



Forever Families:

Improving Outcomes by Achieving
Permanency for Legal Orphans

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Forever Families: Improving Outcomes by Achieving Permanency for Legal Orphans

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Technical Assistance Bulletin

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Introduction

Waiting. The child is sitting on the curb waiting to be picked up after school. The child waits while all the other children go home with their parents. But nobody comes for this waiting child. Nobody is coming. There are no parents. There is no home.

Waiting Children. That is what the government calls children in foster care who are waiting to be adopted. There are over 100,000 waiting children in America. Most of these children are legal orphans. Their biological parents' rights have been permanently terminated, but they have not been adopted nor has any other legally binding relationship with a family been established. Many are nearing adulthood, and will age out of the foster care system, moving into adult life with no parent to "pick them up" and help them on their way. There are too many waiting children, and they have been waiting for too long.*

* Per Adoption and Foster Care Analysis and Reporting System (AFCARS)

What is a "Legal Orphan"?

In the dependency court system, a legal orphan is a child whose parents' rights have been terminated and who has no legal permanent connection to a family.¹ The child remains in foster care and has not been adopted or placed in a legal relationship with a guardian or with kin. A legal orphan may have no legal relationship with her parents' extended families,² might not inherit from his parents or their families, and is effectively a child of the state. With no family connections, these children frequently age-out of the foster care system once they reach adulthood. At that point, they face statistically poor outcomes.

Only a small fraction of legal orphans who age-out of foster care pursue education beyond high school. At least half of these young adults report suffering financial hardship – less than one-half had a job during the year studied, one-fourth had no income from employment at all, and half of those who did work made less than \$8,000 annually.³ Thirty percent of legal orphans have suffered food insecurity and many have accessed food stamps and other public assistance programs.⁴ Too many of the young men are or have been incarcerated as adults, and too many of the young women have been pregnant and were single parents.⁵ Forty percent of legal orphans who aged-out have been homeless or "couch surfed" at others' residences after leaving foster care.⁶

1 "Courts must be welcoming and respectful to people of all races, legal, ethnic, and socio-economic statuses, honoring family in all its forms." Key Principles of Permanency Planning for Children, see http://www.ncjfcj.org/sites/default/files/keyprinciples.final_permplanning.pdf

2 Some states have statutes allowing a child to inherit from biological parents whose parental rights have been terminated.

3 Courtney, M.E., Dworsky, A., et al., "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24," (2010), see http://www.cafosteringconnections.org/pdfs/Midwest_Study_Age_23_24.pdf

4 Ibid.

5 Ibid.

6 Courtney, M.E., Dworsky, A., et al., "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Ages 23 and 24," (2010), see http://www.cafosteringconnections.org/pdfs/Midwest_Study_Age_23_24.pdf

Adoption is the preferred legal relationship for all legal orphans, as defined by federal law and recommended judicial practice. However, for some legal orphans, guardianship or permanent custody may be the best available option, and established relationships with relatives should be made legal and permanent whenever possible. Every child should have a permanent legal relationship with an appropriate, caring adult prior to aging out of foster care. Addressing the permanency needs of older youth in foster care by connecting them to a family or caring adult who is committed to the youth for a lifetime is a critical component of their successful preparation for adulthood.⁷ As stated in the Key Principles for Permanency Planning for Children (“Key Principles”): “[f]amilies are the cornerstone of our society, and children have a right to grow up with their families as long as they can be safe.”⁸

This technical assistance bulletin offers policy and practice recommendations to reduce the number of legal orphans in foster care. Data collection and judicial leadership are critical to providing permanency to legal orphans and preventing children from aging-out of foster care where they potentially face poor outcomes as adults. The policy and practice recommendations herein are based on judicially-led collaborative systems change processes where all stakeholder groups are represented at the table and contributing to the systems change work, such as those utilized in NCJFCJ Model Courts. For more information on NCJFCJ Model Courts, please see <http://www.ncjfcj.org/our-work/model-courts>.

Addressing the permanency needs of older youth in foster care by connecting them to a family or caring adult who is committed to the youth for a lifetime is a critical component of their successful preparation for adulthood.

The Legal Framework

Why the Dependency Court Should Focus on Legal Orphans

Courts have the authority over and responsibility for children in foster care under both state and federal laws. The courts are required to proactively assess issues related to the child’s safety, permanency, and well-being, including in the cases of legal orphans. Under the Adoption and Safe Families Act (ASFA),⁹ the court has the duty and authority to provide ongoing oversight for every dependency case, including meeting ASFA timelines and requirements. For legal orphans, this oversight must occur at review hearings held at least every six months after termination of parental rights, and at permanency hearings held at least every twelve months from the initial removal until termination of the court’s jurisdiction.¹⁰ The permanency goals for the legal orphan and the agency’s reasonable efforts to achieve those goals must be reviewed for every child who is in the custody of the child welfare agency and under the court’s jurisdiction.¹¹ These are the minimum requirements under ASFA but, to be effective, more frequent reviews and vigilant judicial oversight is required.

As more children became freed for adoption under the expedited permanency provisions of ASFA, the need for focused attention on the needs of legal orphans became apparent. In 2008,

7 Casey Family Programs, “Improving Outcomes for Older Youth in Foster Care” (2008)

8 See Key Principles http://www.ncjfcj.org/sites/default/files/keyprinciples.final_.permplanning.pdf

9 Adoption and Safe Families Act (ASFA), 42 U.S.C. § 675, et. seq.

10 Ibid.

11 Ibid.

Congress enacted the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections).¹² This act supports the needs of legal orphans in a number of ways:

- early identification and notification of all parents and relatives is required,
- parent locator and kinship navigator programs are authorized and funding is offered to support the programs,
- intensive family finding practice is encouraged,
- siblings must be kept together absent specific court findings as to why separation is necessary for safety or well-being,
- financial support is authorized for relatives adopting or entering into legal guardianship.¹³

“Belonging” is a core human need and children need families to support their growth and development. Legal orphans are absolutely dependent on the state to find them a family. Although a child’s interest in being part of a family has not received “fundamental right” status, a child’s right to be free from “harm” while in foster care has been found by a federal court to be a constitutionally protected liberty interest: “Children in foster care have a substantive due process right to protection from harm....[They] have a substantive due process right to be free from unreasonable and unnecessary intrusions into their emotional well-being....Individuals in state custody...have a constitutional right to conditions of confinement which bear a reasonable relationship to the purpose of their custody. The goal of the child welfare system is ‘to further the best interest of children by helping to create nurturing family environments....’[Foster children] are entitled to conditions and duration of foster care which are reasonably related to this goal.”¹⁴

Identifying and Measuring Your Legal Orphan Population

“To demonstrate the effectiveness of the system and to improve its ability to serve children and families, courts should strive to maintain data on every aspect of the process and use that data to identify and achieve system improvements.”¹⁵

Every court should have its own data information system, or access to data, that identifies, among other things, every child under the ongoing jurisdiction of the court, the child’s legal status, permanency goal, record of hearings, and assigned judge. For purposes of tracking legal orphans, reports from the information system should be able to be sorted by the case name and case number of every child whose parental rights have been terminated. Reports should also be available on children who have been under the court’s jurisdiction for more than a year and whose custody or supervision remains with the agency so that the judge can focus on timely permanency and avoiding long-term foster care for these children.

Reports should be provided on a monthly basis to the presiding judge as well as to each individual judge regarding their assigned cases. Using this information, the judge can focus on the specific children who are legal orphans, tailoring questions and requesting information to ensure these

¹² 42 U.S.C. § 675, et. seq.

¹³ See also www.grandfamilies.org

¹⁴ *Marisol A. v. Giuliani*, 929 F.Supp.662, S.D.N.Y., 1996, reported in Abrams & Ramsey, “Children and the Law,” 4th Ed.

¹⁵ See Key Principles http://www.ncjfcj.org/sites/default/files/keyprinciples.final_.permplanning.pdf

children achieve timely permanency. The court system should track success in reducing the jurisdiction's number of legal orphans and supporting better outcomes for children leaving foster care.

Every court system should have an ongoing collaborative relationship with its child welfare agency and share information regarding all children in the custody or under the supervision of the agency and under the court's jurisdiction. The court and agency information should serve as a check-and-balance to ensure all children under the court's jurisdiction and in the custody or under the supervision of that agency are accounted for. On a regularly agreed-upon basis, the court and agency should be able to provide to each other the case names, case numbers, legal status, permanency goal, and record of hearings. This assures that the court and agency have identified the same children as legal orphans. Confidentiality concerns should not inhibit the free sharing of this information, as both the court and the agency have jurisdiction and authority over these children, and both are statutorily required to perform specific functions regarding these children. Neither the court nor the agency could meet its obligations without sharing this information and identifying children who are legal orphans.

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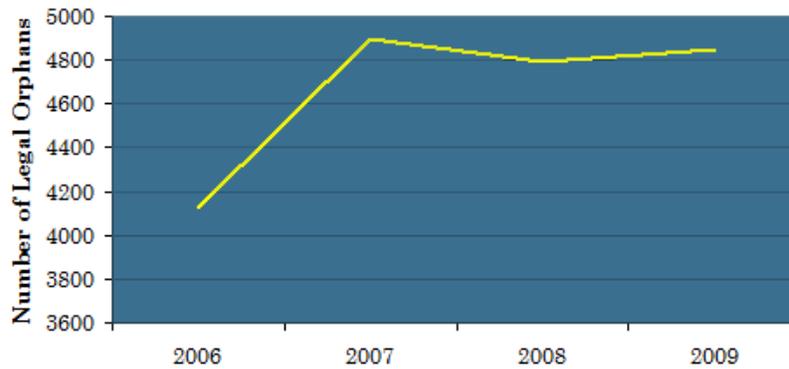
Each state's Court Improvement Project or Court Improvement Program (CIP) should receive semi-annual reports from the Department of Health and Human Services' Children's Bureau through the Adoption and Foster Care Analysis and Reporting System (AFCARS) identifying all "legal orphans" in the state. As every legal orphan is under the jurisdiction of a court as mandated by ASFA, every court should receive at least the AFCARS identifying information regarding legal orphans. However, this is aggregate data, and is not broken down by local court jurisdiction, nor does it identify by name individual legal orphans for specific court focus and reasonable efforts analysis. Nonetheless, identifying AFCARS numbers can be provided, from which courts should be able to ascertain names.

