6351(E)(9). The phase-in is to be completed by thirds starting with the group of children in foster care the longest. These children still need to meet the requirement of having been in foster care 15

out of the most recent 22 months. If the child has any periods when he/she is not in substitute care, these periods do not count towards the 15 months in care.

Assuming the child has a continuous placement, the trigger date for the phase-in depended on when the Pennsylvania State legislative session ended in 1998. The session ended November 30,1998. The beginning of the phase-in starts 6 months after the end of the Pennsylvania 1998 legislative session, or May 30, 1999, when petitions for TPR must be filed for the oldest group of children in substitute care who qualify under the 15 month requirement and for whom no exceptions apply. The petitions for the next third of the children must be filed 12 months from the trigger date, or November 30. 1999. The last group of children must have petitions filed to TPR 18 months after the trigger date, or May 30, 2000.

Children in Substitute Care On Or Prior to November 19, 1997 Whose Goal is Adoption

All of these children must be included in the first third of children as discussed for Children in Substitute Care On or Prior to November 19, 1997 above.

The following chart reflects the time frames:

All children who entered on or prior to 11-19-97 – do in groups of thirds.	File petitions for children in care the longest First third due: **MAY 30, 1999** NOTE: Children placed on or prior to 11-19-97 who now have a goal of adoption must also have their petitions for TPR filed with the first group.	Petitions for the second third of this group of children due: **November 30, 1999**	Petitions for last group due: **May 30, 2000**

County agencies should have begun planning for this requirement based on the interim guidelines (OCYF Bulletin 3130-98-01). The following considerations are recommended:

1. Identify all children in substitute care and group them:

    a. By the greatest amount of time in care for all children who entered care on or prior to November 19, 1997. This group also needs to be identified by amount of time in care as those in

care the longest will need their petitions for TPR filed first.

b. By children with a goal of adoption who were placed on or prior to 11-19-97 as these children will be included with the first group of children who will need to have their petitions for TPR filed.

b. By those who entered care after November 19, 1997.

2. Review the length of time for each child in substitute care to determine if there were any breaks in time in substitute care.

   a. If there are no breaks in substitute care for 15 consecutive months for a child, then petitions must be filed by the specified timeline.

   b. If there are breaks in time spent in substitute care, then the time each child spent in substitute care must be individually reviewed to ensure that the child has been in for 15 out of the last 22 months.

3. Need to continually plan for these children to file the petitions, to schedule the hearings and to identify permanent placements for these children in a timely manner.

In addition, county agencies need to plan to identify children who are coming into care as to when they will meet the 15 out of 22 month requirement for filing for TPR. For counting purposes for this requirement, a month is 30 days.

<u>Exceptions to filing a Petition to Terminate Parental Rights for a Child in Care 15 out of the last 22 Months.</u>

There are only three exceptions to the requirement to file a petition to TPR. These are:

- the child is being cared for by a relative best suited to the welfare of the child;
- the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or
- the child's family has not been provided with necessary services to achieve the safe return to the child's home within the time frames set forth in the Permanency Plan.

If the court does not approve the exception, the county agency must file the petition to terminate parental rights.

First Exception: Child Is With A Relative.

By the time the child has been in out-of-home care for 12 months, the court approved goal in the Permanency Plan should be achieved or nearly achieved by the family. If the goal is that a child be placed with a relative, the county agency should encourage the most permanent relationship the relative is willing to provide for the child. Adoption should be encouraged and the petition for TPR should proceed whenever possible.

If adoption is not an option, then another permanency option such as permanent legal custodianship should be encouraged. In this case, a decision needs to be made whether it is in the best interests of the child to have parental rights terminated. If it is not in the best interest of the child, then the agency may seek court approval of this decision as a compelling reason and may petition the court to approve a permanent legal custodian for the child and [as an option] discontinue further permanency hearings.

If neither adoption nor permanent legal custodianship is an option, the county agency may request that the court find that the relative placement is an exception to the TPR requirements. As long as the child remains with the relative, the county agency will need to get a finding on this exception at each Permanency Hearing unless the court approves the placement as a permanent placement for the child. The court may also waive the requirement for Permanency Hearings.

The court approval of the exception may be:

- obtained at the 12 month Permanency Hearing; or
- obtained at a Permanency Hearing prior to the end of the fifteenth month.

Note that documenting an exception in the record without court approval is not acceptable. The court must approve the exception.

If the county agency opts to have a Permanency Hearing at 15 months to secure court approval of the exception and does not include all of the matters for Permanency Hearings as required at §6351(E), then the next Permanency Hearing will fall when six months have elapsed from the Permanency Hearing where these matters were reviewed. For example:

- Permanency Hearing is held at 12 months and all the matters at §6351(E) are reviewed;

- Permanency Hearing is held at 15 months and the court approves the exception but does not review the matters at §6351(E);
- then the next Permanency Hearing is at 18 months.

If all of the matters at §6351(E) are reviewed at the Permanency Hearing held for court approval of the exception at the 15 month in placement, then the next permanency Hearing is held within six months. For example:

- .Permanency Hearing is held at 12 months and all the matters at §6351(E) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception and reviews all the matters at §6351(E);
- then the next Permanency Hearing is at 21 months.

As long as the child remains in out-of-home care, the county agency will need to get a finding on this exception at each Permanency Hearing after the fifteenth month that the child is in out-of-home care.

If, at any time, the court does not agree with the county agency, then it must file a petition to terminate parental rights.

Second Exception: Compelling Reason Why TPR Is Not In the Child's Best Interests.

A second exception is when there is a compelling reason why it is not in the child's best interests for a petition to terminate parental rights be filed. This exception is to be case specific. A case may not be considered as a compelling reason because it falls into an arbitrary category. For example, a child may not be considered for this exception solely because of the child being medically fragile. There are families who are willing to adopt a child with serous medical conditions.

Final Form federal regulations, via commentary, contain the following prohibition in the Preamble:

> "...States may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis."

The case must have a specific reason/circumstance why the reason not to file is compelling. It will help in assessing whether this exception applies if one remembers that the compelling reason must be directly related to the best interests of the specific child. If the county agency petitions the court to approve

this exception, then it must present the case for the compelling reason as it relates to the child's best interests.

The court approval of the exception may be:

- obtained at the 12 month Permanency Hearing; or
- obtained at a Permanency Hearing at the fifteenth month (the county agency may request the court to hold a Permanency Hearing at this time to make a finding on the exception).

If the county agency opts to have a Permanency Hearing at 15 months to secure court approval of the exception and does not include all of the matters for Permanency Hearings as required at §6351(E), then the next Permanency Hearing will fall when six months have elapsed from the Permanency Hearing where these matters were reviewed. For example:

- Permanency Hearing is held at 12 months and all the matters at §6351(E) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception but does not review the matters at §6351(E);
- then the next Permanency Hearing is at 18 months.

If all of the matters at §6351(E) are reviewed at the Permanency Hearing held for court approval of the exception at the 15 month in placement, then the next permanency Hearing is held within six months. For example:

- Permanency Hearing is held at 12 months and all the matters at §6351(E) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception and reviews all the matters at §6351(E);
- then the next Permanency Hearing is at 21 months.

As long as the child remains in out-of-home care, the county agency will need to get a finding on this exception at each Permanency Hearing after the fifteenth month that the child is in out-of-home care.

If, at any time, the court does not agree with the county agency, then it must file a petition to terminate parental rights.

Third Exception: Services Were Not Provided.

The exception for services not provided must be fully documented in the case record and must connect to supporting the current goal. County agencies must identify all problems which lead to the child's placement or which can prevent a child's placement and offer services to the family to address the

problems. Agencies may provide the services directly or through another provider. The county agency remains responsible for seeing that the services are provided. This exception ties the services to those in the family service plan and the child's permanency plan. It cannot be used for services not identified in the family service plan/child's permanency plan. The exception for services not provided must be avoided.

CRIMINAL RECORDS CHECKS

REQUIREMENT OF FEDERAL LAW

Section 106 of the Adoption and Safe Families Act requires criminal records checks for prospective adoptive or foster parents. Such applicants cannot be approved if they have been convicted of certain crimes. The Child Protective Services Law (CPSL) already contains the list of comparable Pennsylvania crimes.

Section 106 also prohibits approval for 5 years from conviction if the criminal records check reveals a felony conviction for drug-related offenses. Pennsylvania law and regulations do not address these types of crimes.

IMPLEMENTATION GUIDELINES

Changes relating to criminal records checks in reference to the convictions for drug-related offenses required amendments to the Child Protective Services Law (CPSL) and to Departmental regulations.

On December 10, 1998, Governor Tom Ridge signed House Bill 1992, Printer's No. 4148, amending the CPSL. This is known as Act 127 of 1998. Section 6344(c) included the following amendments:

- (2) extends the prohibitive hire for an applicant convicted of certain crimes to include **"an equivalent crime under federal law or the law of another state:"** and **"The attempt, solicitation or conspiracy to commit any of the offenses set forth in this paragraph."**
- (3) a new section was added that reads as follows: **"In no case shall an administrator hire an applicant if the applicant's criminal history record information indicated the applicant has been convicted of a felony offense under the Act of April 14, 1972 (P.L. 233, No. 64), known as the Controlled Substance,, Drug, Device and Cosmetic Act, committed within the five-year period immediately preceding verification under this section."**

The requirements of the Child Protective Services Law Regulations at §3490.123 prohibits the approval of prospective foster or adoptive parent applicants in certain circumstances. OCYF Bulletin # 3490-99-01 extends the bar on approving foster or adoptive applicants from being approved as foster or adoptive parents if:

- they have been convicted of such a felony drug-related offense within the past five years; and
- they have been convicted of any of the specified crimes committed under any jurisdiction or have been convicted of the attempt, solicitation or conspiracy to commit such crimes.

Note that foster parents who are also relatives may be referred to as kinship care providers and the child in their care as being in kinship care. This type of kinship care is considered formal kinship care as the relatives have been approved as agency (public or private) foster parents. This type of arrangement is different from those arrangements that a child's parents make when they, the parents, make arrangements for their child to stay with a relative. This latter type of arrangement is known as informal kinship care. The criminal records checks requirements apply to those relatives who are agency (public or private) foster parents. The checks may be helpful in determining whether the relative is fit and willing.

Please refer to the aforementioned bulletin for clarification. This bulletin is Attachment H.

JUVENILE DELINQUENTS/SHARED CASE MANAGEMENT

INTRODUCTION

There are several funding sources available for youth that have been adjudicated delinquent in placement. Each of these funding sources has a set of eligibility criteria that must be met in order for the state and county to receive federal reimbursement for a particular youth.

Title IV-E of the Social Security Act is the federal funding source designated specifically for children who are under the care and supervision of the state or county child welfare agency. Title IV-E provides reimbursement for the costs associated with the care and maintenance of children in placement (**Placement Maintenance**); for children with "special needs" who have been placed for or have been legally adopted (**Adoption Assistance**); for administrative costs related to the state's foster care program (**Administration**); and for the costs associated with training child welfare agency staff who work

with the child or who administer the foster care and adoption systems or for foster care providers (**Training**).

