

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Distribution: X, Z, C-3

POLICY GUIDE 99.09

ADOPTION AND SAFE FAMILIES ACT

DATE: August 16, 1999

TO: Rules and Procedures Bookholders and Child Welfare Staff

FROM: Jess McDonald, Director

EFFECTIVE: August 30, 1999

I. PURPOSE

The purpose of this Policy Guide is to reissue the instructions contained in Policy Guide 98.11, The Adoption and Safe Families Act, with some additional clarification and modifications. This Policy Guide describes the key elements of the federal Adoption and Safe Families Act and provides instructions to staff on how to implement the requirements relating to children who have been in foster care for 15 of the most recent 22 months.

II. PRIMARY USERS

The primary users of the procedures contained in this Policy Guide are direct service staff of the Department and purchase of service agencies

III. PROVISIONS OF THE ADOPTION AND SAFE FAMILIES ACT

The federal Adoption and Safe Families Act of 1997 was passed by Congress and signed into law by the President on November 19, 1997. It established that the primary goals for children in the child welfare system are safety, permanency and well-being. These same goals were adopted by the State of Illinois and the Department through the permanency legislation passed in 1997 and announced to staff in Policy Guide 98.1, Permanency Initiative - Phase II, dated February 2, 1998 and adopted through Department Rules 315, Permanency Planning, and Rules 316, Administrative Case Reviews and Court Hearings, which were effective February 1, 1999. Further implementation of the permanency initiative has been ongoing. Some of the adoption provisions of the federal law were incorporated into Department Rules 309, Adoption Services for Children for Whom the Department of Children and Family Services Is Legally Responsible, released to staff on May 1, 1998. The following is a summary of the major provisions of the Adoption and Safe Families Act which affect direct service staff and a statement of how the Department complies with each provision:

- 1) **Safety** must be the paramount concern when making service, placement, and permanency planning decisions. This principle has been incorporated into Policy

Guide 98.1 and Rules 315, Permanency Planning and 316, Administrative Case Reviews and Court Hearings. Safety determinations are conducted by the Department through the use of the Child Endangerment Risk Assessment Protocol (CERAP), which is applied frequently throughout the time children and families are served by the Department.

- 2) **Reasonable efforts** to preserve and reunify families are important but are **time limited** and **not required** when doing so places a child's safety in jeopardy. The federal law describes certain aggravated circumstances when reasonable efforts are not required. The concept of not requiring reasonable efforts in certain situations has prominently been reinforced in Policy Guide 98.1 and Rule 309 by the adoption of the policy permitting expedited termination of parental rights and the expansion of the grounds for termination of parental rights to match the federal definitions of aggravated circumstances.

The concept of **time limited** family preservation and reunification services has also been adopted by the Department in the new time limited return home goals introduced in Policy Guide 98.1 and Rule 315. In addition, Section IV of this Policy Guide implements the Federal requirement that States seek termination of parental rights when children have been in foster care for 15 of the most recent 22 months unless there is a compelling reason not to.

- 3) **Children remain eligible for adoption assistance** payments if the adoption is dissolved due to the death or termination of parental rights of the adoptive parents and the child is readopted. This provision has been incorporated into Rule 302, Section 302.310, effective May 1, 1998.
- 4) States may **not deny or delay the placement** of a child for adoption when an approved family is available **outside of the jurisdiction** with responsibility for handling the case of the child. The Department has adopted this provision in Rule 309, Section 309.100.
- 5) A **permanency hearing** must be held for each child in foster care in juvenile court no later than 12 months after the child is considered to have entered foster care. Policy Guide 98.1 and Rules 316, Administrative Case Reviews and Court Hearings, describe the Department's compliance with this provision.
- 6) A State **must file a petition to terminate parental rights** and concurrently identify, recruit, process, and approve a qualified family for adoption in the case of a child;
 - A) who has been in foster care for **15 of the most recent 22 months**, or
 - B) if a court has determined a child under two years of age to be an **abandoned infant**, or

- C) a court has made a determination that the **parent has committed certain crimes** which are specified below under Section IV(a)(3).