The national data on legal orphans reported by AFCARS shows a steady increase in legal orphans aging out and at risk of aging out. Except in states like New Jersey, which has focused intense efforts on reducing these numbers, most states have not effectively addressed this issue, and no state achieved substantial compliance on this measurement on the first round of Federal Child and Family Service Reviews. While a number of states showed improvements in the second round, most did not reach the level of substantial compliance. To date, there are still thousands of legal orphans waiting for permanency.¹⁶

¹⁶ 2010 CFSR State Safety & Permanency Composites Scores: <http://cwoutcomes.acf.hhs.gov/data/>

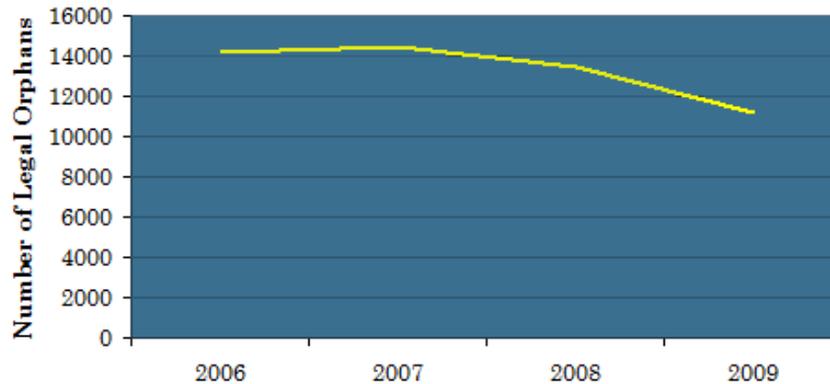
Legal orphans exiting to non-permanency numbered 4,124 in 2006, 4,893 in 2007, 4,795 in 2008, and 4,848 in 2009:¹⁷

Legal Orphans Aging Out in the U.S.



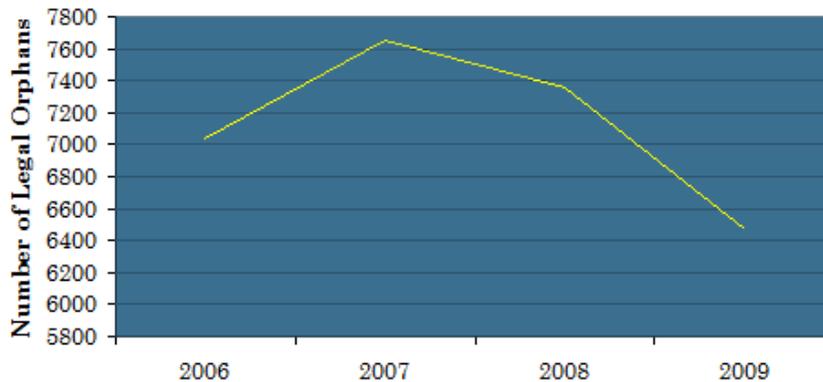
Legal orphans still under court jurisdiction at risk of aging out numbered 14,157 in 2006, 14,499 in 2007, 13,427 in 2008, and 11,186 in 2009:¹⁸

Legal Orphans at Risk of Aging Out in the U.S.



Legal orphans aged 16-18 at risk of aging out numbered 7,039 in 2006, 7,657 in 2007, 7,352 in 2008, and 6,474 in 2009:¹⁹

Legal Orphans 16-18 at Risk of Aging Out in the U.S.



¹⁷ AFCARS, <http://www.acf.hhs.gov/programs/cb/research-data-technology/reporting-systems/afcars>

¹⁸ Ibid.

¹⁹ Ibid.

The decline in total numbers of children at risk of aging out is due to a continuous decrease in the total numbers of children in foster care. The intensified focus on expediting permanency for younger children also contributes to the reduction in legal orphan numbers. System-wide reform efforts and improved practices throughout the country account for the overall decrease in the foster care population, and thus overall lower numbers of legal orphans. However, the numbers of legal orphans aging out has not been as dramatically impacted, hence the need for closer judicial oversight.²⁰

State AFCARS reports with aggregated numbers on legal orphans are provided twice a year to the federal government. For those systems which can identify legal orphans from their own information systems, the AFCARS data is an excellent “double check.” For those court systems which cannot identify legal orphans from their own data, the AFCARS data allows them to quickly identify and assist the legal orphans under their jurisdiction. A goal of the NCJFCJ Legal Orphans Committee is to work with the Children’s Bureau of the Department of Health and Human Services to provide data on legal orphans so that they can be identified in local jurisdictions.

For those systems which can identify legal orphans from their own information systems, the AFCARS data is an excellent “double check.”

Best Practices in Dependency Cases

The judge should implement best practices for permanency planning from the beginning of the case forward. Not only will utilizing these practices reduce the number of children who become legal orphans, they will also expedite permanency for children whose parents’ rights are terminated. The judicial best practice guides *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*²¹ and *Adoption and Permanency Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*,²² along with the visionary framework of the Key Principles for Permanency Planning for Children, have served as the blueprint for judicially-led systems change in child welfare cases in jurisdictions across the country for over 15 years.

One Family-One Judge

The judge makes the order “creating a legal orphan” and thus the judge must assure that the child does not remain one. The same judge should preside over all hearings and make all orders related to the child throughout the case. This will ensure a thorough understanding of the history, decisions, challenges, and successes in each case, to enable a full analysis of reasonable efforts based on all available information, and make certain that the agency is truly moving forward to achieve permanency for the child.

If state law requires the case be transferred to another judge for the termination of parental rights (TPR) or other adversarial proceedings, the new judge should either keep the case including all further review hearings through termination of jurisdiction, or the case should be returned to the judge who initially had the case. In either circumstance, the judges should communicate with each other

20 It should also be noted that a growing number of states have continuing jurisdiction over legal orphans beyond the age of 18. Those children are not included in the statistics reported here.

21 <http://ncjfcj.org/resource-library/publications/resource-guidelines-improving-court-practice-child-abuse-neglect-cases>

22 <http://ncjfcj.org/resource-library/publications/adoption-and-permanency-guidelines-improving-court-practice-child>

about the events and status of the case, and in no event should more than two judges be involved in the case. No hearing should ever end without the next hearing date and time being set for the following hearing, regardless of who the judge will be.

Consistency in caseworkers, legal representation for the child, and in Court Appointed Special Advocates (CASA) are of similar importance to the child and the case. Adolescents aging-out of foster care, both legal orphans and those whose parental rights are intact, reported that having the same caseworker throughout their case was very important to them and to their success in foster care and afterward.²³ Additionally, multiple caseworker changes are also noted to be a major factor in poor outcomes after children age out. As reported by Casey Family Programs “[y]outh who experienced a change in case worker post-TPR were 44% less likely to be adopted than those who did not experience a change in case worker.”²⁴ While it may be necessary to add a caseworker to do focused and targeted recruiting for an adoptive or permanent home for a legal orphan, that caseworker should not replace the ongoing worker with whom the child is familiar and has a trusting relationship. Moreover, under concurrent planning principles, adoption recruitment, guardianship and kinship placement efforts should be taking place prior to the TPR and the adoption or permanency case worker should not be unknown to the child or the judge. The judge should take a role in this process by examining reasonable efforts related to all components of the primary and concurrent plans at every hearing.

It is also very important that the attorney, guardian ad litem, or CASA who is assigned to the child pre-TPR remain with the child through permanency and case closure. It is not uncommon for the attorney to be released upon TPR. This leaves the child without representation throughout all of the post-TPR hearings, alternative dispute processes, team meetings, and other proceedings where other parties are still represented by counsel. The child’s attorney should remain in place until the court terminates jurisdiction.

Strict Judicial Oversight and Frequent Reviews

“Judges must provide fair, equal, effective, and timely justice for children and their families throughout the life of the case, continually measuring the progress toward permanency for children....Through frequent and thorough review, without needless delay, judges must regularly exercise their authority to set and monitor the timeliness, quantity, quality, and cultural responsiveness of the services for children and families.”²⁵ Judicial oversight has been a permanency planning principle since the passage of the Adoption Assistance and Child Welfare Act in 1980.²⁶ When that oversight was not enough to keep children from remaining in foster care indefinitely, it was emphasized again and strengthened in ASFA with specified judicial findings, time frames for hearings, decision-making, and other added provisions. ASFA also promoted the use of concurrent planning to reduce the time a child would spend in foster care if reunification with the child’s parents could not be achieved.

Every child in foster care should have a judicial review hearing at least every 90 days, in addition to the six-month permanency review required by ASFA. If, at that six-month hearing, the family is

23 Cushing, G., & Greenblatt, S.B., “Vulnerability to foster care drift after the termination of parental rights,” *Research on Social Work Practice*, 19(6) (2009).

24 *Ibid.*

25 See Key Principles http://www.ncjfcj.org/sites/default/files/keyprinciples.final_.permplanning.pdf

26 Adoption Assistance and Child Welfare Act, 42 U.S.C. § 670 et. seq.

not making substantial progress toward reunification, the judge should require more effort from the agency. The primary plan should be changed if necessary. Frequent judicial review, focused on the concurrent permanency goals for the child, will result in an ongoing and clear understanding among the parties, parents, children, agencies, and legal representatives of the potential outcomes of the case. This will also involve all parties in planning for transition to a new primary goal if necessary. The statutorily required reviews at six and twelve months should be fully informed by frequent interim reviews to assess efforts toward the reunification goal and likelihood of success. Added emphasis on a concurrent plan can be pressed at any time the court directs.

Frequent and focused court review of legal orphans' cases has resulted in a significant improvement for legal orphans in New Jersey. One need only look at the single-digit numbers of legal orphans aging-out without permanency in New Jersey to understand and acknowledge the value of frequent, intensive court reviews.²⁷

The judge must never "lose" the child because of inadequate information systems, through careless calendaring, or through switching judges or calendars. The judge must ensure that a legal orphan is not relegated to the back burners of over-burdened agency case workers. The surest way to avoid "losing" a legal orphan is for the judge who terminates parental rights to set a post-TPR hearing at the conclusion of the TPR proceeding, and to put the post-TPR review on the calendar at the same time the order terminating parental rights is entered. At each post-TPR review hearing, the next hearing date should be set. Hearings should occur as frequently as necessary to address the child's needs. Legal orphans will not be forgotten or lost if the judge adheres to this simple practice.

Concurrent Planning

"Concurrent planning involves considering all reasonable options for permanency at the earliest possible point following a child's entry into foster care and concurrently pursuing those that will best serve the child's needs."²⁸ The ASFA-favored primary permanency plan is reunification with the child's parents. With concurrent planning, an alternative permanency goal, which would provide a permanent legal family if reunification is not successful, is pursued at the same time as the primary plan. Long-term stays in foster care are the result of "...sequential planning for permanency, where one permanency plan is ruled out before an alternative is developed, concurrent planning may provide earlier permanency for the child."²⁹

Concurrent planning should be practiced and supported from the beginning of the case, and the judge should make reasonable efforts findings related to achieving both planning goals. "To be effective, concurrent planning requires not only the identification of an alternative plan, but also the implementation of active efforts toward both plans simultaneously, with the full knowledge of all case participants."³⁰ All children, regardless of age, should have concurrent plans, which can include placement in a potential adoptive or legally permanent home, from the beginning of the case. When, through the review process, it becomes apparent that progress toward the primary goal of

27 AFCARS

28 "Concurrent Planning: What the Evidence Shows." Child Welfare Information Gateway, Children's Bureau/ACYF, April 2005. www.childwelfare.gov

29 "Concurrent Planning for Permanency for Children: Summary of State Laws." Child Welfare Information Gateway, Children's Bureau/ACYF, 2009. www.childwelfare.gov

30 Ibid.

reunification with parents is failing, the concurrent permanency goal should be pursued with increased emphasis.