In order for States to be eligible to receive Title IV-E Placement Maintenance reimbursement for the placement costs of children who are under their care and supervision, two levels of eligibility must be met. First, the state must have federally approved Title IV-B and Title IV-E state plans. These plans, which contain program requirements, specifically designate the state law, regulations, and/or policy that are in place to meet the corresponding federal requirements. Secondly, Title IV-E requires that there be an individual eligibility determination for each child for whom federal placement maintenance benefits are claimed. The individual child eligibility requirements are set forth in Section 472 (a) of the Social Security Act.

The status of a child as an adjudicated delinquent is not relevant to the child's eligibility for Title IV-E Placement Maintenance benefits. It is, however, important to note, that the type of facility in which the youth is placed, does impact on whether or not the cost of the placement is federally reimbursable. The federal government has specifically stated in Section 472 (c) the types of placements that are federally reimbursable and those that are not.

The following sections of the bulletin are intended to provide you with an overview of information related to Title IV-E individual child eligibility requirements for youth adjudicated delinquent and detailed information related to the Pennsylvania state plan requirements that must be met in order for the state to claim reimbursement under Title IV-E for delinquent youth.

OVERVIEW OF CHILD SPECIFIC TITLE IV-E ELIGIBILITY REQUIREMENTS FOR DELINQUENT YOUTH

A juvenile is eligible for Title IV-E Placement Maintenance if three basic criteria are met when the juvenile enters care. These criteria are as follows:

1. Legal Status

The county children and youth agency (county agency) must have legal responsibility for the juvenile's care and placement. The juvenile must have entered care as a result of a court order with a judicial determination to the effect that it is "contrary to the welfare of the child" to remain in the home or, alternatively, that such placement is in "the best interests of the child." The judicial determination must be so stated in the first order removing the child from the home even if this is an emergency or detention order.

Federal final form regulations also require that there be a judicial finding "When a child is removed from his/her home, the judicial determination as

to whether reasonable efforts were made ...must be made no later than 60 days from the date the child is removed from the home...." (45 CFR 1356.21(b)(1)) This judicial findings must be made on a case-by-case basis, explicitly stated in the court order. If this finding is not explicitly stated in the court order, a transcript of the court proceedings is the only acceptable documentation that such a finding was made. Nunc pro tunc orders and affidavits are not acceptable documentation. If such a finding is not made within the 60 day period from when the child is removed from the home, the child is not eligible for Title IV-E placement maintenance reimbursement for the duration of that stay in out of home placement. Therefore, in implementing this requirement in Pennsylvania, the county agency **must** request such a judicial finding in the earliest order to ensure that such a finding is made within 60 days of the child's removal from the home.

Note: Legal responsibility in cases involving delinquent youth, means that the responsibility for case management must either be given by the court to the county children and youth agency, or the responsibility for shared court-ordered case management must be given by the court to the county agency and the juvenile probation office. Case management requires that the youth must have a case plan and all the requirements of the case review system must be met as set forth at 42 Pa.C.S. §§6301-6365 (relating to the Juvenile Act) and in regulations at Chapter 3130 except as modified by this bulletin. The requirements include Family Service Plans, Permanency Plans, Dispositional review hearings, Permanency Hearings, and Administrative Reviews.

2. AFDC Relatedness
   When the juvenile entered care, the juvenile met the AFDC relatedness test in the month the court petition to place the juvenile in out-of-home placement was filed. This month is the eligibility month used in the initial eligibility determination.

3. Citizenship
   The juvenile must be a United States citizen or a "qualified alien." Examples of individuals who are not qualified aliens under federal law are undocumented aliens and aliens legally admitted to the country on a temporary basis (for work, study or pleasure). The juvenile's citizenship or immigration status must be verified.

Child specific Title IV-E eligibility requirements are contained in OCYF Bulletin, number 3140-82-01. OCYF is in the process of finalizing a Title IV-E Policies and Procedures Manual. The manual will provide detailed information on the policies, procedures and process for determining Title IV-E Placement Maintenance eligibility and reimbursability, Medicaid (formerly known as Medical Assistance) eligibility and Title IV-E Adoption Assistance eligibility.

All youth adjudicated delinquent must have a Title IV-E eligibility determination completed at the time of the youth's initial removal. The eligibility determination for the delinquent youth must include an order for shared case management responsibilities for the county children and youth agency (county agency) and the juvenile probation office.

TITLE IV-E STATE PLAN/PROGRAM REQUIREMENTS FOR DELINQUENT YOUTH

All adjudicated delinquent youth who are determined Title IV-E eligible with shared case management must meet Title IV-E state plan/program requirements. ASFA and Pennsylvania's accompanying amendments in the Juvenile Act amend existing program requirements under Title IV-E which have been required for delinquent youth prior to ASFA. Adjudicated delinquent youth who are not determined Title IV-E placement maintenance eligible are not subject to the Title IV-E state plan/program requirements as described below.

As discussed earlier, the purpose of ASFA is to emphasize that the safety of a youth (whether receiving in home services or placement services) is the paramount concern and that permanency for the youth must be considered in a timely manner. The Title IV-E program requirements and the implementing state amendments focus on parental behavior and responsibility. At times though, a delinquent youth's behavior is the result of the child's decision to engage in certain actions and not necessarily the result of any parental abuse or neglect of the youth.

Implementation of Title IV-E program requirements, especially in light of ASFA, requires increased emphasis on parental responsibility as it relates to delinquent youth. All of the requirements of Title IV-E including ASFA apply to delinquent youths, however, we recognize that some additional clarification is necessary to the application of the requirements. What follows is a listing of the various program requirements with clarification that is necessary for delinquent youth. Program areas discussed below include:

- Case Plan Requirements;
- Permanency Hearings;
- Notice and Opportunity to be Heard;
- Clarification of the Reasonable efforts Requirement;
- Child Support; and
- Clearances.

Case Plan Requirements

The case plan and case management requirements are found in the Chapter 3130 regulations at:

§3130.61(b) information to be included in the family service plan; and
§3130.67(b) information to be included in the placement amendment to the family service plan.

ASFA and the amendments to the Juvenile Act refer to a permanency plan. Until regulations are promulgated, the permanency plan includes both the family service plan and the child's permanency plan (formerly known as the placement amendment) with necessary modifications to regulations to comply with legislative/state plan requirements. The requirement that each plan be completed within 30 days of placement remains in effect. In order to provide for copies for the different parties involved in service planning, the family service plan needs to be a separate document. In as much as the Title IV-E placement maintenance eligibility status may not be known within 30 days, all delinquent youth must have a permanency plan within the established 30 day time period unless it has been clearly established prior to the end of the 30 day period that the youth is not Title IV-E eligible.

The requirements for the family service plan at §3130.61(b) apply except as modified in the following discussion:

§3130.61(b) The family service plan shall include:

(1) Identifying information on each child and family member.

(2) Description of why the case was accepted for services.

(3) Service objectives for the family, services needed to protect the children in need of protection from abuse, neglect and exploitation and to prevent placement.

ASFA requires that each child's safety be continually addressed wherever the child is living, including the parental home. The plan must address safety issues for each child.

(4) Services to be provided to meet the objectives of the plan.

(5) Actions to be taken by the parents, children, county agency, juvenile probation office, other agencies/providers and the dates when the actions will be taken.

(6) Placement amendments as required by §3130.67 (placement planning).

As discussed in this document, placement amendments are now referred to as a child's permanency plan. A discussion on the requirements of §3130.67 follows this sub-section.

(7) Results of the family service plan and placement amendments.

Again, placement amendments are now referred to as a child's permanency plan.

The requirements for the child's permanency plan (placement amendment) at §3130.67(b) apply except as modified in the following discussion:

§3130.67(b) The amendment to the service plan shall include the following, for each child placed:

(1) A description of the circumstances that make placement necessary.

(2) Health and educational information on each child that includes:
- (i) names and addresses of health and educational providers;
- (ii) the child's grade level performance;
- (iii) the child's school record;
- (iv) assurances that the placement considers the proximity of the child's school at the time of placement;
- (v) record of the child's immunizations;
- (vi) known medical problems including mental, physical or emotional disabilities;
- (vii) child's medications; and
- (viii) other relevant health and educational information.

(3) Health and educational information shall be reviewed and updated each time the child changes residence and a copy of this given to the child's foster parent/ placement provider.

(4) Note: This health and educational requirement is a dated phase-in requirement and no longer applies.

(5) Requirement that, once the county agency notifies a private agency of updated health and educational information, the private agency is responsible for providing the same to the child's foster parent.

(6) Requirement at initial placement that all services that have been provided to prevent placement be identified.

(7) Identify and discuss the type and appropriateness of the placement including:

(i) how the placement is least restrictive;
(ii) how the location/proximity will encourage parent-child visitation.

ASFA also requires that the child be in a "safe setting." Therefore, the child's safety must be assessed while the child is in placement whether the placement is in a foster home or at an institution/ facility. (For a related discussion on safety see page 10.)

(8) Months of anticipated placement duration.

(9) Identifying a permanency goal for the child. The goals are new and include:

- return home;
- adoption;
- placement with a permanent legal custodian; or
- placement in another living arrangement that is intended to be permanent and approved by the court but only after documenting in the record that return home, adoption, placement with a permanent legal custodian or with a relative are not appropriate goals for the child.

Note that long term foster care is no longer an option.

Final form federal regulations modified this requirement to allow for placement with a fit and willing relative as a permanency option. See the discussion on the next page on Permanency Hearings.

(10) Description of service objectives that must be achieved. Parental responsibility is now emphasized that, not only must the objective be achieved, but a specific result must also be achieved. For example, a parent attending parenting classes is expected to learn the skills from the classes and appropriately apply them to the child.

(11) Consideration of programs/services to be offered to the child to transition from placement to independent living. Documentation includes why these services are or are not offered to the child.

(12) Identification of services to be provided to the child, parents and the foster family, if applicable. ASFA places increased emphasis on the prompt identification of services necessary for facilitating timely reunification.

(13) Identification of agency responsibilities in implementing the service plan. The references to placement reviews and dispositional review

hearings are no longer applicable. The requirements for both types of reviews have been incorporated into permanency hearings. (See the discussion below on permanency hearings.)

(14) Parent-child visitation schedule including the frequency, location and participants.

(15) Description of services provided to the child and parent to achieve the permanency goal. The description must be updated and incorporated into the plan prior to it being submitted to the court for the permanency hearing.

(16) This requirement related to incorporating results of placements reviews should reflect the results of permanency hearings.

New requirements include that when:

- A child is placed outside the Commonwealth, a description of why the placement is best suited to the child; and
- A child is placed a substantial distance (that is, 150 miles or more from the county where the parents reside to the boundaries of the county where the child is placed), a staff person from the county agency/juvenile probation office must visit the child in placement a minimum of once every 12 months.

