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Nell Clement

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Do “Reasonable Efforts” Require Cultural Competence? The Importance of Culturally Competent Reunification Services in the California Child Welfare System

NELL CLEMENT*

Introduction

With the enactment of the Adoption and Safe Families Act of 1997 (“ASFA”), the American child welfare system prioritized permanence. The ASFA sets a rigid time frame for attempts at family reunification and non-compliance with this time frame can result in the termination of parental rights. The ASFA approach moves away from the presumption that family reunification is in the best interests of the child and towards a presumption that if attempts to reunify a family do not succeed within fifteen months, termination of parental rights is in the child’s best interests.

Under the ASFA’s rigid time line, the importance of effective reunification services is especially vital to preservation of the family and preventing the termination of parental rights. Federal law requires that “reasonable efforts” be made to reunite a child with her parents once a child has been removed from her home.¹ California case law provides a definition of what “reasonable

* J.D., University of California, Hastings College of the Law (2008); B.A. Anthropology, Yale University (2001). I would like to dedicate this note to my grandmother, Marjorie Flynn, who imparted on me the importance of education and free-thinking; a woman before her time. I would like to thank Lois Weithorn for her guidance and feedback on this note. I would also like to thank Lisl Duncan and the staff of the *Hastings Race and Poverty Law Journal* for their support and tireless hard work.

1. Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C.S. § 671(a)(15)(B) (2007).

efforts" should entail.² However, this definition fails to make any specific mention of culture³, nor is there any statutory requirement that culture be taken into account in assigning reunification services or determining if services provided were in fact "reasonable." Noting that a high percentage of child welfare cases involve families from varying cultural backgrounds,⁴ the absence of an express recognition of culture in reunification services is particularly disturbing. This non-recognition of culture in attempts to reunify families creates potentially disastrous results for children, parents, and communities falling outside the dominant American culture. This paper discusses the role that culture currently plays in the assignment of reunification services under California child welfare law. Additionally, this paper argues that "reasonable efforts" at family reunification require statutory recognition of culture and a requirement that culturally competent services be provided to families in the California child welfare system.

Beginning in the late nineteenth century, the state began to invade the privacy of the family in the name of child welfare.⁵ Xenophobia and social control were often the roots of public concern over child welfare.⁶ Part I of this note explores the evolution of the child welfare system in the United States from its origins to its current status, examining federal as well as other important case law. Part II continues with a discussion of the current law in California and the requirement of "reasonable efforts" to reunify families in the system, with particular attention paid to the influence of the ASFA.

Part III of this note examines the presence of children from culturally diverse families within the child welfare system in California. This section discusses the overrepresentation of these families involved in the California child welfare system and examines potential explanations for this overrepresentation. This

2. Reunification services will be found to be reasonable if the child welfare department has "identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist parents in areas where compliance proved difficult (such as helping to provide transportation. . .)." *In re Riva M.*, 286 Cal. Rptr. 592, 599 (1991).

3. See *infra* text accompanying notes 6, 7.

4. Children of color represent 41 percent of children within the United States, yet 59 percent of children involved of in the child welfare are children of color. Theresa Hughes, *The Neglect of Children and Culture: Responding to Child Maltreatment with Cultural Competence and a Review of Child Abuse and Culture: Working with Diverse Families*, 44 FAM. CT. REV. 501, 503 (2006).

5. Lois Weithorn, *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes*, 53 HASTINGS L.J. 1, 41 (2001).

6. *Id.* at 41, 50-51.

section also discusses the interdependence of the interests of culturally diverse children, their families, and their cultural community.

Part IV investigates the role that culture currently plays in child welfare law in California. This section discusses the "reasonable efforts" standard in the absence of express recognition of a family's culture, how this standard can be ineffective at reunifying families, and how it allows for cultural biases and unpredictable subjectivity to enter into child welfare decisions. Additionally, this section argues that legal precedent requires that reunification services recognize cultural differences through analogous California case law that requires services to be tailored to particular parental needs and status. Part IV highlights specific cases where lack of cultural competence in reunification services has affected a family's ability to utilize these services, resulting in negative outcomes for the family in child welfare proceedings. This section identifies several problems that inhibit the ability of the California child welfare system to provide culturally competent services.