Concurrent planning continues to be important after termination of parental rights. Under ASFA, once reunification is no longer a permanency option, adoption is the preferred first-considered permanency plan for a legal orphan, followed by guardianship, and kinship placement (in order of ASFA preference). Another Permanent Planned Living Arrangement (APPLA) is the least preferable permanency option under ASFA and should not be the primary permanency goal. The judge should make specific findings at every hearing showing why adoption, guardianship, and kinship placement remain unavailable as permanency plans as the case moves forward. “Most obviously, the decision to change a youth’s permanency goal from adoption to ‘another permanent planned living arrangement’ ... will have a negative impact on the likelihood that a youth is adopted. When the goal is changed, efforts to achieve permanency through adoption too often cease, resulting in youth for whom birth parents’ parental rights have been terminated aging-out of foster care without legal ties to a family.”³¹

The concurrent permanency goals for a legal orphan should be reviewed by the court at every hearing. For example, if the concurrent goals are adoption and APPLA, then the case plan should describe in detail what is needed to complete each goal, and the judge should closely examine reasonable efforts related to achieving each goal. For adoption, the permanency plan should include information such as:

- who are the proposed adoptive parents,
- what efforts are being made to identify and secure an adoptive home,
- what needs to be done to finalize the adoption,
- who is specifically responsible to meet those needs,
- timelines and deadlines to complete identified steps.

If the goal is APPLA, because adoption, kinship placement, and guardianship have all been closely examined at each hearing and are truly unavailable options, then the case plan should list:

- by name, the adults who will be connected to this child in the future,
- how those relationships are being built and supported, and
- how all of the rights and needs of the child will be met as the child ages out.

Simply identifying “independent living” services to be provided to the child is not sufficient and alone should not be considered a “reasonable effort.”

Calendar Management and Alternative Dispute Resolution Services

When, at the permanency hearing, the child’s primary permanency plan is changed from reunification to adoption, the court must direct the filing of a petition for termination of parental rights. The first hearing (pre-trial) on that petition should be set at the end of the permanency hearing at which the goal is changed. This facilitates giving notice of the next hearing to everyone present. At the pre-trial, the TPR petition can be served on parties who were given legal notice to appear at the permanency

³¹ Cushing, G., & Greenblatt, S.B., “Vulnerability to foster care drift after the termination of parental rights,” *Research on Social Work Practice*, 19(6) (2009).

hearing, and a trial date should be set, again giving everyone present legal notice.

The Key Principles encourage the development of “family-centered, culturally responsive forms of dispute resolution to allow families to craft effective, court-sanctioned solutions to the issues that brought them before the court.”³² An alternative dispute resolution process that can be used to resolve issues without the TPR proceeding should be made available and participation be required of the parties prior to the date set for trial. The order for the alternative resolution process should be made at the pretrial hearing.

The Child Must be Present at Every Court Hearing

Children of all ages should be brought to court, unless the judge decides it is not safe or appropriate based on information provided by case participants.³³ Legal orphans at risk of aging out should be present at every hearing to be aware of and contribute to decisions regarding their permanency and their futures. Inconvenience, transportation, school attendance, and all the other reasons children have not attended court hearings in the past must not be accepted by courts. If distance is too great an obstacle to actual in-person attendance, the child should be present via technology – phone, web-based video technology, or other technological options. Presence must also include the opportunity to speak, and have appropriate conversations and inquiry by the judge directly with the child. In addition to being present at all court hearings, the children should also be present, consulted, and included at every team meeting or case conference about the youth’s case and future.

Children of all ages should be brought to court, unless the judge decides it is not safe or appropriate based on information provided by case participants.

Competent Legal Advocacy for the Child

Every legal orphan should have an attorney, guardian ad litem or CASA assigned from the beginning of the case until the court terminates jurisdiction, even after parental rights have been terminated. It is often post-TPR that the legal orphan most needs legal assistance and advocacy. The legal advocate can be an independent check on the continuing need for judicial review, advocate for reasonable efforts to achieve permanency, and help the child navigate the transition to adulthood. In California, only the child or his legal advocate can petition for reinstatement of parental rights, which means the legal orphan must have a legal advocate to utilize that remedy to overturn the parental rights termination decision.

Finding Family

Fostering Connections requires that relatives be identified and notified within 30 days of removal of a child from home.³⁴ Quickly identifying and contacting extended family, as well as those the child considers family, increases the likelihood that a child can be adopted, placed in guardianship, or

32 See Key Principles http://www.ncjfcj.org/sites/default/files/keyprinciples.final_.permplanning.pdf

33 See Seen, Heard, and Engaged: Children in Dependency Court Hearings

<http://www.ncjfcj.org/resource-library/publications/seen-heard-and-engaged-children-dependency-court-hearings>

34 Fostering Connections, 42 U.S.C. § 675, et. seq.

placed with kin if reunification cannot take place. Good concurrent planning will prepare the child and his caretaker relative for adoption, kinship placement, or guardianship if reunification is not possible, and can reduce disrupted placements. In addition to directly inquiring of parents and the child for the names of relatives, special programs are available to assist in locating family. The process has come to be known as “family finding.” Family Finding is also the name of a private program that is taught and used in many states.³⁵ Family finding, at any stage of the proceeding, can result in locating many relatives who may be resources for permanency.

Dual-Licensing

Prospective foster and adoptive homes, including specific relative placements, should be dually-licensed, so one home study and licensing process approves the homes to both foster and adopt. “[T]he rejection of the foster family [or relative] with whom the child was living at the time of TPR resulted in a reduction in the likelihood of adoption. [This] argues for placing children early with families that could be suitable adoptive resources if TPR is granted.”³⁶ No additional home study or approval for adoption should be required of a family that has been approved as a foster home. In addition, non-safety reasons for denying a foster care license to relatives should be closely examined and waived by the agency in support of long-term permanency goals. The judge can lead this process by asking about the non-safety issues, and being aware of and asking about foster care licensing waiver options available in the jurisdiction.

Post-Termination Judicial Reviews

Ambivalence among foster parents and relatives who have been caring for a child and are now looking at a legally permanent relationship should be expected after TPR. At post-TPR review hearings, those caretakers have the opportunity to address their concerns to the judge and caseworker(s). The judge can give support, encouragement, and facilitate problem-solving. Post-TPR review hearings should occur no less than every 90 days. Frequent post-TPR review hearings provide opportunities for trouble-shooting and problem-solving that could go unnoticed and unattended if the court waited six months or a year for the ASFA-mandated minimum time frames for hearings. Legal orphans must also be present at these hearings to speak and advocate for their own futures. The value of frequent post-TPR hearings is amply demonstrated by the success New Jersey’s Post-Term Project has had in reducing the numbers of legal orphans aging-out without permanency.³⁷

Legal orphans must have the six-month review hearing which is required by ASFA. They must also have permanency hearings every twelve months. Ideally, permanency should be achieved before the passage of twelve months after TPR.

Adoption

One of the fundamental principles set forth in the ADOPTION AND PERMANENCY GUIDELINES is that all children are adoptable. “[W]hen caseworkers are not convinced of the eventual adoptability of

³⁵ National Institute for Permanent Family Connectedness. <http://www.senecacenter.org/familyconnectedness>

³⁶ Cushing, G., & Greenblatt, S.B., “Vulnerability to foster care drift after the termination of parental rights,” *Research on Social Work Practice*, 19(6) (2009).

³⁷ New Jersey’s Post Term Project is described in more detail below.

a child, their recruitment efforts on behalf of the child are reduced. Ironically, the hardest children to place are those in need of enhanced recruitment efforts, but receive the least because the agencies give up on them....Youth who are older, of minority ethnic or racial backgrounds, and with significant emotional or behavioral problems do in fact get adopted.”³⁸ Judges, attorneys, caseworkers, parents, and children must all subscribe to the motto of the National Adoption Center and Wendy’s Wonderful Kids: “There are no unwanted children, just unfound families.”³⁹

Believe in the Adoptability of All Children

Targeted Recruitment for Adoptive Homes

First, adoption recruiters must believe that there is a family for every child. Several states have implemented targeted adoption recruitment for legal orphans at risk of aging out. The first tool that should be used is family finding. An “extreme” recruitment project in St. Louis resulted in finding dozens of relatives of legal orphans.⁴⁰ Extreme Recruitment focuses on the hardest-to-place children: ages 10-18, sibling groups, African-American children, and youth with emotional, developmental, or behavioral concerns. Extreme Recruitment requires weekly, intensive meetings between the child’s professional team for 12-20 weeks, demands concentrated support from child welfare supervisors, and focuses on preparing the youth for adoption, including their mental health and educational needs.

The added component that makes Extreme Recruitment so effective is the use of a private investigator. Originally, the agency tried to do the investigation work itself, but the contact rate with relatives was a dismal 23%. Within two weeks of hiring an investigator, the contact rate skyrocketed to 80%.⁴¹

When relatives are identified, even late in the case, there is a significant increase in the likelihood of adoption. The “Cold Case Reviews” in Georgia “re-look” at kin who may have been unable, unwilling, or unqualified to have the child placed with them at the beginning of the case.⁴² Judges must be aware of recruitment practices available to the agency so that “reasonable efforts” can be fully evaluated, including targeted, focused recruitment of adoptive homes, kinship placement, or persons able and willing to be permanent guardians.

Adoption With Contact

Older legal orphans are much more likely to consent to adoption, and the adoptions are more likely to be successful if there is some planned contact with birth parents or other family members. Adoption with contact, sometimes called open adoption, should be considered by the court, the agency, the adoptive parents, and the child. “Adoption with contact recognizes that many children who move into new families through adoption are old enough to have established strong relationships with biological parents, siblings and others and that completely severing these relationships may not be in the child’s

38 Cushing, G., & Greenblatt, S.B., “Vulnerability to foster care drift after the termination of parental rights,” *Research on Social Work Practice*, 19(6) (2009).

39 Ibid.

40 “Extreme Recruitment.” <http://www.foster-adopt.org/ForProfessionals/ExtremeRecruitment.aspx>. See also, “Foster Care Extreme Edition,” <http://www.time.com/time/magazine/article/0,9171,2040212-3,00.html>

41 Ibid.

42 Georgia’s “Cold Case Review” project is described in more detail below.

best interests.”⁴³ Plans to continue relations with birth families do not pose a barrier to adoption.⁴⁴

Customary Adoption

A customary adoption is a practice, ceremony, or process conducted in a manner that is long-established, continued, reasonable, certain, and considered by the people of a tribe to be binding or found by the tribal court to be authentic, which gives the child a legally-recognized permanent parent-child relationship with a person other than the child’s biological parent and without the requirement of a termination of parental rights.⁴⁵ Customary adoption is primarily utilized for Native American children because termination of parental rights is at odds with the traditions and cultures of many Native American tribes. Utilizing customary adoption as a permanency plan honors the sovereignty and customs of Native peoples. In July 2010, California enacted legislation making Native American children eligible for adoption by and through the laws, traditions, and customs of the child’s tribe without requiring termination of the parental rights of the child’s biological parents.⁴⁶

California Welfare and Institutions Code section 358.1(j), as amended by AB 1325 (2010),⁴⁷ requires the state social worker for every Native American child to consider whether customary adoption is an appropriate permanent plan for the child if reunification is unsuccessful. The social worker must consult with the child’s tribe throughout the course of a dependency case, as required by ICWA. The child’s tribe then elects whether or not to pursue tribal customary adoption. An essential element of customary adoption is a valid tribal customary adoption order issued by a federally recognized tribe which can be given full faith and credit by the state court. This means that tribal customary adoption is available only with the consent and participation of the child’s tribe.