Permanency Hearings

ASFA and the amendments to the Juvenile Act changed dispositional review hearings to Permanency Hearings. Permanency hearings provide court oversight and focus on the child's need for permanency. Final form federal regulations (45 CFR §1355.20 Definitions/ Permanency Hearing) emphasize permanency while recognizing the importance of a relative placement for a child if a fit and willing relative is available for the child.

Federal final form regulations list the following hierarchical permanency goals for a child:

(1) Return to the parent;
(2) Place for adoption and the agency will file a petition to terminate parental rights;
(3) Place with a permanent legal custodian;
(4) Place permanently with a fit and willing relative; or
(5) Place in another planned permanent living arrangement but only when the other four goals have been ruled out.

Review the Permanency Hearing section starting on page 42 for a discussion on permanency hearings and relative placements in particular.

Permanency Hearings apply to all delinquent youth who are determined Title IV-E eligible who are in the custody of a county agency or under shared case management by the county agency with the juvenile probation office. The following clarifications to the Permanency Hearing section apply to adjudicated delinquent youth:

1. Matters considered at Reviews (see §3130.71 Placement Reviews and §3130.72 Dispositional Review Hearings) have been incorporated into Permanency Hearings. Each child will have a Permanency Hearing starting at six months from the date discussed in the above paragraph. Each Permanency Hearing will, then be held six months from the previous hearing until permanency has been achieved for the child.

2. There are three exceptions when the court may exercise its discretion to discontinue permanency hearings for a child who has been placed:

- with a permanent legal custodian;
- in a pre-adoptive home pending finalization; or,
- in a living arrangement that is intended to be permanent in nature and approved by the court.

When the county agency/juvenile probation office retains custody under any of these three exceptions, then an administrative review must be held every six months until custody of the child is relinquished.

A discussion of this process is found starting on page 52.

NOTE: This policy is modified to conform to final form federal regulations which require that every child have a permanency hearing until permanency is achieved. A child placed with a permanent legal custodian or in a living arrangement that is intended to be permanent in nature and approved by the court are considered to have achieved permanency. A child in a pre-adoptive home has not achieved permanency until the adoption is finalized. Therefore, county agencies are not to request the court to exercise its discretion to discontinue permanency hearings for a child in a pre-adoptive home.

Federal law requires that children have safe, permanent homes in a timely manner by requiring that petitions be filed to terminate parental rights when the child has been in placement 15 out of the last 22 months. This requirement is one of the matters for the court to determine at a permanency hearing. Once a child, including delinquent youth under shared case management, has been in placement 15 out of the most recent 22 months, the county agency/juvenile

probation office must file a petition to terminate parental rights unless an exception exists (see discussion starting on page 54) and is court approved prior to the end of child's fifteenth month in placement.

In these situations the possibility of TPR and adoption should not be overlooked. While in most situations, issues center on the child's behavior, there may be those instances that the child's home situation is such that another permanent home through adoption would be appropriate.

Where parental issues are not a consideration for delinquent youth, the youth's case may constitute an exception to the requirement to file for TPR. However, in each case, the court must approve the exception. At each permanency hearing following the initial action on the TPR requirement the court must determine if the exception continues to remain. The requirement to file for TPR at the 15 out of 22 month timeline and the phase-in requirement for children who were in placement as of November 19, 1997 is discussed in the section Filing for Termination of Parental Rights starting on page 54.

Notice and Opportunity to be Heard

ASFA and the accompanying amendments in the Juvenile Act at §6336.1 require that a child's caretaker be given notice of and the opportunity to be heard at any review or hearing regarding the child in their care. Caretaker includes foster parent, adoptive parent or a relative caring for the child. Reviews and hearings include any proceedings under the Juvenile Act or our administrative review pursuant to Chapter 3130. The caretakers do not have standing.

Under shared case management, nothing precludes the county agency from having the juvenile probation office provide such notice. However, it is the responsibility of the county agency to assure that this has been done. (See page 21 for further discussion.) County agencies and juvenile probation offices may want to establish local protocols.

Clarification of the Reasonable Efforts Requirement

ASFA reaffirms that reasonable efforts must be made to prevent placement; or, if the child is in placement, to make reasonable efforts to return the child home. In addition, when reasonable efforts were not made, a court must still determine that the absence of reasonable efforts was reasonable. Final form federal regulations require that a judicial finding related to reasonable efforts must be made within 60-days of the child being removed from the home. It is important that a reasonable efforts determination be made in the earliest court order for the child. ASFA and the amendments to the Juvenile Act expanded the reasonable efforts requirement so that when there are egregious situations that it

may not be necessary to make reasonable efforts to reunify the family. An egregious situation is one in which a child cannot safely return home within a reasonable amount of time or a situation exists that it does not make sense to return the child home.

These egregious situations are known as aggravated circumstances. ASFA specified certain situations and required that states must also define their own aggravated circumstances. These situations are found in the definition section of the Juvenile Act (§6302). The aggravated circumstances are discussed in this document starting on page 28.

In applying the aggravated circumstance provisions to alleged delinquent youth, the county agency/juvenile probation office need to consider the following summarized steps:

- The county agency/juvenile probation office reasonably believes that aggravated circumstances exist;
- An assessment of the child's safety needs to be made and a determination whether a petition for dependency should be filed for the protection of the child;
- If the county agency/juvenile probation office determines that it must file a petition for dependency, then it must also request judicial findings in this order relating to:
  - dependency,
  - if the child is found to be dependent, then whether aggravated circumstances exist;
- If the child is dependent and aggravated circumstances exist, then whether reasonable effort will be made to reunify the family. The court may determine that reasonable efforts will be made to reunify the family.
- If the child is dependent and aggravated circumstances exist and the court determines that no/no further reasonable efforts will be made to reunify the family, another permanency hearing must be held within 30 days to determine the permanency goal for the child.

Child Support

Title IV-E requirements include parents paying child support for the child in out-of-home placement. Under procedures established by the Department for these situations, parents of children in placement need to be referred to the Domestic Relations Office for an assessment of child support.

Clearances

ASFA and the amendments to the Child Protective Services Law include a bar on approval of an applicant who has a felony drug conviction within five

years. All foster homes used for children must meet state approval standards and all foster parents must be cleared. For further information see OCYF Bulletin, 3490-99-01, Drug Convictions Prohibiting Hiring Child Care Employees/Approving Foster and Adoptive Parent Applicants (Attachment H.)

DRUG AND ALCOHOL ISSUES/ACCESS TO TREATMENT RECORDS

BACKGROUND

In general, under Pennsylvania law, only limited information contained in drug and alcohol abuse treatment records may be released to courts and other parties involved in criminal proceedings. See 4 Pa.Code § 255.5(b). This is true even in circumstances where the patient consents to the disclosure of particular parts of the records. In contrast, federal regulations allow for the disclosure of any information with the patient's valid consent, or pursuant to a court order. 42 U.S.C. § 290dd-3(b), 45 C.F.R. Part 2. Act 126 of 1998 (effective January 1, 1999), amending the Pennsylvania Juvenile Act, 42 Pa.C.S. §§ 6301 et seq., allows access to drug and alcohol treatment information in conformance with the federal regulations. Act 126 allows access to and use of drug and alcohol treatment records regarding a child or his parent in Juvenile proceedings to an extent not permitted in other proceedings or anywhere else in Pennsylvania law. For circumstances not covered by the Juvenile Act, federal law defers to any state law which would prevent disclosure. 42 C.F.R. § 2.20.

CONSENSUAL RELEASE OF INFORMATION

The easiest means to access drug and alcohol treatment information is to obtain consent to disclosure from the patient. (This is true whether the information relates to a child or his or her parent(s), see 42 Pa.C.S. §§ 6351(f.1), 6352.1.) No matter what the subject of the proceeding, it is the patient who is or was in treatment that must consent to disclosure of the information. As long as the patient is competent, no matter what the patient's age, only the patient need, or can, consent to the disclosure. 42 C.F.R.§ 2.14(b). (This is the case under federal regulations because a minor of any age can consent to drug and alcohol treatment without parental consent under Pennsylvania law. 71 P.S. § 1690.112.)

Only limited circumstances exist where someone other than the patient can consent to the disclosure of information. For example, where the patient has been adjudicated an incapacitated person and has had a guardian appointed, or where the patient has appointed an attorney-in-fact for the purpose, see 42 C.F.R. § 2.15(a)(1), the person specified in that document has the authority to

provide or deny consent to disclosure. Where the patient is deceased, the executor, administrator, or personal representative can consent to disclosure. 42 C.F.R. § 2.15(b)(2).

According to the federal law made applicable to proceedings by Act 126, treatment records may be disclosed in accordance with the patient's valid consent. 42 U.S.C.§ 290ee-3(b)(1), 42 C.F.R. § 2.33. Once information has been disclosed pursuant to the patient's consent, the recipient may not further disclose the information to any other party without the specific consent of the patient. 42 C.F.R. § 2.32.

The consent form itself defines what information may be released to whom and for what purpose. 42 C.F.R. § 2.33. Disclosure, or redisclosure, outside the conditions specified in the consent form is not permitted without a court order. Information may not be disclosed unless it is specifically identified in the consent form. (To avoid confusion and delay, it may help to identify particular information in the manner used by the facility. The Pennsylvania Department of Health's licensing regulations contain a list of the types of treatment information which drug and alcohol treatment facilities must keep. See 28 Pa.Code §§ 709.51-709.54.) Information identified in the consent form may not be released to parties not identified in the consent form. Even if the information and the party to which the information will be released is identified in the consent form, it may not be used for any purpose not specified in the consent form. The drug and alcohol program director has the discretion to deny disclosure if the information is not necessary to carry out the purpose of the disclosure, 42 C.F.R. § 2.13(a). It may be helpful to specify in the consent form each party to which information may be disclosed, and any purpose for which it may be used. If there is any doubt whether the disclosure or intended use of information is allowed by the consent form, it is prudent to seek a court order. (See below.)

Because the provisions of Act 126 are new, it is unlikely that any existing consent forms will provide for disclosure to a county agency, probation officer, or juvenile court. Therefore, when disclosure is sought, the patient will need to execute a new consent form. The requisites of a valid consent form are found in 42 C.F.R. § 2.31. Even if a patient has executed a valid consent form, the disclosed information may not be used to initiate or substantiate any criminal charges or to prosecute any criminal charges against the patient. 42 C.F.R. §§ 2.12(d)(1), 2.23.

RELEASE OF DRUG AND ALCOHOL TREATMENT INFORMATION BY COURT ORDER

If the proper consent is not obtained, or if consent is obtained but the treatment facility refuses to disclose the information, disclosure can be obtained by court order.

However, a court order will only authorize the facility to disclose the information. In order to compel disclosure, the party seeking disclosure must obtain and serve a subpoena. 42 C.F.R. § 2.61.

To obtain information which will not be used in a criminal investigation or prosecution, the party seeking disclosure must file an application with the Court. The application must use a fictitious name (such as John or Jane Doe), and may not contain information identifying the patient. 42 C.F.R. § 2.64(a). The court must give the patient and the record custodian adequate notice and afford them the opportunity to respond to the application for a court order. 42 C.F.R. § 2.64(b). The court must also hold a hearing. 42 C.F.R. § 2.64(c). The court may only issue an order if good cause, as set forth in the federal regulations, exists. 42 C.F.R. § 2.64(d). All court orders must provide additional privacy safeguards to ensure that there is no greater infringement on the patient's privacy than required by the situation. 42 C.F.R. § 2.64(e).

