

OFFICE OF CHILDREN AND FAMILY SERVICES

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DIVISION: Strategic Planning  
and Policy Development

TO: Commissioners of Social Services  
Executive Directors of Voluntary Agencies

DATE: September 6, 2000

SUBJECT: ASFA Safety and Permanency

SUGGESTED

DISTRIBUTION: Directors of Social Services  
Foster Care Supervisors  
Home Finding Supervisors  
Adoption Supervisors  
Staff Development Coordinators

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ATTACHMENTS:

Attachment 1 - Strengths Assessment  
Attachment 2 - Strengths in Families  
Attachment 3 - Poor Prognosis Indicators

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc Ref.
85 INF-5 98 OCFS INF-3		18 NYCRR Part 428	SSL Section 409-e SSL Section 409-f Chapter 7 of the Laws of 1999 Chapter 145 of the Laws of 2000		ASFA Related Changes to the UCR: Documentation Guidelines

The Adoption and Safe Families Act  
Safety and Permanency

Introduction

The purpose of this release is to provide social service districts and voluntary authorized agencies with a comprehensive document describing two of the principle themes of the federal Adoption and Safe Families Act of 1997 (ASFA) Public Law 105-89 and relate those themes to the day-to-day practice issues involved in working with child welfare clients, so children can be cared for safely and so that permanency can be achieved in a timely manner. This release is consistent with the newly revised, ASFA-compliant Uniform Case Record forms and forthcoming amendments to Office of Children and Family Services (OCFS) regulations 18 NYCRR Part 428. Additional information on specific documentation requirements can be found in ASFA-Related Changes to the UCR: Documentation Guidelines (March 2000). To view this document go to the public folders: Statewide; OCFS; ASFA - Policy/Practice.

The passage of the federal Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, places an increased emphasis on promoting child safety and permanency as the primary goals of the child welfare system. In support of the federal Act and New York State's ASFA enabling legislation, (Chapter 7 of the Laws of 1999, enacted February 11, 1999), OCFS regulation 18 NYCRR 428.3(g) states that "each initial assessment, comprehensive assessment and reassessment developed in accordance with this Part must contain: a written consideration of whether it is safe for the child to remain in his or her home; or whether it is safe for the child to remain in his or her current foster care placement, and whether it is safe to discharge the child from foster care." The new safety and permanency requirements of this Act have necessitated a review and revision of current UCR case recording requirements and associated case practice expectations.

The revised UCR templates, for both the risk-based and non-risk based versions, will be available on CONNECTIONS workstations throughout the State, replacing the current UCR templates. In addition, for agencies that do not have CONNECTIONS workstations, paper versions of these new templates will be available. The purpose of this Informational Letter is to highlight the policy decisions associated with the UCR documentation changes necessitated by the implementation of ASFA.

PART 1: ASFA and SAFETY

I. The Safety Framework

The concept of a safety assessment and safety response has always been an integral feature of sound, responsible casework practice. In 1990, New York State further strengthened this critical assessment and decision-making

requirement by developing a structured protocol for safety assessments, risk assessments, and services planning. The Safety Assessment has been a critical component of the New York State Risk Assessment and Services Planning Model. The Safety Assessment has provided a focused and succinct examination of child safety within the context of a child abuse/maltreatment case. The intent of this assessment and decision-making process is to help promote a child's immediate protection (where necessary) when triggered by a report of suspected child abuse or maltreatment. The CONNECTIONS-supported, safety assessment module is completed within seven days of the receipt of any registered Child Protective Services (CPS) report (see 18 NYCRR 432.2(b)(3)(ii)(c)). Its use as a safety update tool is also required at the completion of the CONNECTIONS-supported Investigation Stage (see 18 NYCRR 432.2(b)(3)(iii)(b)). For those post-Investigation Stage cases that are open due to continuing child abuse and maltreatment related risk issues, case planners also re-assess child safety within the framework of the risk-based UCRs (see 18 NYCRR 428.11(b), 18 NYCRR 428.12(b), 18 NYCRR 428.13(b), and 18 NYCRR 428.14(b)).

The OCFS has consistently communicated a policy message which states that the definition of "safety"; the specific factors used to assess safety; and the safety decision and safety response are all inextricably woven around child abuse and maltreatment allegations and the dynamics of child abuse and maltreatment. The same rigorous tests and standards have not been specifically applied to non-CPS cases. Nonetheless, safety requirements identified in the federal ASFA legislation do not distinguish between child protective cases and other child welfare cases. In addition, since implementation of the New York State Risk Assessment and Services Planning Model, some caseworkers have sought conceptual and documentation guidance concerning "safety" issues that may be present in non-CPS cases, especially when documenting their assessments and case decisions using the risk-based UCRs. For these two reasons, additional clarification and, where needed, revised documentation is now available to support a comprehensive assessment and response to all safety-related issues across the continuum of child welfare cases.

To better understand the changes that will be implemented with the release of the ASFA compliant UCRs, it is helpful to re-examine the application of the safety concept across five child welfare perspectives.

## II. Applying the Safety Concept

### o CPS

For CPS-involved families, the foundation of the safety assessment has been directed toward serious and immediate threats to a child's life and health, as a consequence of acts associated with the child's parent(s) or caregiver(s). In this child protective context, the term "safe" has denoted the presence of strengths and/or mitigating circumstances and the absence of threatening conditions or behaviors that would place any child in immediate danger of serious harm. As currently implemented in the New York State Risk Assessment and Services Planning Model, the "safe" decision is explicitly defined by stating that "there are no children likely to be in immediate danger of serious harm" [also see 18 NYCRR 432.2(b)(3)(ii)(c)]. Conversely,

the "unsafe" decision definition states that "without a controlling intervention(s), one or more children will likely be in immediate danger of serious harm." For cases with an "unsafe" decision, the safety "response" is intended to focus on actions that "control" factors that endanger a child, thereby protecting a child from immediate danger of serious harm.