The process of customary adoption under the California law is built around the existing dependency law framework. At the early stages of a dependency case in which a Native American child is involved, the social worker will include customary adoption in concurrent planning. If the state court determines that the Native American child cannot be reunified with the birth parents, the tribe can identify customary adoption as the preferred permanent plan. The state court then continues the case to give the tribe time to complete the tribal adoption and the Tribal Customary Adoption Order (TCAO), which establishes the rights and responsibilities of the parties. The tribe files the TCAO and the state court extends full faith and credit. Upon accepting the TCAO, the court issues an Order of Adoption and terminates jurisdiction.⁴⁸

Customary adoption affords Native American children, their families, and the community the legal permanence and supports of adoption, without the culturally inappropriate requirement of termination of parental rights. Choosing customary adoption can avoid Native American children becoming legal orphans.

43 Adoption and Permanency Guidelines, p.7.

44 Cushing, G., & Greenblatt, S.B., “Vulnerability to foster care drift after the termination of parental rights,” *Research on Social Work Practice*, 19(6) (2009).

45 Clifford-Stoltenberg, C., Kupcho, R., et. al., “Indian Child Welfare Glossary and Flowchart,” National Indian Child Welfare Association, Portland, Oregon.

46 “Tribal Customary Adoption,” <http://www.courts.ca.gov/12569.htm>

47 See full text of California Law in Appendix A.

48 “California Assembly Bill 1325 – Tribal Customary Adoption,” <http://theacademy.sdsu.edu/TribalSTAR/resources/files/AB1325FAQs.pdf>

As customary adoption becomes a favored and acceptable permanent plan for Native American children, it might also be considered for non-Native children who cannot be reunified with birth parents, but may be “adopted” by relatives or others according to the traditions and culture of the family without the necessity of termination of parental rights. This option may make adoption more accessible and acceptable to many children and families.

Post-Adoption Support and Services

Financial support for legal orphans should continue even after adoption. Legal orphans should never have to choose between being adopted and accessing the support that they would have if they aged-out of foster care without being adopted.

“[A] key component to enhancing permanence through adoption for children in foster care is the provision of high-quality support and therapeutic services both before and after adoption.”⁴⁹ “Many families who adopt children with special needs will require supportive services throughout childhood and adolescence. The availability of these supportive services can be the determining factor in the long-term success of many adoptions of children with special needs. While adoption subsidies provide financial and medical assistance, many adopting parents find themselves with very troubled children, for whom their repertoire of parenting techniques and the usual configuration of community services are inadequate.”⁵⁰ One of the reasons foster parents and relatives may be ambivalent about adopting is that they fear the loss of services and genuinely needed financial support. In addition to financial subsidies, post-adoption services should be provided as long as they are needed by the child and family.

Adult Adoptions

Some legal orphans who age out find family and parents who want to adopt them, even after they are adults. Legal orphans should have access to the court to secure legal family relationships, even after aging out and termination of court jurisdiction. Petitions for adult adoptions should be within the jurisdiction of the same court that terminated parental rights. The legal orphan should be allowed to petition to be adopted as an adult by natural parents, grandparents, other relatives, or any other appropriate person. Financial support for the legal process of adult adoption should be available to legal orphans.

Guardianship and Permanent Custody

For some legal orphans, guardianship may be the best permanency plan. This is especially true for children who live with and have established relationships with kin who may not wish to or be able to adopt, and who still want a permanent legal relationship with the legal orphan. Guardianship or permanent custody may be approved if it has the characteristics of legal permanency and will be an enduring relationship for the child. Permanency includes the following characteristics:

- a judicially created relationship that is intended to be permanent and self-sustaining; a relationship that will last through the child’s minority and continue with lifetime family relationships,

49 Ibid.

50 Adoption and Permanency Guidelines, p. 48

- a legal relationship that is binding on the adults awarded care, custody, and control of the child,
- the parents in the permanent family have the right to protect, educate, have care and control of the child, have decision-making authority including medical care and discipline and have the power to represent the child in legal proceedings,
- the family is free from supervision by the child welfare agency and monitoring by the court,
- biological parents cannot petition the court to terminate the relationship, and
- the court will only consider a change of custody if there is clear and convincing evidence that the custodian is unfit or has abused or neglected the child.⁵¹

Guardianship and permanent custody should be financially supported to the same extent as adoption. Fostering Connections authorizes continuing funding for permanent guardianships.⁵²

Limit the Number of Placements

Research on legal orphans who are not adopted shows that the probability of adoption declines significantly with every placement change.⁵³ Casey reports that 63% of children who were adopted were living with the same family they had lived with prior to TPR.⁵⁴ This was true of only 30% of children who were not adopted during the study period.⁵⁵ Children should be placed in potentially permanent homes from the beginning of the case. Decisions to move children to another placement should be considered carefully with the reduced likelihood of permanency that comes with each move.

Use Institutional Care Very Sparingly

A history of institutional care is an even greater impediment to adoption than multiple placements. Too many children are placed in group care and institutions to address emotional and behavioral problems that are natural by-products of child maltreatment, family disruption, and foster care placement.⁵⁶ Furthermore, group and institutional care is often more readily available than family foster care or pre-adoptive homes, especially for adolescents, which makes it an easy option for the agency rather than spending time to find the right placement. Group and institutional care essentially guarantees non-permanency and aging-out for legal orphans.⁵⁷

Enduring Relationships with Biological Family

Family members should continue to be included in the child's life after termination of parental rights whenever possible and in the child's best interests. Even though many state laws terminate enforceable grandparents' rights along with parental rights, the court and the agency should actively seek to maintain those relationships whenever appropriate. State laws and court orders should be modified to continue appropriate family relationships even if parental rights are terminated. The

51 Adoption and Permanency Guidelines

52 See www.grandfamilies.org.

53 Cushing, G., & Greenblatt, S.B., "Vulnerability to foster care drift after the termination of parental rights," *Research on Social Work Practice*, 19(6) (2009).

54 *Ibid.*

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

names of legally continuing family relationships should be included in court orders and case plans. Current information should be kept on the birth families of legal orphans after termination of parental rights. Parents, grandparents, and siblings should be locatable if and when it is determined to be in the best interests of the child to include those family members in their future.

Dually-Involved Legal Orphans

Legal orphans who are dually-involved in the child welfare and juvenile justice systems still need permanent homes, even though they may “age out” from the juvenile justice system instead of foster care. Usually, child welfare agencies transition authority over a child who moves into juvenile justice and correctional settings. However, if that child is a legal orphan, the child welfare agency must stay involved and continue to work towards permanency for that child.

Reinstatement of Parental Rights

State laws should authorize reinstatement of parental rights in appropriate cases. This should be limited to cases where another permanent legal relationship with a family is unlikely and the court determines that reinstatement of parental rights is in the best interests of the child. Only the child (assisted by legal representation) should be able to petition for reinstatement of parental rights. The juvenile court which terminated parental rights should have jurisdiction over the reinstatement proceedings, upon appropriate petition and clear and convincing evidence, even after the court has terminated jurisdiction or the child has aged out of the child welfare system.

Nine states have a statute authorizing reinstatement of parental rights⁵⁸ developed in response to children aging-out of the foster care system and then re-establishing ties to biological family after termination of parental rights. The statute in California has served as a model for reinstatement laws in Georgia and elsewhere.⁵⁹

Local Practice Implementation

The NCJFCJ Legal Orphans Project

Judge R. Michael Key, President of the NCJFCJ 2010-2011, initiated the NCJFCJ Legal Orphans project as an ad hoc committee, with the goal that juvenile and family courts across the United States focus their attention on the legal orphans within their jurisdictions. States with large populations of children in foster care, and thus the greatest numbers of legal orphans, were invited to participate in this project, with the goal of reducing the numbers of legal orphans in those states, and provide practice recommendations for all court systems seeking similar results. The Legal Orphans’ Project focuses on legal orphans aged 14 and above who are at risk of aging out of foster care.

The national Child and Family Services Review (CFSR), through which state compliance with federal child welfare laws and rules is measured, includes Permanency Composite Number 3 which measures three things: 1) how many children have been in foster care a long time; 2) how many age-out of care after being in care over three years; 3) how many legal orphans age out of foster care.

58 See www.ncsl.org

59 See Appendix A for the text of the California statute

This is a well-designed composite, and a child-focused outcome measure (which means it measures what is actually happening to children as compared to process). All 50 states have legal orphans aging out of foster care every year.

The work of the Legal Orphans project does not focus on independent living service provision, and the project focuses solely on efforts and recommendations to prevent legal orphans from aging-out at all.

The NCJFCJ coordinated with the state Court Improvement Project programs in Georgia, New Jersey, Ohio, and Texas, and with outreach to and participation from California and New York. Of these participating states, only New Jersey has an established practice focused on legal orphans, a judicially-led program emphasizing judicial oversight and leadership. Each of the other participating states studied the issue in various ways. Building on existing child welfare recommended practices, each state has committed to identifying and reducing their legal orphan population and preventing legal orphans from aging-out of the foster care system.

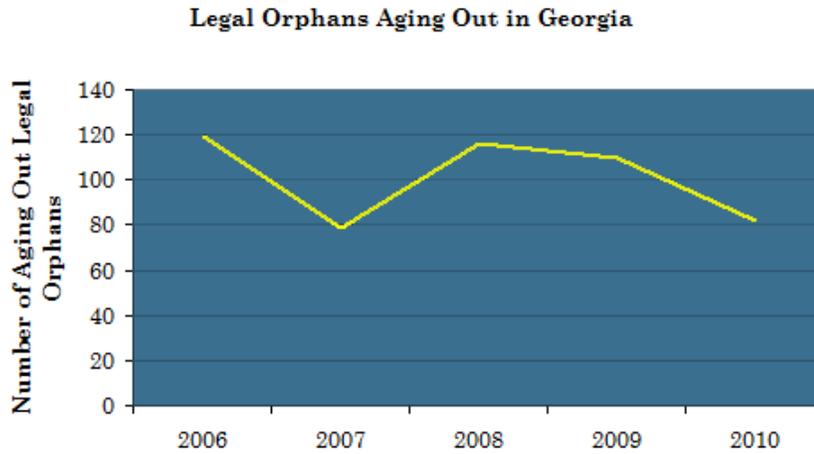
Legal Orphans Project States – Efforts to Achieve Permanency for Legal Orphans⁶⁰

Those states participating in the Legal Orphans project have engaged in different approaches to reducing their legal orphan population. Each has focused strongly on achieving permanency for legal orphans through vigilant judicial oversight, adoption, guardianship, and kinship placement. All of the practice examples rely on judicial leadership and system collaboration.