When a court order is sought for disclosure of drug and alcohol treatment records related to a criminal investigation or prosecution, the procedure is very similar. 42 C.F.R. § 2.65. However, there are additional restrictions on what will constitute good cause. 42 C.F.R. § 2.65(d).

Please note that violation of the federal regulations can result in criminal penalties. 42 U.S.C. §§ 290dd-3(f), 290ee-3(f); 42 C.F.R. §§ 2.3(b)(3), 2.4. This document is meant for informational purposes only and should not be considered legal advice. IT IS BEST TO CONSULT WITH AN ATTORNEY REGARDING DISCLOSURE OF CONFIDENTIAL DRUG AND ALCOHOL TREATMENT INFORMATION IN PARTICULAR SITUATIONS AS THEY ARISE.

IMPLEMENTATION GUIDELINES

Based on Federal Regulations at 42 CFR 2 Subpart C §2.31, the drug and alcohol written consent for the release of information must include:

1. Name of the Drug & Alcohol Program
   (This can be general such as the general designation of the program.
   A specific person can be named.)
2. Whom the Information is to be disclosed to:
   - For an individual, the name or title; or
   - The name of the County Agency.
3. The name of the client.
4. The purpose of the disclosure.
5. The information to be disclosed which includes how much information and what kind of information. The following may be requested:

- Whether the client is or is not in treatment
  - This includes an estimate of length of time for treatment
  - If, and when, the client terminated treatment
  - Client's attendance patterns, including dates of sessions
  - Type of service provided
  - Length of session
- Client's prognosis
  - Client's diagnosis
  - Provider's opinion of prognosis in general terms only
  - Provider's recommendations regarding continuing treatment
- Nature of the drug and alcohol program
  - Purpose and philosophy of the drug and alcohol program
  - Program structure, treatment methodology and models utilized
  - Services being offered to the client
  - Recommendations for other supportive services or support groups
  - Indicate services provided by a description of the nature of the project (Note that the Treatment Record may not be released.)
- Brief description of the client's progress in general terms only that may address:
  - denial/lack of denial
  - progress in coming to terms with his/her condition
  - progress/lack of progress in understanding the disease concept or program philosophy
  - general term discussion of cooperation/lack of cooperation with
    * treatment plan
    * following facility rules
- Short statement whether client relapsed and frequency of the relapse
  - Can be specific, e.g. positive urine or 3 positive urines in past 60-days
    (Specificity of this release depends on the program's philosophy.)
  - Provider's opinion whether "use" does or does not constitute "relapse."

6. Signature of the client.
7. Date when signed.
8. A statement that the consent is revocable at any time.
9. The date, event or condition when the consent will expire if not revoked sooner.

The Federal Regulations at 42 CFR 2 Subpart C §2.31 are found in Attachment B.

The Department of Public Welfare, the Juvenile Court Judges' Commission and the Department of Health are currently working together to develop a sample release form. When this is available it will be forwarded to the agencies for use.

CONCURRENT PLANNING

ASFA encourages the use of concurrent planning when a child enters placement. Many agencies use a sequential approach to permanency planning for children. The first plan is generally for the child to return home and planning for this may take 12 to 15 months. Once it becomes apparent that the child will not be returning home, then another permanency goal is identified. This sequential planning takes much longer than if planning were done concurrently. Concurrent planning is a casework process that uses two permanency plans that, for a specified period of time, are both in effect for the child and family.

In concurrent planning the primary plan has a goal of reunification. The county agency must make reasonable efforts for reunification of the family. Concurrent planning DOES NOT eliminate the requirement to make reasonable efforts to reunify the family unless there is a court-approved goal to the contrary. The goal of the second plan, or alternate plan, is another permanency option. It is a contingency plan in case reunification does not work out. Both plans are drawn up at the same time. After a specified period of time, usually one year, one plan emerges as the plan for the child. This depends on the family's progress in meeting the reunification plan.

When a child enters placement, it is critical that the county agency make an accurate assessment of the family's strengths and weaknesses. This assessment is essential to determining what services are needed.

The family service plan is drawn up specifying who will do what, when, etc., to help the family meet the goals. The second plan is drawn up as a "concurrent" plan for another permanency option. This could be with a fit and willing relative, legal guardian or adoption. If the child is placed with a foster family, it should be with a family that would be willing to become the child's adoptive parents if the reunification plan fails. A child's placement must be carefully determined early in the process. Moves must be minimized.

Parents are fully advised of both plans, of their responsibilities and of the limited time period to achieve the specified goals. If the parents fail to comply, then the concurrent plan will prevail.

Documentation is an important element. The county agency starts to build its case from day one by carefully documenting what is transpiring in the case. This documentation could become the legal basis for a court action as a petition to TPR.

Agencies should develop policy on those cases to be selected for concurrent planning. Concurrent planning is not appropriate for all cases. The court should be involved in the development of the policy. County agency policy

should be based on practice standards which are evolving as the process receives national attention.

The Office of Children, Youth and Families (OCYF) has convened a statewide work group that will establish standards for Concurrent Planning for Pennsylvania. It is anticipated that the standards developed by this group will answer many of the questions related to concurrent planning. In addition, OCYF plans to convene a workgroup later this year to develop practice guidelines related to concurrent planning and to release the practice guidelines via a bulletin.

PREPARATION OF FOSTER PARENTS

REQUIREMENT OF FEDERAL LAW

The Senator John H. Chafee Foster Care Independence Program (CFCIP), P.L. 106-169), was signed on December 14, 1999. One of the provisions in the law added a new requirement (42 USC §671(a)(24)) which states:

> "...before a child in foster care under the responsibility of the State [*county*] is placed with prospective foster parents, the prospective foster parents will be prepared adequately with the appropriate knowledge and skills to provide for the needs of the child, and that such preparation will be continued, as necessary, after the placement of the child."
>
> This amendment is effective October 1, 1999.

IMPLEMENTATION GUIDELINES

Preparing prospective foster parents to provide for the needs of the children they will be fostering requires developmental knowledge of children, knowledge of the children who enter foster care, a careful assessment of their own strengths and weaknesses and the training that is needed to successfully foster children. General issues related to training need to include information such as:

- ages of children;
- developmental stages;
- physical, social and emotional needs;
- behavior problems (these may be significant, challenging, and testing);
- issues of separation;
- attachment, grief & loss;
- child being at high risk in terms of behavior, at school, medical/dental needs;

- behavior management techniques;
- discipline techniques; and
- working with the child's parents.

In addition, foster parents may need specialized training to care for children with issues such as:

- significant behavioral or emotional issues;
- substance use/abuse issues;
- learning disabilities;
- sexual abuse; or
- medically fragile/medically complex conditions.

Good casework practice dictates that each family assess their personality, strengths, weaknesses and their capacity to offer temporary or permanent stability to the child. Adequate preparation of a family will help promote a successful foster care placement.

Requirements related to foster parent preparation and training are found in regulation for Foster Family Care Agency (55 PA Code Chapter 3700.) The requirements affect four key areas of training and preparation:

- orientation and training for prospective foster parents;
- assessment of prospective foster parent capacity;
- ongoing foster parent training; and
- assessment of foster parents at the annual reevaluation.

Foster parents to children of adolescent age need to understand the age and the issues related to this age group. Foster parents need to be prepared to help these children, including those children in independent living programs, learn the skills they will need as they approach adulthood. Examples of such skills include:

- cooking;
- budgeting and financial management;
- teaching each child to accept responsibility for his/her own actions including handling his/her emotions;
- encouraging each child to get an education, particularly a high school diploma; and
- communication etiquette (e.g. telephone protocol

As orientation and training are provided for prospective foster parents, the agency must make an assessment of the prospective foster parents' capacity to provide a safe, nurturing environment for the child. (Also see 55 PA Code §3700.64.) Training must be provided minimally six hours annually (55 PA Code

§3700.65.) The annual reevaluation of the foster family to determine continued compliance with Chapter 3700 regulations also includes requirements related to ongoing training, assessment of foster parent capacity.

QUESTION AND ANSWER SECTION

CHILD SAFETY

1. QUESTION: Will child safety be defined by the state? Does safety include physical? Emotional? Parental use of drugs or alcohol? Parents not sending child to school? Safe home?

ANSWER: Determining the safety of a child is part of the investigatory process. A child's safety is specific to the child and his/her circumstances. Forthcoming practice standards will give further guidance to assist agencies in making decisions regarding the full scope of issues to be considered when deciding about a child's safety. In addition, the Risk Assessment Task Force is preparing guidelines for safety assessment. The Pennsylvania Risk Assessment Model provides guidance to risk and guidelines to address issues related to safety. Pennsylvania child welfare Practice Standards will give further guidance during each phase of the casework process.

2. QUESTION: How will safety be documented? For each child?

ANSWER: The documentation of service activity when a family has been accepted for service is found in regulations at §3130.43 Family case records. Service activity includes addressing the safety needs of <u>each</u> child. Specifically (5) requires that the service activity include:

(i) The dates of contact with the family members.
(ii) The parties involved in the contact.
(iii) The action taken.
(iv) The results of the actions.

These requirements are specific for individual family members. For instance, the family service plan may require that the parent take parenting classes and learn appropriate discipline methods to use on a two year old child and a ten year old child. Attendance and resulting impact of the parenting classes should be documented. The parents subsequent use or failure to use this training appropriately should also be documented as observed or noted.

When a child is in placement, the record likewise needs to address issues related to the child's safety in the setting where the child is placed.

In addition, the Family Service plan (regulations at §3130.61), and the Permanency Plan, including any amendments (regulations at §3130.67), must address safety and the services required to remove the risks to each child. Regulations for the review of family service plans at §3130.63(3) require "An assessment of whether the children continue to be safe in the home."

3. QUESTION: Will documentation on safety be acceptable if incorporated in the risk assessment, or will a separate safety plan be required?

ANSWER: No. Documentation related to safety needs to be addressed in several areas: The case record, the family service/child permanency plan and the risk assessment. No one document by itself will fully address issues related to the child's safety. The Risk Assessment Task Force is currently addressing the need to consider safety issues in the risk assessment process.

4. QUESTION: What role do foster parents have in providing children with safe and permanent homes?

ANSWER: Children are usually removed from their homes because of issues relating to child safety. Foster parents are selected and approved because the agency believes the foster parents have the ability to provide a safe setting in which the child can live temporarily.

5. QUESTION: Should county agencies be encouraging/requiring the private providers to address the issue of the placement setting being safe, least restrictive and appropriate for the child?

ANSWER: Yes. The service purchase contract needs to specify the terms under which private providers will be expected to meet all of a child's needs, including safety. The Individual Service Plan (ISP), as described in Private Agency Administrative regulations at §3680.42, is the private agency case record document that addresses child care, protection, and service needs on a daily basis. Regulations published as final for Chapter 3800 Residential Agencies, Facilities and Services describe the Individual Service Plan Content at §3800.226.