To date, these definitions - and the specific "safety factors" that form the foundation for the safety assessment and safety decision - have been designed to address child protective circumstances only. The emphasis has been squarely placed on whether the actual, suspected or anticipated abusive, neglectful, or dangerous acts of a child's parent or caretaker are placing one or more children in immediate danger of serious harm.

o Preventive

In a non-CPS context, OCFS policy has viewed issues related to "safety" within a "crisis" frame, typically generated by a parent and/or child service need. Unlike the concept of safety with CPS-involved cases, the operative definition of "crisis" in the non-CPS context has been shaped by identifying serious threats to a child, family and/or community's health, functioning and well-being. For example, a child or caretaker's suicidal ideation, a child's runaway behavior, a child's drug use, family homelessness, caretaker hospitalization, or death of a family member might precipitate these crises or safety threats. These non-CPS reported "crises" have been assessed within the normal course of conducting and documenting a non-CPS assessment. Subsequently, this process continues throughout the ongoing case assessment and services planning stages. Associated documentation has usually been found in UCR Progress Notes and the following risk-based UCR sections: "Safety Decision and Response", "Other Actions Taken and Case Events", "Risk Assessment Analysis", and the "Service Plan." In situations where there are serious threats to a child's health and safety as a result of parent/caretaker actions, (which otherwise satisfy the definition of abuse or maltreatment as set forth in SSL 412 and FCA 1012), OCFS policy has consistently stated that suspected abusive or neglectful situations should be reported to the Statewide Central Register of Child Abuse and Maltreatment (SCR) (and must be reported when the source satisfies the definition of a mandated reporter as set forth in SSL 413). If the report is accepted and registered, this action would begin a CPS-focused safety assessment and the initiation of a CPS-involved case.

o PINS/JD

Another perspective arises with children who are adjudicated as juvenile delinquents (JD) or persons in need of supervision (PINS). For these cases, the emphasis typically revolves around safety in relation to the child, especially his/her interaction with his/her family, placement setting, and community. The focus is often on the protection of the family, community, or other individuals living with the child, as a consequence of the particular child's behavior. Presently, safety is documented via Rehabilitative Services recording requirements or, for children who are Title IV-E eligible, safety is considered in a manner similar to the Preventive cases described in the preceding paragraph or as described in the next subsection on foster care placement.

o Foster Care Placement

An additional safety perspective mandated by ASFA concerns a child's safety within the foster care placement itself. Child safety assessment in a foster care setting is a specific ASFA mandate. Indeed, ASFA requirements related to criminal background checks illustrate the priority that is attached to promoting, as best as one can, the expectation that children placed in out-of-home settings will be safe. In addition to criminal background checks, there are other variables that may influence the safety of a child in a particular foster care setting. For both CPS and non-CPS cases, a child's safety in the foster care placement can be affected by multiple variables including, but not limited to, the adherence to home or facility licensing standards, foster care resources, adequacy of supervision, and living conditions. In addition, safety can be affected by the behaviors of caregivers or other adults and other children who may have access to the child.

o Foster Care Discharge

The safety assessment and safety decision requires a focus on the child's protection from serious harm attributed to his/her caretaker and/or living conditions. It also assesses the child's own affect on the safety of his/her family, caregivers, and community. In the context of a child's potential discharge from foster care, the most relevant judgment is whether the discharge "will be safe and appropriate" [18 NYCRR 430.9(e)(2)(iii)]. Documentation associated with safety and appropriateness of the discharge has been recorded in the UCR Plan Amendment or in the next regularly scheduled UCR. For CPS cases, the primary consideration is whether the original safety concerns have been resolved and sufficient protective factors are now established so that the child can be safely returned home, without the likelihood of immediate or impending re-placement. For children discharged to independent living, the safety focus may be on the child's self-sufficiency readiness, and the resources and linkages that may be needed to provide essential emotional, developmental, vocational, educational and other living supports.

III. ASFA UCR Compliance and Related Modifications

To fully address the specific documentation and case practice expectations identified in ASFA, current safety principles and most documentation requirements have been maintained. In addition, new safety definitions have been developed, previous safety definitions have been clarified, and the application of safety assessment case documentation are now more clearly expressed across a wider range of child welfare cases. Specifically, these cases include: children that remain home, but are in receipt of protective and/or preventive services; children that have been voluntarily or involuntarily placed in foster care; and children that are planned to be discharged from a foster care placement. These changes will allow us to meet ASFA child safety requirements by enhancing rather than reconfiguring current case practice and documentation expectations.

#### IV. Revised Safety Definitions

To address ASFA safety assessment requirements, clarify safety concepts, strengthen safety decision-making and support safety-related case recording, the following definitions and guidelines apply with the implementation of the revised ASFA-compliant UCRs:

##### CPS Cases:

"Safe" is defined as a decision-making conclusion that three essential components are present related to any child in the household or custodial setting:

- protecting factors exist;
- there are no present or impending threats of immediate danger of serious harm to any child's life or health as a result of acts of commission or omission by the child's parent(s) or caretaker(s); and
- safety interventions are not required.

"Unsafe" is defined as a decision-making conclusion that three essential components are present related to any child in the household or custodial setting:

- protecting factors do not exist or are insufficient;
- there are present or impending threats of immediate danger of serious harm to any child's life or health as a result of acts of commission or omission by the child's parent(s) or caretaker(s); and
- safety interventions are required.

"Protecting Factors" are defined as: strengths, attributes, circumstances, and/or resources that serve to promote and support child safety.

##### Non-CPS Cases:

"Safe" is defined as the decision that there are no children, parents, caretakers, family members, or community members likely to be in immediate danger of serious harm or likely to face a serious threat to their emotional, physical or developmental well being.