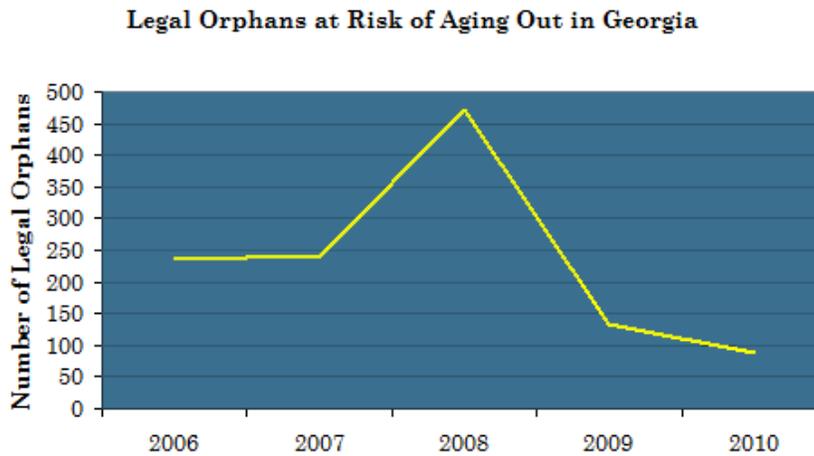
The project focuses solely on efforts and recommendations to prevent legal orphans from aging out and does not focus on the independent living service provision.

⁶⁰ For additional information, please see <http://fosteringcourtimprovement.org/tmp/tprs1.html>.

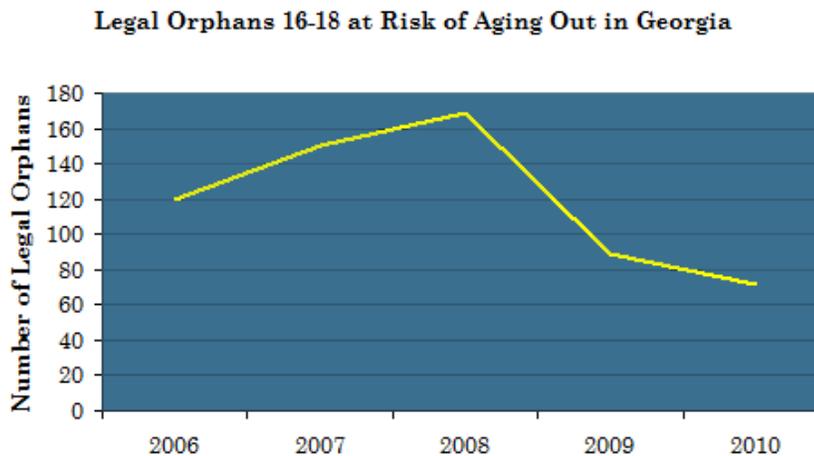
Legal orphans exiting to non-permanency in Georgia numbered 119 in 2006, 79 in 2007, 116 in 2008, 100 in 2009, and 82 in 2010:



Legal orphans still under Georgia court jurisdiction at risk of aging out numbered 237 in 2006, 241 in 2007, 473 in 2008, 133 in 2009, and 88 in 2010:



Legal orphans aged 16-18 at risk of aging out in Georgia numbered 120 in 2006, 150 in 2007, 169 in 2008, 89 in 2009, and 72 in 2010:



61 <http://www.casey.org/Resources/Initiatives/garoundtable/>

The courts in Georgia are county based, with no centralized statewide information system. Thus the judicial branch relies on the executive branch to identify legal orphans at risk of aging out with the agency's federally required AFCARS data. This data is broken down by the individual children at the county level and shared with both branches of government.

Georgia has instituted "Permanency Roundtables" and "Cold Case Reviews" to achieve timely permanency for legal orphans. These initiatives have the support of the bench and are included in the analyses of what constitutes a reasonable effort to achieve permanency. "Permanency Roundtables" are an agency-based initiative designed to review all cases of children who have spent more than one year in foster care and assess the permanency plan for each child with social work experts. The main goal of the roundtables is to achieve legal permanency for children and teenagers in foster care. The intensive process brings fresh perspectives to the table, ushering in new possibilities for permanency.

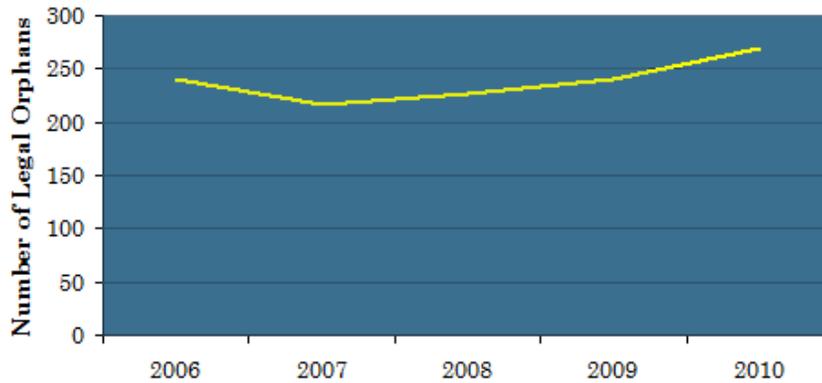
The "Cold Case Project" is a joint executive and judicial branch project using a statistical predictive model to find children who appear to be "stuck" in foster care and who appear to be at risk for aging-out without permanency. The statistical model produces a list of approximately 200 to 300 children (on any given day of 8,000) who fit the criteria.

The identified cold cases are often very complicated with competing sets of interests and facts. The review seeks to untangle the legal issues, assist as needed to address any social work issues, address the problems one at a time, and come up with a strategy for the court to resolve the issues. Once the children are identified, a review of the file occurs by a lawyer (Supreme Court of Georgia Fellow) with a file review form designed to identify permanency placement options. The Fellow also interviews the case manager and others attached to the child. From this review, a report with a narrative is written and shared with the stakeholders. Some of the issues addressed can be adequate relative searches or updating old searches, evaluating Interstate Compact on the Placement of Children (ICPC) barriers, medical and educational needs, and more.

Both of these programs are supported in Georgia by Casey Family Programs. There is legislation pending in Georgia which would authorize reinstatement of parental rights. The proposed statute would be very similar to the California statute.

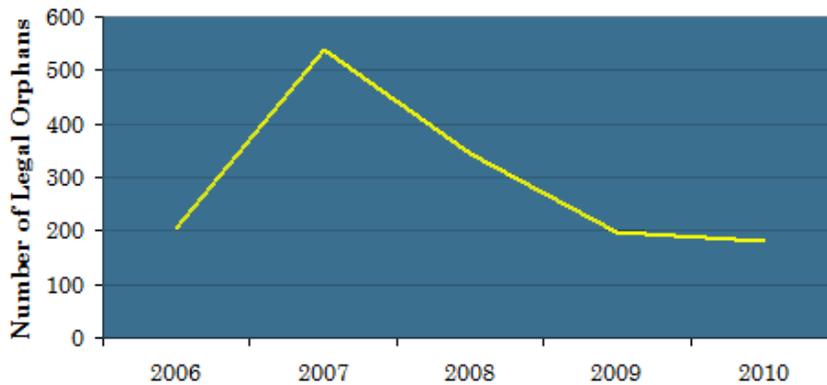
Legal orphans in Ohio exiting to non-permanency numbered 240 in 2006, 217 in 2007, 226 in 2008, 240 in 2009, and 269 in 2010:

Legal Orphans Aging Out in Ohio



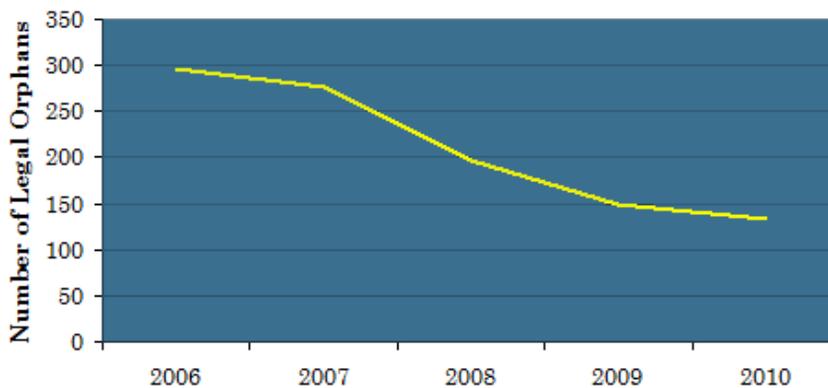
Legal orphans still under Ohio court jurisdiction at risk of aging out numbered 602 in 2006, 538 in 2007, 343 in 2008, 197 in 2009, and 181 in 2010:

Legal Orphans at Risk of Aging Out in Ohio



Legal orphans aged 16-18 at risk of aging out in Ohio numbered 297 in 2006, 276 in 2007, 196 in 2008, 149 in 2009, and 133 in 2010:

Legal Orphans 16-18 at Risk of Aging Out in Ohio



Ohio is a non-unified state which means it is a state-supervised, locally-administered court system. The courts do not have a statewide case management system, so local courts must rely on the data available in their individual systems. This situation presents a challenge to the consistency of court data across all 88 counties. Often the courts rely on data available through the Statewide Automated Child Welfare Information System (SACWIS) to better understand outcomes related to children in foster care.

Ohio has several initiatives that help address the issue of legal orphans, including Permanency Roundtables, judicial education, and new agreements for access to court-level data.

Like in Georgia, Ohio's Permanency Roundtables bring together caseworkers, supervisors, and experts from inside and outside the children services agency to scrutinize the case and brainstorm ideas on how to achieve permanency for the child. Casey Family Services supports Permanency Roundtables in Cleveland, Columbus and Cincinnati. In addition, Permanency Roundtables are also held in other counties that are not supported by Casey Family Programs. Columbus is part of a multi-state study on Permanency Roundtables. This research will help inform practice both nationally and in Ohio.

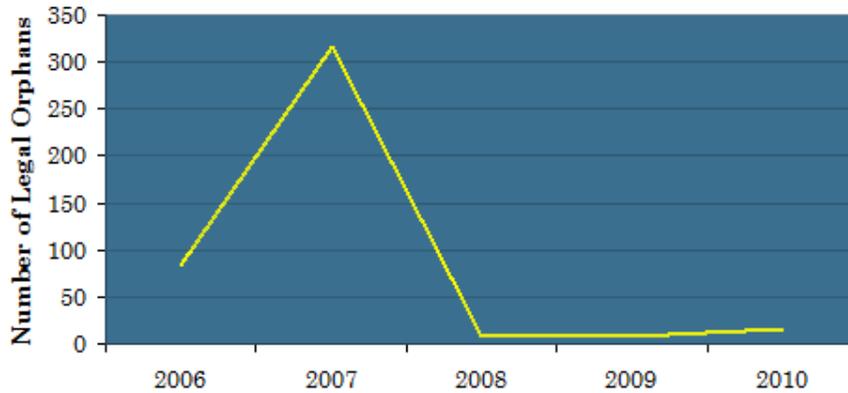
A presentation on the unique challenges facing legal orphans and strategies that hearing officers may employ to ensure that youth achieve permanency took place in Fall 2011 during an Ohio Judicial College video teleconference on dependency docket issues. Special attention was drawn to the use of case reviews and specific inquiries that hearing officers may use to ensure efforts are being made to achieve a permanent placement of these youth.