6. QUESTION: Identify the difference between assessing risk and assessing safety.

ANSWER: The basic difference is that Risk Assessment involves looking at current risk factors and making a projection regarding the level of risk to which a

child will be exposed. A safety assessment is a more immediate determination about whether existing circumstances place a child in a situation where the child at risk for harm.

DEPENDENCY GROUNDS

7. QUESTION: Should ground # 1 of dependency be interpreted to include newborn children who were damaged in utero by the parent's drug and alcohol use? (Especially when the child was born addicted to a controlled substance and must undergo controlled withdrawal.)

ANSWER: No.

8. QUESTION: The dependency section references the "prior or present conduct of the parent that poses a risk ...to the child." What are examples of prior conduct that would pose a current risk to the child?

ANSWER: Any parental conduct that posed a risk to a child previously may continue to pose a risk to other children in the family. For example, if a parent has issues related to anger control, has injured a child in the past and has failed to get the necessary treatment/counseling, then such conduct may continue to pose a risk to that child or another child. Or, as another example, a mother has a Protection from Abuse Order (PFA) against the father who has injured a child during a domestic violence incidence. The domestic violence continues and the father has not sought any help.

9. QUESTION: The amendment for ground # 10 for a dependent child addresses involuntary termination "within three years immediately preceding the date of birth of the child." If the child was two years old at the time when his parents' rights were involuntarily terminated on a sibling, and the child is now 12 years old, does this fit the definition?

ANSWER: No. The involuntary termination as used in this ground for dependency is limited to a child born within three years of an involuntary TPR. If the TPR occurred 11-1-98, this provision would apply to a child born within three years of that date (by 11-1-2001).

10. QUESTION: Under the new dependent child ground (# 10), how is the information regarding the involuntary termination made available when community service agencies involved with the birth of the new child were not

involved with the family when the termination occurred (i.e. The parent lives in a new county, different hospital, etc.)?

ANSWER: There are many ways that the information could become available to the county agency. The current social service agencies involved with the case may or may not be aware of a prior involuntary TPR. The family may tell the county agency of a prior TPR, or another person may be aware of the information, etc. County agencies need to consult with their legal counsel regarding how to obtain and present evidence needed for court.

11. QUESTION: Does the county agency go to court with a TPR on every child born to parents with an involuntary TPR in the past three years?

ANSWER: No. The agency may petition for dependency using ground #10 if the involuntary TPR time lines are met and the "conduct of the parent poses a risk to the health, safety or welfare of the child."

12. QUESTION: Define parent and sibling. Does "parent" include step-parents? Does "sibling" include step-siblings and half-siblings?

ANSWER: Generally, parent refers to the birth or adoptive parent of a child. The term sibling includes half-siblings, when the children share one parent in common. A step-sibling relationship is dependent upon the marriage of a man and a woman who bring children from a previous relationship to the new marriage. If specific questions arise agency staff should consult with their legal counsel.

DOCUMENTING EFFORTS TO FIND A PERMANENT HOME

13. QUESTION: Is documenting the efforts to find the child a permanent home the responsibility of the county agency or the private agency or both?

ANSWER: The county agency has ultimate case management responsibility for assuring this documentation. Providing adequate documentation of efforts to find a permanent family is a shared responsibility of those involved in the process. Where direct services are provided by a contracted-provider, the county agency should include these requirements in its contract and monitor regularly.

14. QUESTION: In many cases a child profile is done for a child whose father is unknown so there is no information available about the father. What constitutes reasonable efforts by county agencies to identify, locate and involve parents in

case plans for children who enter care? Especially the "alleged" father. What has to be done to identify the unknown parent?

ANSWER: Agencies must make diligent efforts to locate unknown parents. This should start at intake. Unknown parents may be a resource to the child by providing a home and /or financial support. There are many avenues that agencies can explore to try and locate the unknown parent. Some of the steps agencies can do include the following:

- ask the mother and other relatives what information they may have about the unknown parent's whereabouts;
- check with the local county assistance office;
- check police, school and other agencies;
- question the mother about "possible" parents (often more than one individual can be the parent); and
- check with the Domestic Relations Office to access the Federal Parent Locator (see page 19).

15. QUESTION: Home studies of relatives requested from other agencies are bogging down the public agencies who are unprepared for the extra work. Any ideas? Contracting out was already considered but where is the money coming from?

ANSWER: It is encouraging that relatives are stepping forward to become resources for the children in need of permanent families. Home studies are necessary to determine if the relative is fit and willing to provide for the needs of the child. Funding for home studies should be addressed through the Needs-Base Budget process. Home study services may be provided by agencies directly or via purchase of service agreements.

ABANDONED INFANT

16. QUESTION: What is acceptable as "diligent efforts" to locate non-custodial parents? How does this tie to the use of the Parent Locator Service and Domestic Relations?

ANSWER: Diligent efforts to locate non-custodial parents would include, at a minimum, the following efforts:

- ask the custodial parent and other relatives what information they may have about the non-custodial parent's whereabouts;
- check with the local county assistance office;
- check police, school and other agencies; and

- question the custodial parent about "possible" parents (often more than one individual can be the parent); and
- check with the Domestic Relations Office to access the Federal Parent Locator (see page 19).

17. QUESTION: What information is available from the Parent Locator Service?

ANSWER: Federal information memorandum, ACYF-CB-IM-99-02 (Attachment C), limits the information that the county agency may receive regarding an individual who has or may have parental rights to a child to the following:

- The individual's social security number;
- Address and location;
- Employer's name and address
- Employment wages, benefits or other income.

18. QUESTION: Define "infant."

ANSWER: An infant is any child who is newborn through age 18 months.

19. QUESTION: Define "if a parent fails to claim child" as the Orphan's Court would perceive it. Does this include when the parents refuse to visit, financially support the child, or refuses to participate in any planning for the child?

ANSWER: A parent's failure to claim their child may include any or all of the issues raised in the question. The agency must fully document and present to the court all of the facts/reasons the agency believes demonstrate that the parent(s) failed to claim the child. Again, consult with your legal counsel.

NOTICE AND OPPORTUNITY TO BE HEARD

20. QUESTION: Can these provisions be enforced now?

ANSWER: Yes. All of the provisions under this requirement must be enforced as required by state law, 42 Pa.C.S.§6336.1. Notice and hearing. The effective date of the provision was January 1, 1999.

21. QUESTION: Copies of petitions are already being sent to the child's foster parent, preadoptive parent or relative providing care for the child with the time

and date of the review hearing. Is this enough to serve as notification of the hearing?

ANSWER: No. The notice also needs to include the location of the hearing and must inform the child's foster parent, preadoptive parent or relative caring for the child that they will be given the opportunity to be heard at the hearing. The notice also needs to be provided at least 15 days prior to the scheduled hearing date.

22. QUESTION: What about confidentiality in the court room when the child's caregivers are allowed in to be heard? Are caretakers bound by confidentiality?

ANSWER: Each court will address how it will handle matters related to confidentiality. It is suggested that you address this issue with each judge who handles juvenile court cases.

23. QUESTION: Do caretaker notices need to be sent by "registered mail"?

ANSWER: No. There is no requirement that the notice be sent via any special handling. The child's caretakers should have timely notice. Consistent with other notice requirements, timely notice is considered to be mailing the notice 15 days prior to the scheduled hearing.

24. QUESTION: Do caregivers with an opportunity to be heard in court have the right to representation by legal counsel? Who will provide counsel for the caretakers?

ANSWER: No. They do not have legal standing at the hearing.

25. QUESTION: Can private agencies be heard in court under the caretaker definition?

ANSWER: Private agency staff do not fall within the definition of caretaker; therefore, the law does not provide them with the right to receive notice or to be heard at the hearing. The law also does not prohibit private agency staff from participating in scheduled hearings. As people with first hand knowledge of the child's circumstances, participation by private agency staff in the hearings could enhance the hearing process. The rules and practice of local courts will control who will be involved and how their involvement will be incorporated. The agency solicitor should consider private agency staff as potential witnesses.

26. QUESTION: As a private agency we are often not aware of when court hearings are scheduled. How can we be sure that caretakers are notified of hearings when the private agency is not notified?

ANSWER: The public agency, not the private agency, has the responsibility for notifying the caretakers of the hearing. Where the public agency is purchasing services for a child, the public agency should send a copy of the notice to the private agency.

27. QUESTION: Why are caretakers given this opportunity when grandparents are denied?

ANSWER: The Juvenile Act at §6336.1 provides for "the child's foster parent, preadoptive parent or relative providing care for the child" to be given the opportunity to be heard. Caretakers provide care for the child on a daily basis and can provide important notice to the court about the children in their care. When the grandparents are the relatives who are providing for the care of the child, then they have the right to receive notice and to be provided an opportunity to be heard in court.

28. QUESTION: Does the caretaker right to be notified of hearings and be given the opportunity to be heard at hearings include Orphan's Court and TPR hearings?

ANSWER: No. The provision for the notice and opportunity for the child's caretakers to be heard is found in the Juvenile Act and applies only to proceedings under that Act.

FAIR HEARING FOR CROSS-JURISDICTION ADOPTIONS

29. QUESTION: Clarify the cross-jurisdictional requirements. If an agency places a child for adoption with a family, does the agency have to notify other agency approved adoptive applicants of the placement of a child from another jurisdiction?

ANSWER: No.

30. QUESTION: Please clarify what is meant by "denied or delayed" adoptive placement because of cross-jurisdictional considerations.

ANSWER: "Delayed or denied" refer to barriers to child placement. ASFA prohibits denying or delaying placement based on cross-jurisdictional issues. This is an extension of the Multiethnic Placement Act of 1994 (MEPA) and the amendments in Section 1808 of The Small Business Job Protection Act of 1996, entitled "Removal of Barriers to Interethnic Adoption" which forbid using race, ethnicity or culture as barriers to placements. "Denied" refers to any situation where the agency rejects a family for the placement of a child solely because of where the family resides. "Delayed" refers to any situation where placement is postponed, while attempts to locate a family in another location are attempted.

Once a family has been approved and the family has been determined to be a suitable resource for the child, placement should be made without delay.

31. QUESTION: In regards to the requirement for not delaying adoption due to jurisdictional issues, what about children who want to maintain birth family/sibling visitation?

ANSWER: A permanent family for each child in a timely manner is a key principle of ASFA. Agencies need to employ sound casework practice in resolving those issues which could become barriers to a timely permanent family for each child. The adoption worker should counsel the adoptive and birth families so the adoption meets the needs and best interests of the child. When a child has siblings, the considerations of siblings and their needs are an important balance to be considered. The details of birth family/sibling visitation should be worked out such that the adoption is not delayed and that the expenses of the visitation can be provided for in the adoption assistance agreement.