"Unsafe" is defined as the decision that one or more children, parents, caretakers, family members, or community members will likely be in immediate danger of serious harm or will likely face a serious threat to their emotional, physical or developmental well being.

Note: The non-CPS definitions are somewhat similar to the CPS case definitions, but there are important differences. For one, different assessment factors are considered [for examples, see the guide: ASFA Related Changes to the UCR: Documentation Guidelines (March 2000)]. In addition, in the non-CPS definition, the focus of attention and concern expands beyond the child, extending to other family members, caretakers, and/or the community. The threat is not thought to be

associated with a parent or caretaker's abusive or neglectful behavior or living conditions. In fact, the child could even pose the safety threat. Lastly, the definition is broader than only immediate danger of serious harm to life or health. It also includes serious threats to emotional, physical or developmental well being.

"Protecting Factors" in the non-CPS context are defined as: strengths, attributes, circumstances, and/or resources that serve to promote and support the safety of the child, family, and/or community members.

#### V. CPS and Non-CPS Safety Documentation

For the revised UCRs, changes to the "Safety Review" and "Actions to Date" sections of the UCR are intended to eliminate confusion that some workers have experienced concerning the concept of safety in CPS as well as non-CPS cases. The changes are further designed to more clearly preserve the "Safety Review" section for CPS cases, thereby adhering to established CPS safety definitions and decision-making criteria. The UCR revisions now include a distinct section for documenting non-CPS safety concerns. With implementation of the revised UCRs, workers will have a specifically designated section in each risk or non-risk based UCR to document non-CPS "safety issues", presenting issues, and identified family or child crises. In addition, workers are prompted to address both in-home and out-of-home placement safety decision-making, including key protecting factors that will support child safety.

#### VI. Safety in Foster Care Settings

Traditionally, the criteria for child safety in foster care settings has been intentionally higher than familial situations, insofar as a child is placed in the legal custody of a governmental entity; either a local Commissioner of Social Services or Commissioner of the Office of Children and Family Services. Child welfare professionals and the community have come to expect that a higher standard should apply. When the caretaker is the foster care provider, concerns related to family autonomy and family preservation do not apply. In the New York State child welfare system, it has always been expected that no child would be intentionally placed or remain in a foster care setting that was harmful to the child's safety and well-being. This is reinforced by current homefinding and licensing standards, along with agency-conducted, home monitoring. Consequently, in addition to the continuing need to assess potential or immediate child safety threats, the frame of reference is positively focused toward the identification and significance of "protecting factors" that serve to support and confirm a safe environment.

Prior to ASFA, UCR documentation requirements had not been explicitly related to the child's safety once she/he has been placed in a foster care setting. However, this does not mean that safety-related issues have not been routinely identified and documented. For example, "Appropriateness of Placement, including both "Placement Level Justification" and "Continuity of Environment" have been routinely addressed for all placement cases. Also, references to the child's adjustment and functioning within the foster care setting are found in case Progress Notes, and various other sections of the UCR.

In addition to our ongoing safety-focused practices and documentation requirements, a new ASFA-inspired documentation question will prompt workers to "identify key protecting factors that will support child safety in the current placement." This phrase is operationally defined to reinforce the expectation that the child is placed in an environment that includes the presence of protecting factors and the absence of threatening conditions or behaviors that would place the child in immediate danger of serious harm or seriously threaten their emotional, physical or developmental well-being. Although not restricted to this list alone, protecting factors might be associated with any one or more of the following:

- \_ the home/agency approval or licensing and child abuse/maltreatment record
- \_ criminal background checks and an assessment of safety when criminal records exist
- \_ the safety of the physical environment
- \_ the protective capacities of other children or adults in the placement setting
- \_ the ability to meet the child's needs; appropriateness of placement
- \_ child's attributes and capacity to protect him/herself
- \_ caretaker's ability and willingness to recognize child's needs and act accordingly
- \_ family and/or inter-personal dynamics within the placement setting
- \_ resources available to the child
- \_ family and community supports
- \_ relationship between placement caretakers and child's family

#### VII. Re-Assessing Safety and the "Discharge Planning Protocol"

Compliance with ASFA provisions will strengthen our emphasis on re-assessing safety, both in case practice and case record documentation. As previously identified, ASFA-inspired changes to the UCR will facilitate the application of safety principles to both CPS and non-CPS cases, and include on-going safety assessments. These safety re-assessments will apply not only for child protective cases, but also to preventive cases and cases where children are placed in a foster care placement setting.

Re-assessing safety and readiness for placement discharge is the primary objective of the new "Discharge Planning Protocol" case planning and recording instrument. Social services districts and voluntary authorized agencies may decide to use the Discharge Planning Protocol instead of the more broadly worded and open-ended narrative that currently exists in the appropriate section of the UCR Plan Amendment. The Discharge Planning Protocol offers a more vigorously comprehensive assessment of safety prior to the anticipated discharge date. Relinquishing formal custody and returning a child home or to independent living is one of the most critical decisions that child welfare officials are required to undertake. Assessment and decision-making expectations articulated through the Discharge Planning Protocol reflect a renewed and strengthened commitment to child, family, and community safety and appropriate post-discharge or aftercare services and supports.

## VIII. Conclusion

The path that State and local stakeholders have chosen to address ASFA safety requirements, and to strengthen and clarify our safety concepts and definitions, should enhance case documentation and support caseworker's ability to make clear and appropriate safety decisions. Importantly, it should not serve to diminish the critical distinction between immediate safety and future risk. However, adding a "safety" definition and clear documentation expectations on the new UCRs, for both CPS and non-CPS case situations, offers important case assessment and decision-making guidance. The implementation of this safety enhancement plan will help everyone in New York State meet ASFA recording requirements and maintain child safety as our number one child welfare priority.