The Supreme Court of Ohio and the Ohio Department of Job and Family Services are negotiating a data-sharing agreement to allow courts to identify youth under court jurisdiction at risk of becoming legal orphans. Currently, extensive aggregate data is available to the courts on county performance on various measures, however, courts are challenged to identify, address and track specific youth and there are legal barriers for judges to directly obtain identifying information on the youth under their jurisdiction. The data-sharing agreement will eliminate these barriers for the purposes of the agreement.

Once identifying information is obtained, efforts must be made to cross check agency data against court records in order to ensure agreement on a child's legal status and to establish a plan to address the youth's individual needs.

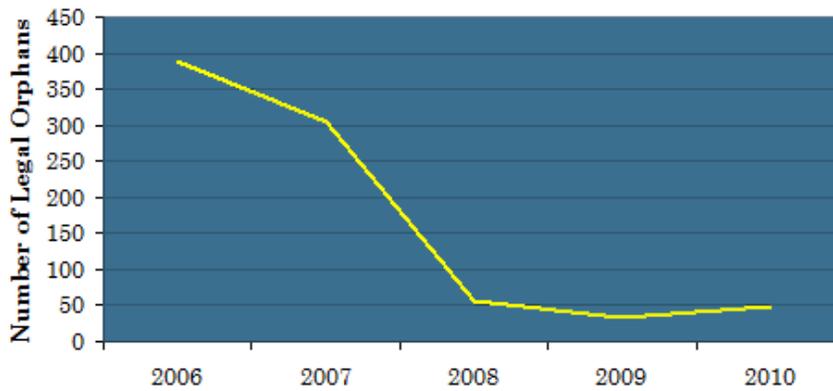
Legal orphans in New Jersey exiting to non-permanency numbered 84 in 2006, 317 in 2007, 7 in 2008, 7 in 2009, and 16 in 2010:

Legal Orphans Aging Out in New Jersey



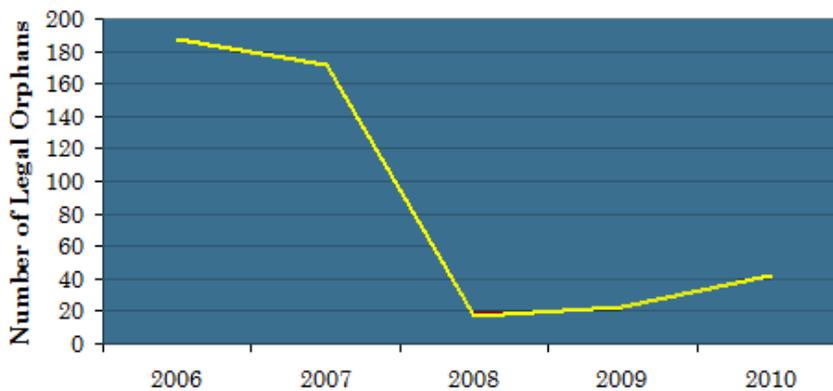
Legal orphans still under New Jersey court jurisdiction at risk of aging out numbered 389 in 2006, 305 in 2007, 56 in 2008, 33 in 2009, and 48 in 2010:

Legal Orphans at Risk of Aging Out in New Jersey



Legal orphans aged 16-18 at risk of aging out in New Jersey numbered 187 in 2006, 172 in 2007, 17 in 2008, 23 in 2009, and 42 in 2010:

Legal Orphans 16-18 at Risk of Aging Out in New Jersey



In New Jersey prior to 2005, after the court ordered termination of parental rights, a child's case was closed by all stakeholders except the child welfare agency. There was no judicial oversight and no continuing representation of the legal orphan. The courts came to realize that children legally freed for adoption were lingering in foster care without achieving permanency, and only the Child Placement Review Boards were overseeing the cases.

The Post Term Project was started in 2005 to meet the needs of these children.⁶² Through this Project, the Essex Vicinage in Newark began conducting court hearings for every legal orphan within the court's jurisdiction. The first objective was to identify all of the legal orphans, which took years. The second objective was to ensure that each child's needs were being met. The ultimate goal was to have each child achieve permanency.

Hearings for legal orphans now occur regularly (usually every two months, but more frequently if needed) until the child achieves permanency or ages-out of the system. A court report is provided by the agency prior to each hearing. A Deputy Attorney General, a representative from the Division who acts as a liaison, the caseworker assigned to the child's case, and the Law Guardian for the child are present at each hearing. As time progresses and the team becomes more attuned to the issues, more individuals involved with the child's life, including the child, may attend.

Areas addressed at each hearing include: 1) reasons for delay in finalization of the legal orphan's permanent plan; 2) if the child is not in an adoptive home, description of recruitment efforts; and 3) if adoption is no longer the goal, the efforts in place to ensure that the child does not leave foster care without a support system. The usual service needs of the children are reviewed (therapy, special education, life skills, etc.). Additionally, eligibility for financial benefits to which the child may be entitled is monitored.

Legal orphans over the age of 12 can also request a benchmark hearing to assist the child in achieving career and higher education goals. These hearings have a different tone than the standard court hearing. At a benchmark hearing, the youth guides the matters being discussed.

The Post Term project consists of the following components:

- Identification of all cases involving legal orphans. The State of New Jersey identifies its legal orphan population through a court-based information management system. Comprehensive data is provided on each individual child. Two charts provide weekly information on legal orphans; namely, the legal orphans added in the past week and a detailed report which allows appropriate court staff to drill down for all relevant information about a legal orphan on that weekly chart.
- Each child in New Jersey is assigned a case number under the child placement docket. New Jersey is able to count each legal orphan from the day a TPR judgment is entered to the day the child achieves permanency and/or ages-out of the system by this case number. A child ages-out at age 21 (or sooner, if the child opts out of the system beginning at age 18). The data identifies all legal orphans, county by county, and how long they have been in the child welfare system. The data also breaks down all legal orphans between ages 18 and 21 and identifies

⁶² Floria, Judge Sallyanne. "More Good Than Harm: Legal Orphans and the New Jersey Post-Termination Project," *Juvenile and Family Court Journal*, Volume 59, Issue 2, pages 1–13, Spring 2008,

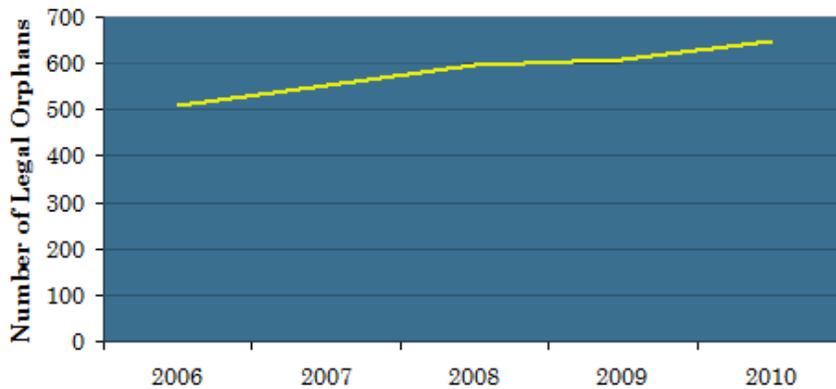
individual goals for each case. The numbers provide the Administrative Office of the Courts with all data entry mistakes so that those files may be corrected. These reports are available weekly, which makes it easy to track overall trends. Since 2007, the total number of legal orphans and the number of mistakes in the system has been reduced significantly. Access to and trust in this data is a major factor in the successful reduction of New Jersey's legal orphans.

- Every case involving a legal orphan is set for a judicial review within 60 days after the entry of an order terminating parental rights. Judicial reviews are then set at intervals not exceeding 90 days, and often more frequently. Usually the case is reviewed every 60 days. These thorough, frequent reviews continue until permanency is achieved. Review hearings are intensely focused on achieving legal permanency and preparation for adult living.

Due to the tremendous success of the Post-Term project in Newark, post-termination of parents rights oversight of legal orphans by the courts is now required statewide in New Jersey.

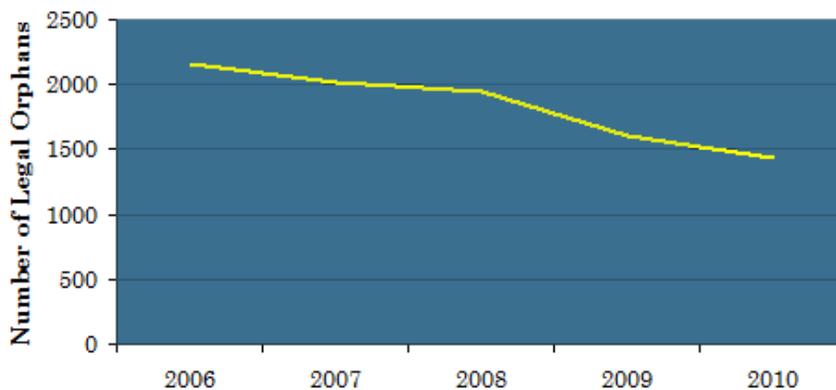
Legal orphans in Texas exiting to non-permanency numbered 509 in 2006, 554 in 2007, 595 in 2008, 607 in 2009, and 650 in 2010:

Legal Orphans Aging Out in Texas



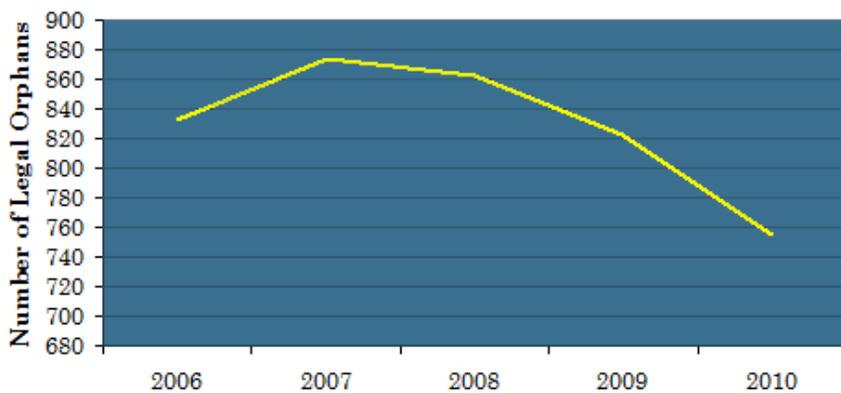
Legal orphans still under Texas court jurisdiction at risk of aging out numbered 2,165 in 2006, 2,019 in 2007, 1,939 in 2008, 1,600 in 2009, and 1,440 in 2010:

Legal Orphans at Risk of Aging Out in Texas



Legal orphans aged 16-18 at risk of aging out in Texas numbered 833 in 2006, 874 in 2007, 862 in 2008, 822 in 2009, and 755 in 2010:

Legal Orphans 16-18 at Risk of Aging Out in Texas



The Texas judiciary does not have access to data that readily identifies legal orphans, but the child welfare agency does. The child welfare agency regularly shares information with the Supreme Court Children’s Commission, which in turn shares the information with individual jurisdictions.