32. QUESTION: We have guidelines/statutes through the interstate compact regarding placing a child from one state to another. Are there or are there going to be regulations regarding placing children from one county to another county? Address the following:

- notification to the receiving county;
- who is responsible for what in post-placement/post-adoption services, etc., and
- who is responsible for funding the entitlements for services?

ANSWER: No. In summary the following will apply:

- Until the adoption is finalized the needs of the child remain the responsibility of the agency with custody of the child.
- Once the adoption is finalized, the child is considered a resident of the county where the child lives.
- The adoptive child, just like the birth child, is entitled to services available in the county where the child lives.

Note: Out of state placements are governed by the interstate compact (for movement) but, just as above, an adopted child has full residency where the child is then living.

33. QUESTION: Will the Statewide Adoption Network pay for registering a child on the National Adoption Exchange?

ANSWER: Yes. The Statewide Adoption Network already pays for registering a child on the National Adoption Exchange. This is done based on a specific request of the county agency to the Pennsylvania Adoption Exchange (PAE) to register the child on the National Adoption Exchange.

Note that this must be done via PAE; not the prime contractor.

34. QUESTION: Will the Statewide Adoption Network pay for out of state placement supervision?

ANSWER: The Statewide Adoption Network includes a network of agencies which work toward the common goal of timely, permanent, adoptive families for children who are in the custody of a county agency. One provision of the network is a contract that allows for specified adoption-related costs to be paid through a prime contractor. It is recommended that the prime contractor be contacted on a case by case basis to determine which adoption-related expense on behalf of any child could be covered by the contract. The county agency would be responsible for allowable costs not covered by the contract.

35. QUESTION: How does ASFA impact on Interstate Compact and out of state placements?

ANSWER: ASFA does not change the requirements on Interstate Compacts. There may, however, be more cases being processed through interstate compacts due to placements across state lines.

36. QUESTION: Does development of a plan and penalties apply if the county agency does not go outside of Statewide Adoption Network (SWAN) for adoptive resources (i.e. interstate adoption)?

ANSWER: Just as the MEPA and the amendments to it (see question #30) removed race and ethnicity as barriers to placement, ASFA says that geographical boundaries cannot be a barrier to placement. SWAN promotes adoptions wherever the adoptive family is located. Agency policy and practice cannot deny or delay placement based on geographical boundaries.

TITLE IV-E ELIGIBILITY - ADOPTION ASSISTANCE

37. QUESTION: When an adoption disrupts and the child goes into placement, is the child automatically eligible for Title IV-E reimbursement? How is that documented on the CY-61?

ANSWER: Upon entry into placement, the child's eligibility for Title IV-E foster care must be established based on the child's removal from the home of adoptive parents. If the adoptive parents do not meet the eligibility criteria for the AFDC program at the time of the child's removal, the child is not eligible for Title IV-E foster care.

ASFA contains a provision that allows for continuation of Title IV-E adoption assistance payments if an adoption disrupts or the adoptive parents die. The provision applies only to those children adopted after October 1, 1997.

38. QUESTION: If a child is in foster care and the goal is changed to adoption, what is the cost center? Adoption or foster care?

ANSWER: The child is still in foster care with a goal of adoption, the foster care costs are still considered placement costs. Adoption activities (e.g. petition to TPR, adoption profiles, etc.) may be going on at the same time while the child is in foster care. These adoption-related activities are charged to the adoption services cost center.

39. QUESTION: Can subsidies match foster care rates/services?

ANSWER: Yes. Regulations at §3140.204(b)(1) state: "The amount of the adoption assistance payment may not exceed the foster care maintenance payment which would have been paid if the child for whom the adoption assistance payment is made were living in a foster family home." The adoption assistance payment does not include administrative costs.

For further discussion on this, please see OCYF Bulletin # 3140-99-01, Adoption Assistance Questions and Answers.

REASONABLE EFFORTS REQUIREMENTS
AGGRAVATED CIRCUMSTANCES

40. QUESTION: Would aggravated circumstances apply if the parent was charged but not convicted? Does a parent have to be convicted of the attempt, solicitation or conspiracy to commit any of the specified offenses? Would

aggravated circumstances apply if the parent was charged with a crime covered within the list of aggravated circumstances but plea bargained to a lesser offense?

ANSWER: The answer depends on which aggravated circumstance the county agency reasonably believes exists. If the aggravated circumstance is one of the crimes, then a conviction is required. However, there are other aggravated circumstances which do not require a conviction; these are aggravated physical neglect, serious bodily injury and sexual violence. Although a parent may be charged and convicted out of circumstances related to these aggravated circumstances, county agencies should not wait for a conviction when any of these arise but petition as appropriate.

41. QUESTION: Parental rights are involuntarily terminated to one of a parents' children. Many years elapse and the circumstance in the family improve considerably. Does the county agency still have to pursue termination of parental rights for the other children?

ANSWER: An involuntary termination of parental rights is not an automatic trigger for a county agency to take steps to terminate parental rights of the other children. The county agency must first assess the safety of the children and make a determination whether a petition for dependency should be filed. If the county agency is filing a dependency petition, then the petition should request a court determination related to aggravated circumstances. See the discussion starting on 38.

42. QUESTION: Does aggravated circumstances apply to every child in the home or just to the subject child?

ANSWER: The safety of every child should be assessed whether or not a petition for dependency is filed. If a petition for dependency is filed, the dependency petition should first request a finding of dependency. If the court finds the child dependent, the next finding should be whether or not aggravated circumstances exist. If the court finds that aggravated circumstances exist, then it should render a finding whether or not reasonable efforts will be made to reunify the family. In those situations where the court previously found the child to be dependent, the agency must file a petition within 21 days of when it reasonably believes that aggravated circumstances exist requesting a finding on whether or not aggravated circumstances exist. If the court finds that aggravated circumstances exist, then it should render a finding whether or not reasonable efforts will be made to reunify the family.

43. QUESTION: Is a nolo contendere the same as a conviction?

ANSWER: Yes.

44. QUESTION: When aggravated circumstances may arise out of conduct that is also a crime, but for which there is not yet a conviction, should the county agency contact the district attorney before filing a petition alleging aggravated circumstances?

Answer: Yes, in order to coordinate efforts and avoid interference with the criminal prosecution. This does not mean that any action on the part of the county agency related to aggravated circumstances need be deferred or postponed because of any actions taken on the part of the district attorney.

45. QUESTION: In regards to the abandoned child, how does substantial contact apply when the parent of the child is in prison?

ANSWER: The length of the prison sentence needs to be considered as does the availability of parent-child contact and the actual pattern of contact historically during the time of the prison sentence. These are not automatic decisions. Each decision is child specific.

46. QUESTION: Do aggravated circumstances apply to indicated/founded abuse cases?

ANSWER: Yes. Aggravated circumstances may apply if the circumstances meet the criteria as contained in the amendments to the Juvenile Act at §6302 Definitions.

47. QUESTION: Does sexual violence need to have a finding in court as an abuse case in order to apply as aggravated circumstances?

ANSWER: No. Sexual violence, like serious bodily injury and aggravated physical neglect, apply when the circumstances meet the criteria as contained in the amendments to the Juvenile Act at §6302 Definitions.

48. QUESTION: Does aggravated circumstances apply to stepparents and the paramour of the parent?

ANSWER: No. The parent must be either biological or adopted. Aggravated circumstances apply when the paramour of the parent is also the parent of the child. Even though aggravated circumstances may not apply for stepparents or

the paramour of the parent, the agency must remain sensitive to the safety risks that a stepparent or paramour may present and proceed through other available means to adequately protect the child.

AGGRAVATED CIRCUMSTANCES PROCESS

49. QUESTION: Regarding the requirement to have a permanency hearing within 30 days of an adjudication of dependency, can the permanency hearing be held the same day as the adjudication? Are there notification or appeal rights that make this a problem? (Concern is that the court calendar makes a 30 day hearing unrealistic.)

ANSWER: Yes, provided that all parties are given notice of the hearing, the permanency hearing can be held on the same day as the adjudication.

50. QUESTION: If the county agency reasonably believes that aggravated circumstances exist at intake, is the county agency required to bring this before the court even if another satisfactory plan (e.g. Placement with a fit and willing relative) has been arranged that would seem to make court involvement unnecessary?

ANSWER: Initiation of court action related to aggravated circumstances pivots on whether or not the agency needs to seek an order of dependency. If an order of dependency is not necessary because the family difficulty can be remedied without court intervention, then aggravated circumstances would not apply.

If the agency reasonably believes that reasonable efforts should be made even though there are aggravated circumstances, the agency can make a recommendation to the court that reasonable efforts to reunify the family should be made.

This is a three step process:

a. file a petition for dependency;
b. if the child is found dependent; then a judicial finding whether or not aggravated circumstances exist; and,
c. if there is a judicial finding that aggravated circumstances exist, whether reasonable efforts will be made to reunify the family.

51. QUESTION: Does a petition for aggravated circumstances still need to be filed when aggravated circumstances applies to one parent only?

ANSWER: Yes. If the agency determines that a dependency petition is appropriate to protect a child, then the agency needs to file for an aggravated

circumstances finding as part of their petition even if the aggravated circumstances applies to only one parent. The agency can make a recommendation on reasonable efforts or even ask the court to defer a finding on this element for a temporary period of time if appropriate.

52. QUESTION: Should county agencies review only current/recent existence of aggravated circumstances? If there are aggravated circumstances that occurred in the past, are those circumstances considered now? If so, how far back do aggravated circumstances go?

ANSWER: There are no time limits on aggravated circumstances. If a situation occurred in the past, the county agency needs to make an assessment of the child's current situation and proceed accordingly.

53. QUESTION: If there are aggravated circumstances, must the court begin the TPR process?

Answer: No. The court does not "begin" this process. The agency must file for a permanency hearing within 30 days of a court determination that aggravated circumstances exist and "reasonable efforts" no longer need to be made. At the permanency hearing a decision on the new permanency plan and goal for the child will be made.

REASONABLE EFFORTS

54. QUESTION: How does the issue of timeliness get addressed when the parents are in prison longer than 22 months?

ANSWER: As stated in response to question number 45, the county agency response to parents who are in prison must be addressed on a case by case basis.

55. QUESTION: Will the county agency have failed to make reasonable efforts if:

- the needed resources are not available (e.g. counselors for perpetrators); and/or
- the county agency lacks funding to purchase/provide needed services. We have a problem with the lack of training and skill by mental health and drug and alcohol providers as well as other providers to engage the "involuntary" children and youth client.

ANSWER: To fully implement ASFA and the Juvenile Act, services must be timely and intensive. This makes it critical to collaborate with other service providers and other community agencies who work with child welfare families. The county agency has the legal responsibility to provide for services. It must identify the needed services and then identify the resources available to meet the services needed. Services may be provided directly by the county agency or by purchasing the necessary services from other community providers. The county agency then needs to identify gaps, if any, in the availability of resources to meet identified service needs. The county agency needs to integrate the services needed, the existing resources and identified gaps in services into a comprehensive package through the Needs-Based Budget and Planning Process.

After considering all evidence presented and the total circumstances of the case, the judge will determine if reasonable efforts have been made.