## PART 2: ASFA and PERMANENCY

### I. The Permanency Framework

Permanency for children is the other predominant theme in ASFA. There is a clear intent for foster care to be a short-term, interim step in a child's journey to permanency. Achievement of permanency in accordance with a child's needs for emotional security and healthy development entails earlier decision making and shorter time frames. Some of the key components of ASFA that support the permanency theme are:

- \_ Affirms that permanency planning includes reunification, as long as it can be established that it is consistent with the safety of the child;
- \_ Identifies concurrent planning as a means to hasten permanency for children;
- \_ Establishes new requirements for reasonable efforts to be made to achieve permanency for children;
- \_ Allows for "no reasonable efforts" to be made under certain circumstances;
- \_ Creates tighter timeframes to achieve permanency for children;
- \_ Except under specified circumstances, requires the filing of petitions to terminate parental rights for children in foster care for 15 of the last 22 months; for children who have been abandoned; and for children whose parents have committed certain specified serious crimes against the child or another child in the family.

### II. Concurrent Planning

Concurrent Planning is a term heard frequently in child welfare since ASFA's enactment. ASFA amended section 471 (a) (15) (F) of the Social Security Act to explicitly permit that reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to make it possible for a child to safely return to the child's home. In other words, it is permissible to work toward reunification, while at the same time establishing an alternative permanency plan.

In a sequential planning approach, most casework efforts to identify and pursue alternatives other than reunification are deferred until it is certain that all reunification efforts have been exhausted or the court has

rendered a decision terminating parental rights. This approach may result in delays in achieving permanency because earlier opportunities to engage parents, relatives, foster parents or others in the identification of alternative paths to permanency are sometimes missed.

In a concurrent planning approach, casework efforts toward reunification earnestly continue, while identification of possible alternative permanency plans is made simultaneous with these ongoing efforts of reunification. The primary goal of concurrent planning is to be able to move children in foster care more quickly from the uncertainty and impermanence of foster care to the security of a permanent family. Additionally, concurrent planning is a tool to help achieve:

- Safety for children;
- Early permanency decisions for children;
- Reductions in length of stay in foster care; and
- Reductions in the number of moves and relationship disruptions a child experiences while in foster care.

This notion of concurrent planning can present a challenge to foster care workers, parents, relatives, foster parents and service providers who serve children in foster care and their families. For concurrent planning to be effective, the caseworker needs to engage all members of the child's significant network, including foster parents, in planning for the child's well being. The district or agency team, including the caseworker, supervisor and legal staff needs to maintain frequent communication about case plans, progress and decisions. The supervisor is key in helping to sort through case information and assist with the difficult decisions that support children's interests, whether those decisions are to reunify or to provide another permanency alternative. Judges, law guardians and attorneys should be helped to understand the principles and ramifications so that concurrent planning activities are understood and determined to be diligent efforts in the child's best interest and not as a way to circumvent the need to work diligently with parents in pursuit of permanency through reunification.

Concurrent planning is not a requirement under federal or State law. It is an option to consider when it would best serve the needs of foster children. Successful utilization of this option entails the use of several steps. A term that is commonly used to describe a critical step in the concurrent planning process is "differential assessment." A differential assessment assists in making a tentative, though reasoned hypothesis about the probability of the child's returning home, and of the family's capacity to benefit from reunification services. Primarily, a differential assessment will focus on the family's history and dynamics, the members' strengths, maturity and capacity for self care, and the available support system. It is important that caseworkers look for strengths and capacities and avoid categorizing or labeling families. It should be noted that in deciding whether to use concurrent planning, and if the choice is made to do so, the implementation, where applicable, must also satisfy the diligent efforts requirements related to termination of parental rights standards. Concurrent planning seeks to provide an alternative path to permanency should reunification not be achieved. It is best developed and implemented in tandem with the reunification plan, not in lieu of it.

McQuade & Ehrenreich (see Attachment 1) have developed material helpful in assessing client strengths. Such concrete factors as client coping mechanisms, resiliency, and interpersonal skills and supports are included to assist workers in conducting a differential assessment and helping with the decisions associated with concurrent planning.

Linda Katz, et.al (see Attachment 2 and 3) have also developed material to assess potential or prognosis for reunification. Their assessment tools elicit responses to assessment factors and to "poor potential" indicators in a variety of categories. These are factors to consider in making a judgement about whether the case is a candidate for concurrent planning. The factors are not weighted or scored, nor is any formula applied. Although certain factors resemble those on the UCR risk scales, identification of these factors do not replace requirements to perform risk assessments. These tools are also provided in order to assist workers in making concurrent planning judgements.

If a worker determines that concurrent planning is the appropriate response to the case circumstances, it is essential that full disclosure be made to the family. Full disclosure means that parents must be given information about the following:

- The agency's concurrent activities intended to prevent the child from experiencing an extended stay in foster care;
- Detrimental effects of out-of-home care;
- Urgency of reunification;
- The significance of visiting the child.

Full disclosure is at the very core of concurrent planning, as it is with all effective case planning. It demands an honest and open dialogue between the caseworker, the parents, and the foster parents. It is essential for everyone involved to understand their rights and responsibilities, allowing for informed decision making. Parents must understand what needs to occur if their children are to be returned to them. They must also understand what will occur if they do not follow through. All good casework includes the family in an assessment of what must change in order for reunification to occur and positive parenting to be sustained. Knowing what factors must change in order for reunification to occur, helps all involved to stay focused on core issues and behaviors. This is especially critical in concurrent planning. Progress on both plans should be continually evaluated and discussed among the caseworker, the parents and the alternate permanency resource. Resources and supports must be targeted toward the areas of critical need, those behaviors, their underlying conditions and contributing factors in need of real change.