Texas is evaluating the relationship between the frequency of post-termination review hearings and improved outcomes for legal orphans. There are currently pilot projects in select counties where courts are increasing the frequency of those hearings. In addition, adoption recruitment efforts begin once a child has an approved primary or concurrent permanency goal of adoption. Post-termination recruitment efforts can include: a re-examination of the case file; stranger adoption efforts; posting on the Texas Adoption Recruitment Exchange (TARE); participation in Texas Heart Gallery; the use of Wednesday’s Child; and the like.

For youth group and institutional placement, best interest and readiness factors drive the adoption recruitment efforts. One project focused on this population is called the Child’s Choice Program, which connects child-placing agencies with the group or institutional placement facility to engage in assessment and recruitment that is child-driven. Potential foster/adoptive families are presented to the child and the child decides whether to move forward with the family. Project PUSH – Placing Us In Safe Homes – is also utilized for legal orphans who are placed in an identified permanent placement and for some reason the adoption remains unconsummated. Project PUSH involves intense casework for a six-month period starting in the spring and culminating in November with various Adoption Days around the state.

The TARE⁶³ is a newly redesigned recruitment tool to find prospective foster and adoptive families and provides a unique feature through photo-listings, profiles, and videos of Texas children awaiting adoption. The TARE redesign included enhancements to make it more user-friendly, efficient, and informative for prospective families. Finally, Texas utilizes a Diligent Recruitment Grant in partnership with Texas CASA that focuses on diligent recruitment efforts to increase permanency for children and youth in both metro and non-metro regions of Texas.

If APPLA is approved as a permanency goal, case workers must take steps to review and consider other permanency options that would not involve ongoing foster care. Such steps include:

- re-contacting relatives to review their interests and circumstances,
- revisiting the parent’s situation to determine if the safety threats that resulted in removal still exist,
- identifying or strengthening support systems that could assist a parent or relative in legally caring for a child, and
- holding special case meetings to review options and develop strategies to achieve permanency.

In November 2010, Texas Appleseed, a public interest law center whose mission is to promote social and economic justice for all Texans, published a report on behalf of the Supreme Court Children’s Commission, entitled *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas’ Courts and Legal System*.⁶⁴

63 See www.AdoptChildren.org

64 Texas Appleseed, *Improving the Lives of Children in Long-Term Foster Care: The Role of Texas’ Courts & Legal System* 84 (2010), available at http://www.texasappleseed.net/images/stories/reports/FosterCare-rev_press.pdf.

Major recommendations from the report included:

- a new Benchmark Hearing Pilot Program,
- expanding opportunities for foster children to participate in their placement review hearings,
- providing an advocate for all children in the foster care system
- one child-one judge model, for the duration of a case.

Austin is implementing a special program called SYNC, Successful Youth Need Connections and Community, designed to increase the number of older youth transitioning to adoption, guardianship, and other permanency plans to reduce the number of youth leaving foster care who become incarcerated or homeless. SYNC is based on the premise that every child will have a home and therefore will transition to a permanent living situation.

Texas enacted new legislation, effective September 28, 2011, to mandate that any court with jurisdiction over a legal orphan on the day before they turn 18, automatically extends jurisdiction over the youth beyond his or her 18th birthday for at least six months. The court must conduct periodic hearings every six months and must make specific findings. The court must also maintain jurisdiction over the legal orphans who are 18 or older and temporarily leaves foster care for a “trial independence” period so that if and when the legal orphan returns to foster care, both the individual and the State will not lose eligibility for federal funding.

Conclusion

Legal orphans need and deserve the most urgent attention we can give them. The thousands of waiting children are our responsibility. We determined that these children could not go home. We made the orders terminating their parents’ rights. We promised them it would be better. We said they would have new families. We gave them hope.

There is a forever family for every legal orphan who is waiting. We must believe that. We must persevere for as long as it takes. We must keep asking. We must re-look, and require everyone to re-look. There is no giving up.

They have been waiting long enough.

Appendix A - Resources

NCJFCJ Resolution adopted by the Board of Trustees March 2012

RESOLUTION CALLING FOR JUDICIAL ACTION TO REDUCE THE NUMBER OF LEGAL ORPHANS AT RISK OF AGING OUT OF FOSTER CARE IN THE UNITED STATES

WHEREAS, dependency courts have continuing jurisdiction over children in foster care, and are required to oversee the child welfare system's responsibility to provide for their safety, permanency, and well-being; and

WHEREAS, all 50 states have what the federal government calls "legal orphans" aging out of foster care every year; A legal orphan is a child whose parents' rights have been terminated leaving a child with no legal permanent connection to a family; and

WHEREAS, legal orphans might have no legal relationship with their parents' extended families, might not inherit from their parents or their families; and

WHEREAS, legal orphans are effectively children of the state with no legal connection to an appropriate caring adult, frequently age-out of the foster care system once they reach adulthood, and statistically face significantly poor outcomes;

NOW, THEREFORE, BE IT RESOLVED that the National Council of Juvenile and Family Court Judges is committed to reducing the number of legal orphans aging out of foster care every year, thereby reducing the poor outcomes they face.

BE IT FURTHER RESOLVED that the NCJFCJ believes that every child should have a permanent, legal relationship with a caring and safe adult. These permanent family connections are critical throughout the child's life.

BE IT FURTHER RESOLVED that because it is a judicial order that creates a legal orphan, the NCJFCJ recommends that judges exercise frequent and diligent judicial oversight to ensure that the child does not remain a legal orphan and that the child achieves permanency.

BE IT FURTHER RESOLVED that the NCJFCJ calls for judicial action to reduce the number of legal orphans in foster care through implementation of the following practice recommendations:

- That judicially-led collaborative teams focus on system reform to achieve permanency for legal orphans at risk of aging out of the system with the judge ensuring that there is communication, collaboration, and cooperation among stakeholders. Practice changes to achieve permanency may include:
 - o adhering to the one family-one judge principle;
 - o holding more frequent and thorough hearings;
 - o having children attend every hearing in their case;
 - o closely reviewing the case file and inquiring of parties and the child about permanent

placement possibilities that may have been overlooked or may now be appropriate due to changes in circumstance;

- o inquiring about regular and ongoing meetings with children to determine who is important to the child and who might be an appropriate permanent placement option;
 - o use of technology and family finding techniques when available to identify every potential placement;
 - o inquiring about reinstating the parental rights of a child's parent(s) if the child can be safely returned.
- That lack of specific and ongoing efforts by the child welfare agency to locate and permanently place a child with a safe and caring adult, merits a negative reasonable efforts finding by the court;
 - That use of Another Permanent Planned Living Arrangement (APPLA), as defined by ASFA, as a permanency goal be actively discouraged by the court, and approved as a permanency goal only as a last resort; and
 - That the judge rule-out all other permanency plans at every hearing when APPLA is proposed and find compelling reasons to continue APPLA as a permanency plan only if there is no other appropriate goal.

BE IT FURTHER RESOLVED that the NCJFCJ urges state and local child welfare agencies to provide courts with information from the Adoption and Foster Care Analysis and Reporting System (AFCARS) so that courts can quickly identify the legal orphans in their jurisdictions and focus on finding permanency consistent with the principles set forth in this resolution. The NCJFCJ requests that the data be provided by the Children's Bureau of the United States Department of Health and Human Services should courts be unable to obtain this information locally.

http://www.ncjfcj.org/sites/default/files/Resolution_LegalOrphans_fnl-3-21-12.pdf

Text of California reinstatement of parental rights law:

A child who has not been adopted after the passage of at least three years from the date the court terminated parental rights and for whom the court has determined that adoption is no longer the permanent plan may petition the juvenile court to reinstate parental rights pursuant to the procedure prescribed by Section 388. The child may file the petition prior to the expiration of this three-year period if the State Department of Social Services or licensed adoption agency that is responsible for custody and supervision of the child as described in subdivision (j) and the child stipulate that the child is no longer likely to be adopted. A child over 12 years of age shall sign the petition in the absence of a showing of good cause as to why the child could not do so. If it appears that the best interests of the child may be promoted by reinstatement of parental rights, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child's attorney of record, or, if there is no attorney of record for the child, to the child, and the child's tribe, if applicable, by means prescribed by subdivision (c) of Section 297. The court shall order the child or the social worker or probation officer to give prior notice of the hearing to the child's former parent or parents whose parental rights were terminated in the manner prescribed by subdivision (f) of Section 294 where the recommendation is adoption. The juvenile court shall grant the petition if it finds by clear and convincing evidence that the child is no longer

likely to be adopted and that reinstatement of parental rights is in the child's best interest. If the court reinstates parental rights over a child who is under 12 years of age and for whom the new permanent plan will not be reunification with a parent or legal guardian, the court shall specify the factual basis for its findings that it is in the best interest of the child to reinstate parental rights. This subdivision is intended to be retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

CA Welf. & Inst. Code § 366.26

Text of California tribal customary adoption law:

(a) For purposes of this section, "tribal customary adoption" means adoption by and through the tribal custom, traditions, or law of an Indian child's tribe. Termination of parental rights is not required to effect the tribal customary adoption. (b) Whenever an assessment is ordered pursuant to Section 361.5, 366.21, 366.22, 366.25, or 366.26 for Indian children, the assessment shall address the option of tribal customary adoption. (c) For purposes of Section 366.26, in the case of tribal customary adoptions, all of the following apply: (1) The child's tribe or the tribe's designee shall conduct a tribal customary adoptive home study prior to final approval of the tribal customary adoptive placement. (A) If a tribal designee is conducting the home study, the designee shall do so in consultation with the Indian child's tribe. The designee may include a licensed county adoption agency, the State Department of Social Services when it is acting as an adoption agency in counties not served by a county adoption agency, or a California-licensed adoption agency. Any tribal designee must be an entity that is authorized to request a search of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry, and must be an entity that is authorized to request a search for state and federal level criminal offender records information through the Department of Justice. (B) The standard for the evaluation of the prospective adoptive parents' home shall be the prevailing social and cultural standard of the child's tribe. The home study shall include an evaluation of the background, safety, and health information of the adoptive home, including the biological, psychological, and social factors of the prospective adoptive parent or parents, and an assessment of the commitment, capability, and suitability of the prospective adoptive parent or parents to meet the child's needs. (2) In all cases, an in-state check of the Child Abuse Central Index and, if necessary, a check of any other state's child abuse and neglect registry shall be conducted. If the tribe chooses a designee to conduct the home study, the designee shall perform a check of the Child Abuse Central Index pursuant to Section 1522.1 of the Health and Safety Code as it applies to prospective adoptive parents and persons over 18 years of age residing in their household. If the tribe conducts its own home study, the agency that has the placement and care responsibility of the child shall perform the check. (3) (A) In all cases prior to final approval of the tribal customary adoptive placement, a state and federal criminal background check through the Department of Justice shall be conducted on the prospective tribal customary adoptive parents and on persons over 18 years of age residing in their household. (B) If the tribe chooses a designee to conduct the home study, the designee shall perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement. (C) If the tribe conducts its own home study, the public adoption agency that is otherwise authorized to obtain criminal background information for the purpose of adoption shall