This requirement to file petitions seeking termination of parental rights and recruit an adoptive family applies to all children who were in foster care on or before November 19, 1997 and demands an **immediate response** from the Department within the time frames described in Section IV(b) of this Policy Guide. The requirement to seek termination of parental rights also applies to children coming into care on or after November 20, 1997. The Department's procedures for complying are described in Section IV of this Policy Guide.

Policy Guide 98.1 and Department Rule 309.50 incorporate subparagraphs B) and C) above as grounds for expediting termination of parental rights. Any case described in B) and C) above that has not already been identified for termination of parental rights should be reviewed to determine whether termination of parental rights should be pursued.

IV. HOW TO COMPLY WITH THE FEDERAL MANDATE ON FILING PETITIONS TO TERMINATE PARENTAL RIGHTS FOR CHILDREN WHO HAVE BEEN IN FOSTER CARE FOR 15 OF THE PRECEDING 22 MONTHS

This Section contains instructions and procedures that require an immediate response and compliance. While the procedures target certain identified groups of children to be freed for adoption through the filing of petitions to terminate parental rights, it is important to note that adoption efforts on behalf of children not in this target population must not be abandoned.

Successful compliance with the federal mandates described in this section requires close coordination and cooperation of Department and purchase of service caseworkers, adoption workers, Regional legal staff, State's Attorney's offices and court personnel. While the work involved is intensive, the ultimate outcome expected is that children who have been in foster care the longest will have at long last achieved permanent adoptive homes.

a) Children for Whom Petitions for Termination of Parental Rights Are to Be Filed

The Adoption and Safe Families Act of 1997 requires that a State file a petition to terminate parental rights and seek an adoptive placement for:

- 1) children who were in foster care on or before November 19, 1997 who have been in foster care for 15 of the most recent 22 months. **For purposes of this policy the date of entering foster care is interpreted as being the date that is 60 days after the date on which the child is removed from the home (these would be children removed from their parents on or before September 20, 1997).**

- 2) children under the age of two years who were determined at an adjudicatory hearing to be abandoned; and
- 3) children whose parents are criminally convicted of:
 - i) murder of another child of the parent,
 - ii) voluntary manslaughter of another child of the parent (second degree murder),
 - iii) aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter, (under Illinois statute these crimes include "solicitation to commit murder of any child, murder for hire of any child, or solicitation to commit second degree murder of any child") or
 - iv) committing a felony assault that has resulted in serious bodily injury to the child or to another child of the parent (under Illinois statute these crimes include "aggravated battery of a child or felony domestic battery, any of which resulted in serious injury to the minor or a sibling of the minor, and aggravated sexual assault").

b) Time Frames for Filing Petitions to Terminate Parental Rights

1) Children in Foster Care On or Before November 19, 1997 and Have Now Been in Foster Care for 15 of the Most Recent 22 Months

Petitions for the termination of parental rights must be filed for:

- A) 1/3 of the above children by November 22, 1998.
- B) 2/3 of the above children by May 22, 1999.
- C) all of the above children by November 22, 1999.

2) Children Who Entered Foster Care After November 19, 1997

Petitions for the termination of parental rights must be filed for children who entered foster care after November 19, 1997 as soon as they complete their 15th month in foster care.

c) Children Excluded from the Federal Requirement to File Petitions to Terminate Parental Rights

It is the policy of the Department to file petitions for termination of parental rights when parental unfitness grounds exist and it is in the child's best interests to seek an adoptive placement. While federal mandates of the Adoption and Safe Families Act now **require** the State to file a petition for termination of parental rights in the cases described in Section IV(a) above (unless there is a compelling reason not to), the federal mandates do not address the entire child population served by DCFS. Workers should proceed, after reasonable efforts have been made or determined to be inappropriate, with seeking termination of parental rights **for any child** in care when grounds for termination of parental rights exist and adoption is in the child's best interests, regardless of whether the child is in the pool defined by the federal mandates.