Parents, and children old enough to understand, should be involved in this discussion and decision-making process to the greatest extent possible. Genuineness, honesty and respect are the most critical values underlying the caseworker's intervention, and nowhere is this more important than when using concurrent planning. At all times during this process, it is essential that parents and children understand what is happening, and why. They need to be assured of the caseworker's positive intent toward them and their children. Caseworkers should strive to convey that the concurrent plan is a positive safeguard for children's well-being.

The probability of reunification may be increased when parents are involved in the development of the service plan and are aware of the agency's perception of their ability to reunify [see NYCRR 430.12 (c) (1)]. Written service agreements or contracts are often helpful in specifying what has to be done to reunify the family. Some caseworkers use the service plan, especially one developed with the family members, as an agreement that is accepted and understood by everyone. This helps to clarify expectations and helps all to focus on concrete and discrete elements of the service plan. Furthermore, the requirement for service plan reviews provides another opportunity to make certain that all parties understand the case plan and their associated responsibilities [see NYCRR 430.12 (c) (2)].

Parents need to be told about the negative effects of substitute care on children as early as possible. Understanding that for their children, being without a permanent home has the potential to cause harm, may act as a motivating factor toward early resolution and hasten permanency. In addition, parents must be informed about the effect of parental inaction, lack of progress or disappearance. The parents should know that they can expect the agency to proceed with alternative plans if they are not able, with the assistance of the agency, to safely resume care and custody of their children. An essential component of this dialog is to specifically inform parents of the requirements for termination of parental rights for children in foster care for 15 of the most recent 22 months (see section III of this part).

One of the most critical things a parent can do while their child is in foster care is to visit frequently, dependably and consistently. A critical component of a caseworker's service planning responsibility is to promote and facilitate an appropriate parent-child visiting plan. Concurrent planning places extra emphasis on such visiting. Visiting environments should present optimal chances for positive parent/child interaction. The more parents visit with their children, the greater the chance of successful reunification. Despite the fact that for some children visits may lead to stress, feelings of divided loyalties and/or behavior problems, visitation, none-the-less shores up the child's sense of identity in the long run.

The UCR has been redesigned to incorporate concurrent planning activities. The questions are phased in and provide areas for documentation of efforts made in the following areas:

- Exploring permanency options with another parent or relatives/extended family members;
- Exploring permanency options with the child's foster family; and
- Exploring permanency through voluntary surrender and subsequent adoption, including possibilities other than the traditional closed adoption. It should be noted that voluntary surrender averts the adversarial nature of termination proceedings and it also eliminates the use of termination of parental rights as a grounds for a court making a "no reasonable efforts" determination for a subsequent child.

o "The Other Parent" and Relatives

As is so often the case, a child may be removed from one of his or her parents, while the other parent was a "non-custodial" parent. In child welfare, there is a strong tendency to concentrate on the parent from whom the child was removed, and to evaluate that parent's likelihood of reunification with the child. This may even be the case when the other parent is available and has been involved in the child's life.

In other scenarios for example, when the father is a respondent in a child abuse or neglect proceeding in Family Court, case plans may in fact focus on removing a father from the child's life all together. When not a respondent, often the "other parent", who had been a non-custodial parent prior to the child's entry into foster care, is not considered for custodial responsibility.

Although New York's law, regulation and child welfare policy requires that children be placed with relatives capable of caring for them safely when ever feasible, and this policy has been bolstered by ASFA, in practice there is wide variation in earnestly pursuing this policy and making determined efforts to seek out, evaluate and consider the other parent as the child's permanent placement. Even if an absent parent is unable to provide a permanent home for the child, ruling out this alternative early in the child's foster care placement will allow the child's permanency planning to proceed in a more expeditious manner. If such parent is ruled out as a viable resource for the child, the result may be a more timely termination or surrender of parental rights. Further, information can be gathered from the non-custodial parent about other relatives who may be capable of providing a safe, suitable home for the child.

Each parent must be sought out, and his/her availability, interest and capability assessed in order to reach a decision with regard to the child's permanency plan. If a parent's whereabouts are unknown, ASFA provides for the use of the Federal Parent Locator Service (FPLS) to assist with the search. The FPLS, established and conducted under Title IV-D, (Section 453 of the Social Security Act), and operated by the Federal Office of Child Support Enforcement, is a computerized network used to help the States locate parents. The FPLS can search for information and records of the Internal Revenue Service, the Department of Defense, the National Personnel Records Center, the Social Security Administration, the Department of Veteran's Affairs, and State Employment Security Agencies. In addition, states report newly hired employees to a National Directory of New Hires, which is also part of the FPLS. The requests for an FPLS search should be submitted through the social services district's IV-D unit. At the present time, these requests can be made only for absent parents. Other relatives are precluded from being sought in this manner.

There are a number of reasons why relatives as caregivers are preferred when the children cannot be reunified with their parents. Some of the reasons are:

- since children are more likely to be familiar with their relatives, placement with them may be less traumatic and disruptive than other options;

- children may maintain a stronger family bond because they are more likely to have their siblings with them;
- there may be more of an opportunity for the children to maintain family continuity by allowing them to have contact with birth families;
- they are less likely to have multiple placements.

Law and regulation promote the use of relatives as placement resources. The court may place a child in the custody of a relative as a dispositional alternative under 1055 (a) [child protective], 756 (a) [PINS] or 353.3 (1) [juvenile delinquency] of the Family Court Act (FCA). Furthermore, the court is required to have the social services district explore the availability of relatives as a placement resource. Section 1017 of the FCA expressly authorizes the court to direct the social services district to conduct an investigation to identify suitable relatives for care of a child either through direct custody or as a foster parent. In addition, OCFS regulation [18 NYCRR 430.10 (b) (2)] requires that districts attempt, prior to the placement of a child in foster care, to locate adequate living arrangements with a relative, which may enable the child to avoid a foster care placement.