perform the state and federal criminal background check required pursuant to subparagraph (A) through the Department of Justice prior to final approval of the adoptive placement. (D) An individual who is the subject of a background check conducted pursuant to this paragraph may be provided by the entity performing the background check with a copy of his or her state or federal level criminal offender record information search response as provided to that entity by the Department of Justice if the entity has denied a criminal background clearance based on this information and the individual makes a written request to the entity for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The entity shall retain a copy of the individual's written request and the response and date provided. (4) If federal or state law provides that tribes may conduct all required background checks for prospective adoptive parents, the tribally administered background checks shall satisfy the requirements of this section, so long as the standards for the background checks are the same as those applied to all other prospective adoptive parents in the State of California. (5) Under no circumstances shall final approval be granted for an adoptive placement in any home if the prospective adoptive parent or any adult living in the prospective tribal customary adoptive home has any of the following: (A) A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery. For purposes of this subdivision, crimes involving violence means those violent crimes contained in clause (i) of subparagraph (A) and subparagraph (B), or paragraph (1) of, subdivision (g) of Section 1522 of the Health and Safety Code. (B) A felony conviction that occurred within the last five years for physical assault, battery, or a drug-related offense. (6) If the tribe identifies tribal customary adoption as the permanent placement plan for the Indian child, the court may continue the selection and implementation hearing governed by Section 366.26 for a period not to exceed 120 days to permit the tribe to complete the process for tribal customary adoption and file with the court a tribal customary adoption order evidencing that a tribal customary adoption has been completed. The tribe shall file with the court the tribal customary adoption order no less than 20 days prior to the date set by the court for the continued selection and implementation hearing. The department shall file with the court the addendum selection and implementation hearing court report no less than seven days prior to the date set by the court for the continued selection and implementation hearing. The court shall have discretion to grant an additional continuance to the tribe for filing a tribal customary adoption order up to, but not exceeding, 60 days. If the child's tribe does not file the tribal customary adoption order within the designated time period, the court shall make new findings and orders pursuant to subdivision (b) of Section 366.26 and this subdivision to determine the best permanent plan for the child. (7) The child, birth parents, or Indian custodian and the tribal customary adoptive parents and their counsel, if applicable, may present evidence to the tribe regarding the tribal customary adoption and the child's best interest. (8) Upon the court affording full faith and credit to the tribal customary adoption order and the tribe's approval of the home study, the child shall be eligible for tribal customary adoptive placement. The agency that has placement and care responsibility of the child shall be authorized to make a tribal customary adoptive placement and sign a tribal customary adoptive placement agreement and, thereafter, shall sign the adoption assistance agreement pursuant to subdivision (g) of Section 16120. The prospective adoptive parent or parents desiring to adopt the child may then file the petition for adoption. The agency shall supervise the adoptive placement for a period of six months unless either of the following circumstances exists: (A) The child to be adopted is a foster child of the prospective

adoptive parents whose foster care placement has been supervised by an agency before the signing of the adoptive placement agreement in which case the supervisory period may be shortened by one month for each full month that the child has been in foster care with the family. (B) The child to be adopted is placed with a relative with whom he or she has an established relationship. (9) All licensed public adoption agencies shall cooperate with and assist the department in devising a plan that will effectuate the effective and discreet transmission to tribal customary adoptees or prospective tribal customary adoptive parents of pertinent medical information reported to the department or the licensed public adoption agency, upon the request of the person reporting the medical information. (A) A licensed public adoption agency may not place a child for tribal customary adoption unless a written report on the child's medical background and, if available, the medical background on the child's biological parents, so far as ascertainable, has been submitted to the prospective tribal customary adoptive parents and they have acknowledged in writing the receipt of the report. (B) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history. (10) The tribal customary adoption order shall include, but not be limited to, a description of (A) the modification of the legal relationship of the birth parents or Indian custodian and the child, including contact, if any, between the child and the birth parents or Indian custodian, responsibilities of the birth parents or Indian custodian, and the rights of inheritance of the child and (B) the child's legal relationship with the tribe. The order shall not include any child support obligation from the birth parents or Indian custodian. There shall be a conclusive presumption that any parental rights or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents. (11) Prior consent to a permanent plan of tribal customary adoption of an Indian child shall not be required of an Indian parent or Indian custodian whose parental relationship to the child will be modified by the tribal customary adoption. (12) After the prospective adoptive parent or parents desiring to adopt the child have filed the adoption petition, the agency that has placement, care, and responsibility for the child shall submit to the court, a full and final report of the facts of the proposed tribal customary adoption. The requisite elements of the final court report shall be those specified for court reports in the department's regulations governing agency adoptions. (13) Notwithstanding any other provision of law, after the tribal customary adoption order has been issued and afforded full faith and credit by the state court, supervision of the adoptive placement has been completed, and the state court has issued a final decree of adoption, the tribal customary adoptive parents shall have all of the rights and privileges afforded to, and are subject to all the duties of, any other adoptive parent or parents pursuant to the laws of this state. (14) Consistent with Section 366.3, after the tribal customary adoption has been afforded full faith and credit and a final adoption decree has been issued, the court shall terminate its jurisdiction over the Indian child. (15) Nothing in this section is intended to prevent the transfer of those proceedings to a tribal court where transfer is otherwise permitted under applicable law. (d) The following disclosure provisions shall apply to tribal customary adoptions: (1) The petition, agreement, order, report to the court from any investigating agency, and any power of attorney filed in a tribal customary adoption proceeding is not open to inspection by any person other than the parties to the proceeding and their attorneys and the department, except upon the written authority of the judge of the juvenile court. A judge may not authorize anyone to inspect the petition, agreement, order, report to the court from any investigating agency, and any power of attorney except in exceptional circumstances and for good cause approaching the necessitous. (2) Except as otherwise permitted or required by statute, neither the department nor any licensed adoption agency shall release information that would identify persons who receive, or have received, tribal customary

adoption services. However, employees of the department and licensed adoption agencies shall release to the State Department of Social Services any requested information, including identifying information, for the purpose of recordkeeping and monitoring, evaluation, and regulation of the provision of tribal customary adoption services. (3) The department and any licensed adoption agency may, upon written authorization for the release of specified information by the subject of that information, share information regarding a prospective tribal customary adoptive parent or birth parent with other social service agencies, including the department and other licensed adoption agencies, or providers of health care as defined in Section 56.05 of the Civil Code. (4) Notwithstanding any other law, the department and any other licensed adoption agency may furnish information relating to a tribal customary adoption petition or to a child in the custody of the department or any licensed public adoption agency to the juvenile court, county welfare department, public welfare agency, private welfare agency licensed by the department, provider of foster care services, potential adoptive parents, or provider of health care as defined in Section 56.05 of the Civil Code, if it is believed the child's welfare will be promoted thereby. (5) The department and any licensed adoption agency may make tribal customary adoption case records, including identifying information, available for research purposes, provided that the research will not result in the disclosure of the identity of the child or the parties to the tribal customary adoption to anyone other than the entity conducting the research. (e) This section shall remain operative only to the extent that compliance with its provisions does not conflict with federal law as a condition of receiving funding under Title IV-E or the federal Social Security Act (42 U.S.C. Sec. 670 et seq.). (f) The Judicial Council shall adopt rules of court and necessary forms required to implement tribal customary adoption as a permanent plan for dependent Indian children. The Judicial Council shall study California's tribal customary adoption provisions and their effects on children, birth parents, adoptive parents, Indian custodians, tribes, and the court, and shall report all of its findings to the Legislature on or before January 1, 2013. The report shall include, but not be limited to, the following: (1) The number of families served and the number of completed tribal customary adoptions. (2) The length of time it takes to complete a tribal customary adoption. (3) The challenges faced by social workers, court, and tribes in completing tribal customary adoptions. (4) The benefits or detriments to Indian children from a tribal customary adoption. (g) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

California Welfare and Institutions Code Section 366.24

Appendix B

Critical Questions for Judges About Permanency

For the purpose of this resource, the definition of legal permanency includes reunification, legal guardianship and adoption.

Questions for the Caseworker

Tell me about your conversations with youth about permanency

- What is the current permanency plan? Do you still believe that this is the appropriate plan?
- What conversations have you had with the youth about their permanency options? When did you last have this conversation?
- Did the youth share their preference? If so, what is their preferred permanency goal? Why?
- Have you explained the differences between all of the permanency options?
- Has the agency identified anyone as a potential permanent caregiver for this youth? Have you explained all of the permanency options to them?
- Has the youth identified anyone as a potential permanent caregiver? Is this person a viable placement option?

Depending upon the answers to the questions above, move to Section A or B below

A. If there is an agreed upon permanency goal, possible follow-up questions include:

- Is there an identified person committed to this youth? If not, tell me about the steps being taken to recruit a permanent parent/guardian.
- What has been done to help the youth identify their connections?
- What steps are you taking to provide the youth with a support network?
- Can you identify one or more adults who are not child welfare professionals with whom the youth has a healthy and potentially permanent relationship?
- What specific next steps are planned? (for what?)
 - For youth
 - For family
 - For securing permanent placement
- Identify any barriers that may prevent the youth from permanency.
- What provisions are you making for continued visits with the youth's family or other important connections?

B. If a youth is resistant to permanency, possible follow-up questions include:

- What has been done to help the youth identify their connections?
- What steps are you taking to provide the youth with a support network?
- Can you identify one or more adults, who are not child welfare professionals, with whom the youth has a healthy and potentially permanent relationship?

- Does the youth have a Life book? Do you use it as a tool to engage the youth in conversations about permanency?
- Have you used a Permanency Pact with the youth? Would you or the youth like one?
- Have you connected the youth with other young people in foster care (peer support)?
- Have you explored the underlying reasons why the youth is resisting permanency?
- Describe the work done with the youth in the areas of self esteem, loyalty to their birth family, loss, and future goals.
- Is the youth receiving mental health services? How well does the therapist understand the different permanency options and the importance of permanency for all youth?

Move on to Section C

C. Caseworker Supports

- What assistance and supports do you need as it relates to achieving permanence for this young person?
- Would you like some tools that will assist you to have more meaningful conversations with the youth about permanency?
- Please identify any systems barriers preventing the youth from achieving permanency.

Move on to questions for the youth

These are difficult questions that the youth may never have been asked. If they are not ready to answer them in court, ask them to discuss the questions with their caseworker or therapist and be prepared to revisit them at the next hearing.

Questions for the youth

- What does permanency mean to you?
- Do you understand the differences between all of your permanency options including adoption and guardianship?
- Who would you like to live with, or where would you like to live?
- Tell me about your transition plan. How were you involved in making this plan?
- Are there important people in your life that you want to stay connected to? Who are they?
- What kind of connection do you want to keep with your siblings and other family members?
- Tell me about some of your future plans. How can a caring adult help you accomplish your goals?
- Where do you go to school? What grade are you in? When do you expect to graduate high school? What future educational and career goals do you have?
- Do you have a Life book? If not would you like help in creating one?
- Have you used a Permanency Pact as a tool to identify important caring adults in your life? Would you like one?
- Have you had an opportunity to participate in a group with other youth in foster care? If not is this something that you would be interested in?
- Are there any questions or concerns you have about your permanency or transition plan that you would like to talk about at this time?

Courtesy of Sue Badeau, Casey Family Programs