PERMANENCY HEARINGS

56. QUESTION: Does permanent legal custody mean that parental rights have been terminated? If a TPR has not been done, would that not leave a child vulnerable to a parent filing for custody at a later date?

ANSWER: No. Parental rights do not need to be terminated. These situations, unlike an adoption, may subsequently be reversed. In some cases permanent legal custodianship could be the most appropriate permanency option for a child. The court has to order a permanent legal custodianship arrangement for a child and custodian. Likewise, the court would also have to order changes to the arrangement.

57. QUESTION: Do agencies need to have permanency hearings for children who live with relatives and do not come under court jurisdiction as a result of an agency initiated action? Agencies in these cases do not have legal custody but do provide in home or supportive services.

ANSWER: An agency, for in home service cases, must develop a family service plan and review the status of the plan at six-month intervals in keeping with Department regulations. Permanency hearings are not required.

58. QUESTION: If the court exercises its discretion and decides not to conduct a permanency hearing must the agency conduct an administrative review?

ANSWER: No. The Juvenile Act at §6351 (h) allows the discretion of the court to not conduct permanency hearings:

(1) for a child who has been placed in a living arrangement that is intended to be permanent in nature and that is approved by the court;
(2) for a child who has been placed in an adoptive home pending finalization of adoption pursuant to 23 Pa.C.S. Part III (relating to adoption); or
(3) for a child who has been placed with a permanent legal custodian appointed by the court....

Clarification to this response: **Federal regulations require that permanency hearings must continue to be held until permanency has been achieved for a child.** A pre-adoptive placement does not meet this criterion; only a finalized adoption does. Therefore, county agencies cannot request the court to exercise its discretion to discontinue permanency hearings for a child in a pre-adoptive home. Placement in another living arrangement for a child that is intended to be permanent in nature or placement with a permanent legal custodian are permanency placements. For those two permanency options, the county agency may ask the court to exercise its discretion and not hold further permanency hearings.

If the county agency retains custody of the child, administrative reviews must he conducted every six months in keeping with Chapter 3130 regulations and as modified as discussed on page 53.

59. QUESTION: Which plan should be presented to the court: the last one completed; or the future one?

ANSWER: The most current plan should always be presented at the time of a hearing. The plan should be updated and revised right up to the time of the hearing.

60. QUESTION: There is confusion – are permanency hearings held every 12 months or every 6 months?

ANSWER: Permanency hearings are held every six months or until such time as permanency is achieved for the child.

61. QUESTION: Will confidentiality be an issue when reaching out to relatives and friends as participants in making permanent plans for a child?

ANSWER: OCYF regulations in Chapter 3130, at § 3130.44 address the issue of confidentiality in family case records. Sub-part (c) addresses the need for those involved in service delivery to have access to information, which is needed for

them to fulfill their responsibility on behalf of the child. The regulation states, "The amount and type of information to be released shall be limited to information needed by the service provider to carry out its responsibilities." A service provider includes foster parents who may be kin. Others, e.g., friends and other relatives, may be included in providing input to the process if agreed to by the child and the child's parents; however, confidential information may not be shared with such people. Information obtained/provided must be fully documented in the record.

62. QUESTION: Regulations at §3130 permit the use of administrative review hearings in lieu of the six-month court reviews. This is not an internal review prior to the court process. Some county agencies use this process for a significant number of cases. The Juvenile Act has never referenced this option, but our state regulations and the federal regulations do. Will the Department of Health and Human Services still provide for the administrative review option in lieu of the court hearing and will OCYF Chapter 3130 regulations permit this option to remain?

ANSWER: Permanency hearings must be held by the court every six months until such time that permanency is achieved for the child. Administrative reviews may no longer be substituted for court permanency hearings unless the court opts out of conducting a permanency hearing per revised Juvenile Act, §6351 (H), and the agency continues to have custody of the child. See the response to Question 58.

63. QUESTION: Can a county agency have a permanency hearing at the same time as a hearing regarding a petition for a finding on aggravated circumstances instead of waiting to have the permanency hearing?

ANSWER: Yes. A county agency may combine the petitions requesting court findings. For instance, when the county agency has petitioned the court for a finding that aggravated circumstances exist and that no reasonable efforts will be made to reunify the family, the county agency can request that the court make an aggravated circumstance/ no reasonable efforts finding and determine the child's permanency plan at the same time. If the hearings are held separately, then the permanency hearing regarding the child's permanency plan must be held within 30 days of the finding that aggravated circumstances exist and that no reasonable efforts will be made to reunify the family.

64. QUESTION: Is long term foster care still an option?

ANSWER: The amendments to the Juvenile Act at §6351 (G) lists as an available option for a child in placement, that the child will be placed "... in

another living arrangement intended to be permanent in nature and approved by the court...." Chapter 3130 regulations, when revised, will contain similar language. While this language does not prohibit a foster family from being designated as "another living arrangement intended to be permanent," the intent of ASFA and Pennsylvania amendments to the Juvenile Act is to restrict any option for a child that limits the legal assurances that the placement is intended to be permanent. Long term placement with a foster family that does not offer the protections as currently defined in the Juvenile Act relating to "another living arrangement intended to be permanent" will not be acceptable.
To be acceptable, the county agency must document in the case record why it would not serve the child's physical, mental or emotional health, safety or morals for the child to return home, to be placed for adoption, to be placed with a relative or to be placed with a permanent legal custodian. The record must also reflect why this particular family is the one for this particular child. It must also reflect the family's intention to provide a home for the child permanently. The family's commitment to the child needs to extend beyond age 18. Based on this documentation, the county agency then must obtain court approval for such placements which are considered to be "another living arrangement intended to be permanent."

65. QUESTION: What happens to the children who already have a goal of long term foster care?

ANSWER: Long term foster care is no longer a goal in the Juvenile Act. Therefore a goal needs to be identified for the child at the next permanency hearing to reflect the new requirements of the Juvenile Act. A child who has been in long term foster care needs a permanent home. Adoption and legal custodianship of the child should be explored with the foster family or with another family. If these are not an option, the child has bonded with the foster family and the foster family is willing to make a permanent commitment to the child (see the above question), then the county agency may consider petitioning the court that a compelling reason exists that a petition to TPR does not need to be filed for this particular child. The county agency then should request the court approve the living arrangement with the foster parents as the child's permanent living arrangement. Note that each case needs to be carefully reviewed for the best permanency plan for each child.

66. QUESTION: If the judge refuses to change the goal, does the agency have the right to appeal?

ANSWER: Yes. Local court decisions may always be appealed by following the normal appellate process for Juvenile Court decisions. Consult with your attorney regarding access to the appeal process.

67. QUESTION: Does placement with a permanent legal custodian constitute permanency?

ANSWER: Yes. Permanent legal custodianship is intended to be permanent. However, because parental rights are not usually terminated, the court should stipulate the terms and conditions of the custodial relationship in the custody order. At a minimum, the order should address temporary visitation rights for the parents and refer matters related to continuing visitation and child support to the Court of Common Pleas.

68. QUESTION: Can a juvenile court judge supercede a custody order, and order a permanent legal custodianship?

ANSWER: Yes. The most recent court order would prevail. Note that juvenile court, domestic relations court, etc., are all part of the county common pleas court. It does not matter which court proceeding issued the order.

69. QUESTION: If the goal is another planned permanent placement, is a permanency hearing still required?

ANSWER: This is at the discretion of the court. If permanency hearings are discontinued under the discretionary provisions of the Juvenile Act (42 Pa.C.S. § 6351(h)) and the county agency retains custody, the county agency must document in the record why and then must conduct administrative reviews every six months. (See question #58.)

70. QUESTION: What impact will ASFA have on children who have already been waiting for years for a family?

ANSWER: ASFA provides for a phase-in for the requirement to terminate parental rights (see page 54) to achieve permanency for these children at the earliest possible time, consistent with the child's best interests. In addition, if the agency reasonably believes that aggravated circumstances exist, the requirements related to expedited permanency process may also apply.

71. QUESTION: Many families receiving services have children in placement are struggling with drug and MH/MR issues. How will the law affect them?

ANSWER: Families with drug and alcohol related problems will need to engage in treatment/services to address their problems. Treatment considerations and the response of the parent to treatment will need to be considered with the

context of the child's time perspectives. In other words, because children cannot wait indefinitely for a permanent family, parents who are dealing with drug and alcohol related issues could be the subject of an involuntary petition to terminate parental rights if they are not demonstrating commitment and progress that will assure reunification within a reasonable time frame. If, in the judgement of those involved in the case, delays to achieve permanency are hurting the child and grounds to terminate parental rights exist, TPR should be pursued.

72. QUESTION: Does ASFA address keeping "sibling groups" together in permanency planning?

ANSWER: Yes. Safety of children is a paramount concern of ASFA. A child who loses or is at risk of losing the protection that parents can provide need to have security to whatever extent possible built into service arrangements. Siblings are a meaningful source of security, safety and permanency for children.

73. QUESTION: A judge conducts a permanency hearing and issues an order stating that the placement selected is best suited to the safety, protection, and physical, mental and moral welfare of the child. Subsequent to the order the placement disrupts. Can the county agency move the child and wait until the next scheduled permanency hearing to address the changes in child circumstances, or do they need to schedule a hearing before the next normally scheduled permanency hearing to have the judge rule on the placement?

ANSWER: The county agency needs to exercise its best casework judgement in such cases. Minimally, permanency hearings are required once every six months, but cases like the one described create obvious circumstances in which the court will require more timely information regarding the child's status.

74. QUESTION: If a county agency fails to adhere to ASFA requirements, what are the responsibilities of private agencies providing services to the child?

ANSWER: The county agency is responsible for meeting ASFA requirements on behalf of children. Private agencies are responsible for meeting ASFA related requirements to the extent such requirements are specified in contracts with counties. Sanctions may be taken by the county agency against the private agency for non-performance on ASFA related issues. The county agency will be held accountable for over-all adherence.

75. QUESTION: Does permanency planning begin at intake or at placement?

ANSWER: At intake.

76. QUESTION: Is a detention hearing a permanency hearing? Do the requirements of notice and opportunity to be heard apply to detention hearings?

ANSWER: No, a detention hearing is not a permanency hearing.
Yes, the requirements of notice and opportunity to be heard apply if the child is living with a person, who meets the definition of caretaker (foster/adoptive parent or relative).

77. QUESTION: If a child was in placement prior to ASFA and continues in placement and there were past aggravated circumstances (pre-ASFA), does the county agency still need to have a hearing on aggravated circumstances. Why implement in a long-standing case when it is not necessary?

ANSWER: Yes, it is a requirement of law. The Juvenile Act at §6334(b)(2) requires:

> "If the county agency reasonably believes that aggravated circumstances exist, it shall file the appropriate petition as soon as possible, but no later than 21 days from the determination by the county agency that aggravated circumstances exist."

A child with a long-standing case, has the same urgent need for a permanent family as does a child who is new to the system. Applying aggravated circumstances could give the child a chance to achieve a permanent family in the timeliest manner. Remember that the court will make separate findings on the existence of aggravated circumstances and the need to continue to provide reasonable efforts to reunify the family.