Relatives have historically been granted special consideration in the foster care system due to the special continuity of relationships they provide to a child. To become a foster parent for a related child, the relative may be approved on an emergency basis as a foster parent, thereby allowing the child to be placed quickly with kin he/she knows. Once a child is in foster care, making a permanency plan for a child with kin continues to be a preferred approach if a child cannot return home. ASFA recognizes, that on a case-by-case basis, it is acceptable not to file a termination of parental rights petition for a child placed in kinship foster care when he or she has been in care for 15 of the most recent 22 months.

Therefore, if a foster child is placed with relatives, exploring the possibility with them of making this a permanent arrangement, or if a child is placed with non-relatives, seeking out and assessing relatives with regard to becoming a permanent resource for the child are critical steps in concurrent planning. Becoming a "permanent resource" may include: adopting a related child who is free for adoption; assuming legal custody or guardianship of a permanently neglected child pursuant to Article 6 of the FCA; assuming legal guardianship pursuant to Article 17 of the Surrogate's Procedure Act; or assuming legal custody through a direct placement with a relative as a result of child protective, PINS or juvenile delinquency proceeding previously noted.

It should be noted that determination of a child's Indian status should be documented as early as possible. If a child is an Indian child, the requirements of the Indian Child Welfare Act of 1978 (P.L. 95-608) and 18 NYCRR 431.18 apply. This includes the requirement for the child to be placed in a home compatible with the child's culture and following the required order of preference for placement.

o Foster Parents

At the point of the home study of potential foster parents, determining their desire to adopt should a child in their care become free, is a useful first step. The process should not end there, but this question should be revisited throughout the period that the family is a foster care resource. When a decision has been made in a particular case to use concurrent planning, children may be placed as early as possible with a foster family who will make a commitment to provide foster care as long as necessary and adopt the child if the child is legally freed. (See 85 INF-5 "Guidelines for 'At Risk' Placement of Certain Foster Children" for more information.) Again parents must be fully informed that a permanent placement with the foster parent is a possibility. This needs to be done in a way that enables the parent to appreciate the value of a potentially permanent placement to their children's well being. It is the responsibility of the caseworker to manage their own and the parent's concerns and fears that this type of placement could interfere with reunification efforts.

Foster parents need a clear set of expectations about their role in the permanency planning process for particular children. Foster parents should be encouraged to attend service plan reviews where frank discussions of permanency progress and options should take place. Under ASFA foster parents are entitled to notice and the right to be heard at any service plan review and permanency hearing. This is particularly critical when the foster parents are the permanency resource for the child in the event that the child cannot be reunified with his or her parents.

What concurrent planning requires are foster parents who can say to the child "you will either be going home or remaining here with us." At the same time they must understand that they have an obligation to assist the birth parents so the birth parents can reunify with their child. This is a challenging role, must be dealt with directly and is an important component of training and supporting foster parents who will or may be involved with a concurrent planning case.

Caseworkers must keep foster families well versed on the progress of the case and assist them in dealing with the ups and downs of the permanency planning process.

o Voluntary Surrender / Voluntary Relinquishment

Both terms, voluntary surrender or voluntary relinquishment of parental rights, are used to refer to the non-adversarial surrender of a child. (See SSL Section 383-c.) As a permanency resolution for a child in foster care who cannot safely return to his or her parents, it is an option that has a number of advantages. Among them are:

- a more humane approach that spares the trauma to parent and child of a contested, often protracted termination proceeding;
- often shortens the time before a child achieves permanency;
- parents may feel less threatened and believe that their rights are more protected;

- allows parents to take responsibility and to more fully participate in decision making for the child - the parents take a positive action for the child, as opposed to having their parental rights taken from them;
- reduces financial, emotional and time costs.

As the timeframes for achieving permanency have shortened under ASFA, it is important to make parents aware of this alternative. Parents need to know all of their alternatives from the outset if they are to be truly empowered to choose the future that is best for themselves and their children. In order to come to a decision regarding this permanency option, counseling and/or mediation are ancillary services that should be considered. This strategy can help focus attention on collaborative problem solving on behalf of the child. ( See OCFs regulation, 18 NYCRR 421.6 for standards relating to the taking of judicial and extra-judicial surrenders.)

Voluntary surrender may be a more attractive alternative if it is coupled with possible adoption options as described below. Parents may be more willing to surrender if they can be assured of who will adopt their child, or if some form of contact can be maintained after the adoption takes place. The parents should be legally represented with this approach, regardless of whether there is an in-court or extra-judicial surrender.

o Open or Cooperative Adoption

In certain situations, the complete severing of the parent-child relationship is not always in the child's best interests. A voluntary surrender may contain conditions agreed to by the birth parent and the authorized agency. Such conditions may include: who will adopt the child, the exchange of information concerning the child with the birth parent, and/or the level of direct contact of the child with his or her birth parent. While not a direct party to the voluntary surrender, the prospective adoptive parent is a key participant in the consideration, implementation and enforcement of any condition. The degree to which such conditions are enforceable, particularly following the completion of the adoption, has not been finally resolved in statute. However, based on case law, it appears that the birth parent may take steps to seek to enforce the conditions set forth in the voluntary surrender, including seeking judicial intervention.

The strategy of open or cooperative adoption may be particularly useful for children because it can speed permanence for children who may otherwise spend years moving between foster care and their birth parents. It may be considered for those children involved in transracial adoptions because ongoing contact with family members may enable them to more easily retain their racial and cultural identity. Other factors to consider are the age of the child and the child's emotional attachment to his or her birth parents. From the perspective of the birth parents, this arrangement will free them from the day-to-day responsibility for caring for the child, which they may not fully desire or believe is beyond their capability, without totally abandoning the child.