The federal law allows the state to exclude certain children who meet the characteristics described in Section IV(a) above from the requirement of filing petitions for the termination of parental rights within the required time frames. The State of Illinois has chosen to exclude the following children from the requirements of Section IV(a) above:

- 1) children in the care of relatives, whether licensed or unlicensed,
- 2) children for whom the Department has documented in the service plan a compelling reason for **not** seeking termination of parental rights. The Department has selected the following circumstances as compelling reasons not to seek termination of parental rights:
 - A) there is a permanency goal of return home for the child of:
 - i) return home within five months,
 - ii) return home within one year, or
 - iii) return home - status pending,ordered by the court after January 1, 1998.
 - B) there is a permanency goal of guardianship expected to be achieved within 12 months for the child,
 - C) there is a permanency goal of independence expected to be achieved within 12 months for the child,
 - D) the child is age 18 or over or the worker documents that a child age 14 or over will not consent to be adopted,
 - E) within the past six months, the case has been rejected at legal pre-screening (Cook County only) or screening either for lack of

grounds for termination of parental rights or more time is needed to meet the statutorily required grounds,

- F) the States Attorney has within the last six months rejected a petition to terminate parental rights based on the best interests of the child, or
- G) adoption has been ruled out for another compelling reason documented by the worker and approved by the Clinical Services Manager or in the case of a purchase of service agency, a supervisor in the office holding a Masters in Social Work degree (example: the child has mental health problems that would make a change in placement very traumatic to the child). It is anticipated that use of this compelling reason will be rare. Frequent use will trigger an inquiry requesting further information.

d) Identifying the Children/Inventory of Cases

- 1) Since November 1998, monthly print-outs have been generated and sent to workers identifying children in their caseloads who were in foster care on or before November 19, 1997 for 15 of the most recent 22 months. Because cases subject to ASFA's termination of parental rights requirements cannot be accurately identified from other existing automated data bases, workers were asked to review the print-outs and either select a code excluding the child from the list or proceed with the filing of petitions to terminate parental rights. The reports were supposed to have already excluded a significant number of children for reasons listed below. However, this exclusion did not take place and all children in care for 15 of 22 months were included on the report. This may have resulted in a low response rate to the reports. Consequently, new reports will be sent to workers during the second week of September. These lists will contain the names of children who have been in care for 15 of 22 months unless they are excluded from the ASFA requirements because they are:
 - A) Children living with relatives (HMR's),
 - B) Children who are 18 years of age or older,
 - C) Children who are non-Title IV-E eligible,
 - D) Children residing in an independent living arrangement (ILO),
 - E) Children whose cases have been closed,
 - F) Children with a return home permanency goal,
 - G) Children with a guardianship goal (with planned achievement under one year from when goal was established),
 - H) Children with a goal of independence (with planned achievement under one year from when goal was established),
 - I) Children who have already been adopted
 - J) Children in SGH placement,
 - K) Children for whom DCFS already has adoptive rights

L) Children in HMP placement.

If any of the above categories of children do appear on the print-out, a reason code is available for the worker to use in order to exclude the child from the list. There are also reason codes to exclude the child based on one of the compelling reasons listed above in (c)(2).

- 2) The print-outs will be sent to the team supervisor of the worker assigned to each child as shown in MARS/CYCIS. When the print-out is received by the assigned worker, the worker shall review each name on the print-out.

If the case has passed legal screening, the worker will record one or more of the following:

- date of pre-screening for a petition for termination of parental rights (Cook County)
- legal screening date, and/or
- termination petition filing date.

If the case has not passed legal screening or has not been to legal screening, the worker will determine if one of the Reason Codes applies and enter the appropriate code on the print-out.