FILING FOR TERMINATION OF PARENTAL RIGHTS (TPR)

78. QUESTION: Does "services not provided" mean all services included in the family service plan or just those that the county agency provides directly or purchases?

ANSWER: "Services not provided" refers to all services that are identified in the family service plan/child's permanency plan.

79. QUESTION: Is it correct that case law will determine compelling reasons?

ANSWER: Over time case law will provide county agencies and courts guidance on those circumstances that rise to the level of compelling reasons. These cases need to be based on documented case-specific issues/circumstances. Documentation must be thorough. It must reflect why the county agency believes a compelling reason exists for the particular child. County agencies may not categorize a child for a compelling reason exception because the child meets certain criteria. Documentation must be case-specific.

80. QUESTION: Are county agencies to disrupt children in existing long term placements who have bonded with these families who wish to continue to provide foster care and not adoptive services?

ANSWER: ASFA, with revised provisions as contained in Pennsylvania law, is intended to allow the best possible permanency outcome to be achieved for each child. Each case requires effective counseling with the child, foster family and birth family to assure understanding of how to achieve the greatest degree of permanency. Agencies should not assume that because a child has been in a setting for a length of time that there cannot be a more permanent plan for a child. Each case needs to be examined with openness and clarity. The requirement related to filing a petition to TPR must be fully considered. If the child has bonded with the foster family and the foster family is willing to make a permanent commitment to the child then the county agency may consider filing a petition that a compelling reason exists that a petition to TPR does not need to be filed for this particular child. The case is then brought before the court for consideration. Based on the county agency recommendation and input from others at the hearing, the court will then make a decision that is consistent with the needs and best interests of the child. (See related questions #64 and 65.)

81. QUESTION: What recourse does the county agency have if other service providers are not carrying out service delivery as required by the Family Service Plan? For example, mental retardation.

ANSWER: County agencies should be working to build collaborative working relationships with other community service providers so that recourse will not be needed. In those few situations where collaboration can not be achieved, the county agency should work through the regional office if local efforts have failed.

82. QUESTION: Give examples of compelling reasons when a petition to terminate parental rights may not be appropriate.

ANSWER: The situation of each child is unique. It is difficult if not impossible to provide examples of "compelling reasons" because all of the circumstances must be considered before deciding if the case would be considered to be compelling.

Examples for training purposes are provided in the OCYF curriculum on ASFA. We hesitate to provide examples of exceptions in policy clarification because of the danger in creating fixed categories of exceptions. The principles that should guide this analysis are:

- the parent has made substantial progress in eliminating the problems that resulted in the placement of the child and it is likely that the child will return home in a short period of time;
- a child is over age 12 and has a positive relationship with the parent and a permanency goal other than adoption is best suited for the child;
- a child is over age 12 and is adamantly opposed to adoption even after having been counseled and is likely to cause the adoption to disrupt;
- a child is not capable of functioning in a family setting at this time. This needs to be reconsidered later.

83. QUESTION: What happens when the petition to TPR is denied in court? When does the county agency have to re-file?

ANSWER: If, at the next scheduled permanency hearing, the child has been in placement 15 of the most recent 22 months a TPR petition must again be filed, unless a compelling reason for not filing TPR has been approved by the court.

84. QUESTION: How do appeals by parents affect the 15 month period? For example, a parent may be appealing a goal change and the appeal process may be lengthy (one to two years).

ANSWER: The requirement for a county agency to file a petition to TPR is not affected by a parent who appeals a goal change.

85. QUESTION: Is there a time limit stipulated between petitioning for TPR and when TPR is granted?

ANSWER: Current state law does not provide a time frame within which a court must act on a TPR petition. County agencies are encouraged to work with the court to avoid undue delays.

86. QUESTION: Every involuntary TPR is appealed in our county and the county agency has to continue to make reasonable efforts until the appeal process is finished. Any ideas?

ANSWER: When parental rights are terminated, all agency efforts are directed toward connecting the child with the new permanent family. Reasonable efforts

to reunify with the birth family no longer need to be made unless the court so orders.

87. QUESTION: At the 12 month permanency hearing the goal of reunification by 15 months is recommended and court approved. At 14 months the parents are no longer able to have the child return home. The county agency does not wish to secure court approval for compelling reasons. Does the county agency file for TPR at 15 months without returning to Juvenile Court to change the goal first?

ANSWER: The agency should petition the court to change the goal and file the petition to TPR before the end of the 15th month.

88. QUESTION: The Pennsylvania Adoption Law does not currently provide the grounds for TPR that would connect directly to the amended Juvenile Act. How can agencies proceed under such circumstances?

ANSWER: The county agency should carefully review all circumstances that will support grounds to terminate parental rights and not limit the search to the aggravated circumstances provision of the Juvenile Act.. Agencies need to work with their legal counsel to be sure that none of the existing grounds would be suitable to use in preparing a TPR. If it is decided that no ground to terminate parental rights exists, the agency will need to prepare a case that a compelling reason exists since grounds to petition to terminate parental rights are not present.

89. QUESTION: When does 15 out of 22 months start in the following example?

- Child placed 6-96; returns home 8-97 (been in care 14 months); child placed again 1-99. Does the clock start at 6-97 or at 1-99 when the law is effective?

ANSWER: For a child who enters placement again in January 1999, and if the child remains in continuous care, the petition to terminate parental rights must be filed before the end of March 2000. This would be the first time the child would meet the 15 out of the most recent 22 months in care.

90. QUESTION: If a county agency goes to court for a goal change to adoption at 12 months in placement, and the court denies the goal change during the permanency hearing, will the county agency still need to file a petition to TPR before the end of the 15th month?

ANSWER: The issue here is that the child must have a court approved permanency plan. If the court approves a permanency plan other than reunification or kinship placement, the court must first look at the facts to determine, as per the Juvenile Act, if a compelling reason exists to allow an exception to the requirement to file a petition to TPR before the end of the 15th month. Until permanency has been achieved for the child, the issue of TPR, must be addressed at subsequent permanency hearings.

91. QUESTION: If the petition to TPR is not filed within the appropriate time limits, what are the consequences?

ANSWER: The county agency will be cited for non-compliance to state law and regulations (§3130.21(b)) which can effect agencies certificate of compliance. The state and/or county agency may also lose funding under Tiles IV-B and IV-E of the Social Security Act.

92. QUESTION: Does the exception for a relative caring for the child apply to relatives who are also foster parents?

ANSWER: Yes provided that placement with the relative is identified as the permanency goal for the child.

93. QUESTION: Does placement just mean foster care?

ANSWER: No. It means all forms of substitute care as authorized by court order or a voluntary agreement.

94. QUESTION: There are counties that do not have supportive services for families so as to reunite the child in placement with the child's family. Concern is expressed about the lack of services and railroading families to implement ASFA timetables?

ANSWER: The agencies must provide or make available services reflective of the needs of families on the agency caseload. The child's best interests are the focal point. Both agency and parental responsibility will be weighed by the court in deciding on permanency for the child. All counties have mandated categorical services. In addition, agencies need to work with private providers to develop the necessary services.

95. QUESTION: Can the same compelling reason be used more than once? For example, a parent is in rehab and the child has been in care for 15 months.

At the permanency hearing the court agrees that there is a compelling reason since the parent is cooperative, etc. Six months later the situation is still the same but the drug and alcohol facility is recommending another six months for the parent. Is this still a compelling reason not to file a petition to TPR?

ANSWER: The court will determine if a compelling reason exists or continues to exist. The intent of ASFA is to achieve a permanency plan within 15 months. Under certain circumstances, there may be sufficient reason to extend the time frame up to an additional six months. Beyond that, it would be very difficult to justify an additional extension. The court will determine if a compelling reason exists or continues to exist. While the parent's needs for continuing drug and alcohol services needs to be given careful consideration, the parent's needs for services cannot be the sole reason for an agency to ignore the child's need to be placed with a permanent family in a timely manner. A child's sense of time must be given primary consideration. Throughout the service process, the county agency continues to access the family circumstances. The county agency must always consider the following principles:

- the extent of progress being made by the parents to reunite their family;
- the developmental needs of the child; and
- how temporary placement is meeting and effecting the child's needs.

JUVENILE DELINQUENTS/SHARED CASE MANAGEMENT

96. QUESTION: Must a family service plan be completed for a Title IV-E eligible delinquent youth if the youth is removed from placement and returned home before 30 days have elapsed?

ANSWER: No. The youth would no longer be Title IV-E eligible and Chapter 3130 would no longer apply. If the placement lasts for 30 or more days, the family service plan must be developed.

97. QUESTION: Does safety have to be constantly assured for JPO youth in placement?

ANSWER: Yes.

98. QUESTION: What does JPO need to do to comply with filing petitions for TPR?

ANSWER: The county agency files the petition to TPR. The county agency and JPO must work together to assure that the necessary information is gathered,

that the child is counseled, that a recommendation that best meets a child's interests is made and that court documents are properly prepared and filed.

99. QUESTION: For youths adjudicated delinquent and whose parents are not abusive or neglectful, how is the compelling reason exception to be applied?

ANSWER: If the child's behavior (adjudication of delinquency) is the reason for the child's placement, and, if the parents are providing a suitable family environment for the child, the county agency/juvenile probation office should present to the court a statement that references the parents strengths and resource capacity as a compelling reason that a petition to terminate parental rights does not need to be filed.

100. QUESTION: Must records maintained by juvenile probation on Title IV-E eligible youth be made available to state and federal officials/auditors?

ANSWER: Yes. This is required for federal financial participation under Title IV-E. Documentation is essential to protect the child and provide for timely permanency.

DRUG AND ALCOHOL ISSUES/ACCESS TO TREATMENT RECORDS

101. QUESTION: Do drug and alcohol confidentiality laws conflict with the release of record requirements in the Juvenile Act? Does one supercede the other?

ANSWER: The drug and alcohol language in the Juvenile Act (§6352.1) was amended to allow for release of information according to federal regulations. It applies only in those cases that fall under the provisions of the Juvenile Act. Specifically, this means any child alleged or found to be delinquent or dependent, or the child's parents.

Confidentiality regarding these cases is determined by federal regulation; not by any other state law, regulation or policy.

Staff from the Department of Public Welfare, the Juvenile Court Judges'. Commission and the Department of Health are currently preparing guidelines for when to request the information (via a voluntary release by the drug and alcohol client or by a court order) and what types of information to request on the release including suggested time frames for the length of the release.

102. QUESTION: How is cooperation going to be ensured with drug and alcohol information? Both drug and alcohol providers and mental health providers are concerned that if they testify against a family, it will (and does) effect their working relationship with the family.

ANSWER: It is best if each county agency begin and continue collaboration with drug and alcohol and mental health/mental retardation providers regarding such issues and how best to resolve these for their communities. The reality of the situation is that the workers involved with the families need to be very clear what the options are and the consequences. A new bulletin is in the process of being prepared that discusses consents to release information.