### III. Termination of Parental Rights

The termination of parental rights requirement is contained in Section 475(5) (E) of the Social Security Act, as amended by ASFA and Section 384-b (3) (1) of the SSL. These sections specify that:

- in the case of a child who has been in foster care for 15 of the most recent 22 months; or
- if a court of competent jurisdiction has determined a child to be an abandoned infant; or
- if a court of competent jurisdiction has determined that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or another child of the parent;

A petition to terminate parental rights must be filed, and concurrently, workers must identify, recruit, process and approve a qualified family for adoption, unless there is a compelling reason not to do so, or another statutorily authorized reason not to do so.

The following case circumstances may constitute a compelling reason not to file a TPR for a particular child. These should not be considered an automatic justification not to file, nor is this list necessarily all-inclusive. In all cases, a case-by-case determination must be made. They are:

- The child is 14 years old or older and does not want to be adopted;
- A family setting will not currently meet the child's needs because of the child's severe emotional, behavioral or psychiatric problems;
- At least one parent is actively being considered as a discharge resource for the child, and it is anticipated that such discharge is likely to occur within six months;
- The child is in placement with a sibling(s) and the sibling(s) is not being freed for adoption;
- The parent makes regular contact with the child and maintaining their relationship benefits the child;
- The child is in foster care for a child-related problem, at least in part, and there would be little or no benefit to the child in ending the child's relationship with the child's parent(s);
- There are insufficient legal grounds for TPR;
- The child's best/most likely permanency option is something other than adoption;
- The child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either return to his or her parent or guardian, or discharge to independent living; or

- The child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrates that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

Other statutorily authorized reasons not to do so include:

- the child is being cared for by a relative; or
- the family has not been provided with services necessary for the safe return of the child unless such services are not legally required.

The latter two items of "other statutorily authorized reasons" is an all-inclusive list.

The decision to file or not to file must be evaluated on a child-specific basis and be made in accordance with a child's best interests. It is not acceptable to claim a compelling reason simply by virtue of his or her membership in a broad class of children (i.e. JD/PINS, Indian children). Chapter 145 of the Laws of 2000 codified preexisting policy on this matter. It specifically added reference to the requirement of a case-by-case determination and eliminated any perceived class of persons to whom the compelling reason standard would apply. For a more thorough discussion of this topic refer to 98 OCFS INF-3.

The UCR forms have been revised to capture the compelling reason(s) or other reason(s) for not filing a petition to terminate parental rights, when applicable. Subsequently, since case circumstances can change over time, the compelling or other reason not to file a termination of parental rights petition should be reassessed and documented with the completion of each subsequent UCR. Caseworkers may reaffirm that the reason supporting the decision not to file still exists or explain any changes in circumstances that affect this requirement.

#### IV. Reasonable Efforts

The ASFA mandate for reasonable efforts determinations are placed on the court with a vital associated role for the agency. It is the agency that bears the burden of proving that reasonable efforts have been made. It is from the worker's testimony and timely and thorough documentation that the judge can obtain sufficient information in order to make that determination. Family members may also provide information to inform this determination. Court orders must specify that for all children in placement, reasonable efforts must be made to achieve whatever permanency option has been chosen, whether it be to return home, adoption, independent living or any other chosen option.

New York law divides reasonable efforts among:

- reasonable efforts to prevent placement;
- if a child is removed, reasonable efforts to make it possible for the child to safely return home, or if the permanency goal is adoption, guardianship or some other permanent living arrangement other than reunification with parent, reasonable efforts to make and finalize such alternative permanent placement; or
- no reasonable efforts are required (per court order).

New York law reflects federal ASFA statute. DHHS regulations 45 CFR 1356.20 (b) (2) refer to reasonable efforts to finalize a permanency plan. Court orders need to address what the reasonable efforts were, as made by the social services district.

The UCR forms provide a number of areas to record the information regarding reasonable efforts. The primary areas include:

- the service plan, and the re-evaluation of the previous service plan, including the level of outcome achievement and modifications made due to insufficient progress [no changes have been made to the UCR service plans];
- the permanency progress section of the Risk Reassessment and Service Plan or the Reassessment and Service Plan Review;
- Progress Notes.

The permanency progress section of the UCR contains expanded language to cover additional permanency options for both children freed for adoption and children who are not freed for adoption. Both barriers to achieving permanency and actions to achieve permanency must be addressed.

## V. Conclusion

Children should not remain in temporary care any longer than is absolutely necessary. The agency must constantly work toward finding and achieving the best possible plan so that the stay in foster care is as brief as possible. Adhering to the permanency provisions described above should enhance case documentation and, more importantly, increase children's opportunities for safe, stable and enduring permanent homes.

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William F. Baccaglioni  
Director  
Strategic Planning  
and Policy Development

Attachment 1

Strengths Assessment

Factors Associated with Resilience, Coping and Growth

Cognitive and Appraisal Skills

- \_ Intellectual ability and memory
- \_ Independence, curiosity, creativity
- \_ Initiative, perseverance, patience
- \_ Practical intelligence, common sense
- \_ Planning ability, ability to anticipate problems
- \_ Realistic appraisal of own situation and personal capacities
- \_ Reflectiveness and insight
- \_ Ability to use feedback

Temperament and Disposition

- \_ Belief in trustworthiness of others
- \_ Belief in own self-worth
- \_ Sense of mastery
- \_ Confidence and optimism
- \_ Ability to tolerate ambiguity and uncertainty
- \_ Sense of humor
- \_ Lack of hostility, anger, anxiety
- \_ Not dwelling on past
- \_ Ability to grieve
- \_ Action oriented
- \_ Not resigned to one's fate
- \_ Takes responsibility for decisions, actions and situations
- \_ Spirituality, faith
- \_ Sense of direction, mission and purpose
- \_ Sense of identity and cultural identity

Defenses and Coping Mechanisms

- \_ Mature and flexible defenses
- \_ Ability to regulate impulses
- \_ Regulates affect
- \_ Maintain emotional equilibrium
- \_ Ability to self-soothe
- \_ Self-esteem
- \_ Proactive with respect to stressors

Interpersonal Skills and Supports

- \_ Good relationships with helpers
- \_ Can accept help and trust helpers
- \_ Ability to confide
- \_ Problem solving skills

- \_ Ability to engage others
- \_ Positive social relationships
- \_ Capacity for empathy
- \_ Not overly dependent
- \_ Can distance self from harmful relationships

External Factors

- \_ Supportive social institutions
- \_ Physical health
- \_ Emotional health
- \_ Adequate income and resources
- \_ Supportive family and friends who provide concrete aid, assistance and feed back

Adapted from "Assessing Client Strengths" by Sharon McQuade and John H. Ehrenreich  
Families in Society, 1997.