Reason Code	Explanation
HMR	Child is currently in the care of relatives, whether licensed or unlicensed.
RET	There is a permanency goal of return home for the child of: i) return home within five months, ii) return home within one year, or iii) return home - status pending. ordered by the court after January 1, 1998.
SGH	There is a permanency goal of guardianship expected to be achieved within 12 months for the child.
IND	There is a permanency goal of independence expected to be achieved within 12 months for the child.
AGE	Child is age 18 or over.
CON	Child age 14 or over will not consent to be adopted.

RJ1	Within the past six months, the case has been rejected at legal pre-screening (Cook County only) or screening either for lack of grounds for termination of parental rights or more time is needed to meet the statutorily required grounds.
RJ2	The State's Attorney has within the last six months rejected a petition to terminate parental rights based on the best interests of the child.
OTH	Adoption has been ruled out for another compelling reason documented by the worker and approved by the Clinical Services Manager or in the case of a purchase of service agency, a supervisor in the office holding a Masters in Social Work degree (example: the child has mental health problems that would make a change in placement very traumatic to the child). It is anticipated that use of this compelling reason will be rare. Frequent use will trigger an inquiry requesting further information.
CLO	Child's case is closed.
ARR	Department has adoptive rights for the child.
HMP	Child is currently living in the home of a parent.
SUB	Child has never been placed in a substitute care placement.
ILO	Child is currently placed in an independent living arrangement (ILO).

In addition, the worker shall add to the blank lines on the bottom of the print-out the names and information about children who are not already on the list but fit one of the following categories:

Add Code	Explanation
A	Child under the age of two years who was determined at an adjudicatory hearing to be abandoned.
B	Child whose parent is criminally convicted of murder of another child of the parent.
C	Child whose parent is criminally convicted of voluntary manslaughter of another child of the parent (second degree murder).

- D Child whose parent is criminally convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter (under Illinois statute these crimes include “solicitation to commit murder of any child, murder for hire of any child, or solicitation to commit second degree murder of any child”)
- E Child whose parent is criminally convicted of committing a felony assault that has resulted in serious bodily injury to the child or to another child of the parent (under Illinois statute these crimes include “aggravated battery of a child or felony domestic battery, any of which resulted in serious injury to the minor or a sibling of the minor, and aggravated sexual assault”).

For each child added the worker shall provide the name, case ID, court docket number, living arrangement type code, birth date, placement name, permanency goal, Reason Code, legal prescreening and/or screening dates, and termination petition filing date on the print-out.

- 3) When the print-outs are received, workers have five days to review and complete the required information. The supervisor will review the print-out for legibility and accuracy, and will make and retain a copy. The supervisor will forward the print-out to regional staff responsible for data entry. Purchase of service agencies will submit their print-outs to their Agency Performance Teams for data entry. Workers will receive turn around print-outs showing any Add Codes and Reason Codes that were entered. They will be able to change and resubmit any Reason Code previously entered. The print-outs may also contain the names of new children who, since the last print-out, have recently become eligible to be included in the population of children who have been in foster care for 15 of the most recent 22 months. The worker shall review the status of any new child added to the print-out to determine whether the child should be excluded with the insertion of a Reason Code or whether a petition for termination of parental rights should be filed. The print-outs will be generated by ISD the first week of every month. The worker must make any changes or additions to the print-out and the printouts must be data entered by the 15th of the month.
- 4) The number of targeted cases identified through the inventory will be an approximation because:
 - A) children may move in and out of the Reason Code categories;
 - B) children in care on or after November 20, 1997 will meet the 15 of the most recent 22 months in foster care from February 19, 1999 through September 19, 1999, thus increasing the total number of cases which fall under the federal mandate. (Illinois

will use 60 days after removal from the parents as the “entered foster care” date. Therefore, for new cases, the Department will be including children removed from their parents on or after September 21, 1997.) As stated above monthly turn around print-outs will contain the names of these children not previously on the print-out.