Attachment 2

STRENGTHS IN FAMILIES

Parent-Child Relationship

- (1) Parent shows empathy for the child.
- (2) Parent responds appropriately to the child's verbal and non-verbal signals.
- (3) Parent has an ability to put the child's needs ahead of his/her own.
- (4) When they are together, the child shows comfort in the parent's presence.
- (5) The parent has raised the child for a significant period of time.
- (6) In the past, the parent has met the child's basic physical and emotional needs.
- (7) Parent accepts some responsibility for the problems that brought the child into care or to the attention of the authorities.

Parent Support System

- (8) Parent has positive, significant relationships with other adults (spouse, parents, friends, relatives) who seem free of overt pathology.
- (9) Parent has a meaningful support system (i.e. church, job, counselor) that can help him/her now.
- (10) Extended family is nearby and capable of providing support.

Past Support System

- (11) Extended family history shows family members able to help appropriately when one member is not functioning well.
- (12) Relatives came forward to offer help when the child needed placement.
- (13) Relatives have followed through on commitments in the past.
- (14) There are significant other adults, not blood relatives, who have helped in the past.
- (15) Significant other adults have followed through on commitments in the past.

Family History

- (16) Family's ethnic, cultural, or religious heritage includes an emphasis on mutual caretaking and shared parenting in times of crisis.
- (17) Parent's own history shows consistency of parental caretaker.
- (18) Parent's history shows evidence of his/her childhood needs being met adequately.

Parent's Self-Care and Maturity

- (19) Parent's general health is good.
- (20) Parent uses medical care for self appropriately.
- (21) Parent's hygiene and grooming are consistently adequate.

- (22) Parent has history of stability in housing.
- (23) Parent has solid employment history.
- (24) Parent has graduated from high school or possesses a GED.
- (25) Parent has employable skills.

Child's Emotional, Cognitive and Social Development

- (26) Child shows age-appropriate cognitive abilities.
- (27) Child is able to attend to tasks at an age-appropriate level.
- (28) Child shows evidence of conscience development.
- (29) Child has appropriate social skills.
- (30) Major behavioral problems are absent.

Adapted from Concurrent Planning From Permanency Planning to Permanency Action by Linda Katz, Norma Spoonemore, and Chris Robinson, Copyright 2000, Lutheran Social Services of Washington and Idaho.

Attachment 3

POOR PROGNOSIS INDICATORS

Catastrophic Prior Abuse

- (1) Parent has killed or seriously harmed another child through abuse or neglect and no significant change has occurred in the interim.\*
- (2) Parent has repeatedly and with premeditation harmed or tortured this child.\*
- (3) Parent seriously physically or sexually abused his or her infant. (Treatment of parent may be so difficult and lengthy that child spends years in foster care.)

Dangerous Lifestyle

- (4) Parent's only visible support system and only visible means of financial support is found in illegal drugs, prostitution, and street life.\*
- (5) Parent is addicted to debilitating illegal drugs or to alcohol.
- (6) Pattern of documented domestic violence between the spouses (or parent/paramour or caretakers) of one year or longer and they refuse to separate.
- (7) Parent has a recent history of serious criminal activity and jail.
- (8) Mother chronically and regularly abused drugs/alcohol during pregnancy, disregarding medical advice to the contrary.

Significant CPS/Child Welfare History

- (9) Parental rights to another child have been terminated following a period of service delivery to the parent and no significant change has occurred in the interim.\*
- (10) There has been a pattern of several escalating CPS interventions for serious separate incidents, indicating a chronic pattern of abuse or severe neglect.
- (11) Maltreatment is pervasive and there have been multiple forms of abuse and neglect.
- (12) Other children have been placed in foster care for periods of time over six months duration or child has had repeated placements with CPS intervention. Inability to sustain reunification efforts and maintain child(ren) at home.
- (13) Child has had periods of prolonged abandonment with friends, relatives, hospital, or in foster care; or once the child is placed in subsequent care, the parent does not visit of his/her own accord.
- (14) CPS or other preventive services have been lengthy and intensive and have failed to keep the child with parent.
- (15) Parent is under the age of 16 with no parenting support systems, and placement of the child and parent together has failed due to parent's behavior.
- (16) Parent has asked to relinquish the child on more than one occasion following intervention.

Mental Health Functioning

- (17) Parent diagnosed with severe mental illness (i.e. psychosis, schizophrenia, borderline personality disorder, sociopathy) and has not responded to previously delivered mental health services. Parent's symptoms continue, rendering parent unable to protect and nurture child.\*
- (18) Parent diagnosed with chronic and debilitating mental illness (i.e. psychosis, schizophrenia, borderline personality disorder, sociopathy) and responds slowly or not at all to current treatment modalities.
- (19) Parent is intellectually impaired, has shown significant self-care deficits, and has no support system of relatives able to share parenting.
- (20) Parent's own history of deprivation, trauma, abuse or neglect as a child has resulted in seriously impaired ability to parent.

\* Extreme conditions making family reunification a very low probability.

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