- 5) If the data on the print-out is incorrect and the child lives in a living arrangement other than that shown on the print-out, the worker shall correct the print-out and also correct the information on CYCIS by completing a CFS 906/906-1.

e) Survey for Administrative Case Review

Policy Guide 98.11 required that workers complete Form CFS 387, Adoption and Safe Families Act Survey, for every child prior to the child’s Administrative Case Review. Effective with this Policy Guide workers need only to complete the form for children under 18 years of age who have been in substitute care for 12 months or longer and who cannot be excluded using one of the exclusion codes listed above in Section IV(d)(2).

Based on the information presented at the ACR, the administrative case reviewer will complete page five of the CFS 387 as a turn around document which will be provided to the caseworker at the conclusion of the ACR. This page will verify the reason for a child being excluded or detail tasks to be accomplished for filing a termination of parental rights petition prior to the next ACR. This information will also be included in the automated AS400 E-mail feedback received by DCFS supervisors and others on the distribution list. Purchase of service agency supervisors will continue to receive this information in the mail via hard copy.

After the administrative case review is completed, the worker shall place Form **CFS 387, Adoption and Safe Families Act Survey for Administrative Case Review**, in the child’s section of the case record.

f) Filing Petitions to Terminate Parental Rights

1) Legal Screening

Workers must request a legal pre-screening (Cook County) or screening to determine whether a petition shall be filed to terminate parental rights for all children on the print-out for whom a Reason Code does not apply. Rule 309.80, Termination of Parental Rights, describes the legal screening process. Workers are responsible for gathering all necessary information and documentation in accordance with their Regional legal screening protocol.

In determining which cases to seek petitions to terminate parental rights, workers will, based on the goals established for their caseloads, consult with their supervisors on which cases will be given priority. When establishing priorities, workers and supervisors will take into account the permanency needs of children who have been in foster care the longest.

2) Grounds for Termination of Parental Rights

Each case for which termination of parental rights is being sought must have **grounds for termination of parental rights separate from the fact that a child has been in foster care 15 out of the most recent 22 months**. The grounds for termination of parental rights are described in Rule Section 309.50, Identification of Children for Potential Adoption Planning. Determination of whether a ground for termination exists will be done at the legal screening.

NOTE: Public Act 90-608 amended the Adoption Act to create a separate ground of parental unfitness based on the fact that a child has been in foster care for 15 months out of any 22 month period. However, the 15 month period for this ground takes effect with the passage of the Act which was signed into law and became effective June 30, 1998. Therefore this ground cannot be used until September 30, 1999.

3) List the Child with AICI

When it has been determined by the legal screening that a petition should be filed for termination of parental rights, the worker shall list the child with the Adoption Information Center of Illinois, in accordance with Rule 309.40, within two weeks of the internal legal screening (Downstate), or within two weeks of the State's Attorney's legal screening in Cook County, if the child does not yet have an adoptive resource.

VI. CREDIT FOR PERMANENCIES ACHIEVED FOR THE EXCLUDED CLASSES

All adoptions and subsidized guardianship cases are counted in meeting the President's 2002 Adoption Initiative and for performance contracting purposes. The fact that a child has been excluded from the ASFA target population even though the child is being adopted, does not mean that the adoption does not count as an achieved permanency outcome. The same is true for subsidized guardianships and return homes. It is only for the narrowly focused purpose of meeting those cases targeted by the Adoption and Safe Families Act that these cases are not counted. Attempts to find permanent homes for children who are being excluded from the ASFA survey must be continued.

VII. QUESTIONS

If you have any questions regarding this Policy Guide, contact Bill Duda in the Office of Child and Family Policy either by phone at (217) 524-1983, PROFS CFS9D63,

or Outlook. If you have any questions regarding the print-out itself, contact Jim Gregory at (312) 814-6866, PROFS CFS9344, or Outlook.

VIII. FILING INSTRUCTIONS

Discard Policy Guide 98.11 dated November 2, 1998 and replace it with this revised Policy Guide. File this Policy Guide with Rule Section 309.50, Identification of Children for Potential Adoption Planning.