Part V argues that negative outcomes in case law and problems preventing culturally competent services necessitate statutory recognition of culture and a statutory requirement that reunification services be culturally competent. Part V outlines the role that culture should play in adequately addressing the needs of California families in crisis. This section illustrates culturally competent services through an examination of existing practices that represent positive examples of culturally appropriate approaches to reunification services. This section also suggests guidelines for attorneys representing culturally diverse children and families in child welfare proceedings to ensure that the needs of the client are met through appropriate services.

In conclusion, this paper reiterates its goals: to evaluate and critique the current role culture plays in the child welfare system in reference to reunification services, to emphasize the necessity of recognizing culture and the benefit for all parties involved, and to improve the cultural competence of the current system by highlighting good examples of culturally competent reunification services and best practices for advocates of culturally diverse individuals.

"Culture" is difficult to define for it encompasses and overlaps with race, ethnicity, religion, language, class, and tradition. As law professor Susan L. Brooks writes, "culture is inclusive of race and ethnicity, but it goes beyond those easily identifiable attributes to encompass more subtle and nuanced aspects of family life."⁷

7. Susan L. Brooks, *Representing Children in Families*, 6 NEV. L.J. 724, 745 (2006).

Culture has been defined as "a set of beliefs, attitudes, values passed from one generation to the next," which includes "language, world view, dress, food, styles of communication, notions of wellness, healing techniques, childrearing patterns, and self-identity."⁸ While this definition gives the reader a basic concept of "culture" for purposes of this paper, this definition is merely illustrative of one concept of culture. The recognized complexity of culture requires that any definition of culture be flexible. Thus, this paper defines "cultural diversity" in the negative, as the absence of the dominant American culture. The dominant American culture is recognized as the values and practices of English-speaking white, middle-class Americans that reflect Judeo-Christian religious beliefs. In contrast, culturally diverse individuals, families, and communities are those that do not reflect aspects of the dominant American culture in terms of race, ethnicity, religion, language, and class, or values, practices and beliefs.

I. Evolution and Current Status of the Child Welfare System in United States

A. Origins of the Child Welfare System in the United States

State concern for and intervention in child welfare is a relatively modern concept. It was not until the nineteenth century that the state began to invade the privacy of the family in the name of child welfare. Early Americans did not see the mistreatment of children to be a problem requiring public attention and parents were rarely questioned regarding their decisions in child-rearing.⁹ However, beginning in the early nineteenth century, childhood was viewed as a distinct phase of development and the public began to perceive children as vulnerable and in need of protection.¹⁰ Throughout the nineteenth century, "challenges to the previously impenetrable privacy of the family were increasingly tolerated, particularly if the parents in question appeared unsuited to the task of raising our country's future citizens."¹¹ Thus, families that failed to reflect desired American values were often the focus of child welfare inquiries and the public concern for child welfare was commingled

8. V.D. Abney, *Cultural Competency in the Field of Maltreatment in THE APSAC HANDBOOK ON CHILD MALTREATMENT* 409, 409 (J. Briere, L. Berliner, J.A. Bulkey, C. Jenny, & T. Reid eds., 1996).

9. Weithorn, *supra* note 5, at 49.

10. *Id.* at 50; Stephanie Jill Gendell, *In Search of Permanency: A Reflection of the First 3 Years of the Adoption and Safe Families Act Implementation*, 39 FAM. CT. REV. 25, 26 (2001).

11. Weithorn, *supra* note 5, at 41.

with xenophobia and a desire for social control.¹² Early actions to protect child welfare generally affected immigrant and impoverished populations almost exclusively and often failed to distinguish between "willful mistreatment of children and poverty or cultural differences."¹³ Throughout the nineteenth and twentieth century the child welfare system in the United States has evolved through statutes and case law, resulting in a complex system that involves state, federal, and individual players. While the current child welfare system does not explicitly reflect the xenophobia demonstrated by the child welfare system of the past, the disproportionate number of culturally diverse children within the system raises questions about the recognition and consideration of diverse cultures within child welfare cases.

B. Parental Rights: Supreme Court Case Law

The Supreme Court has continuously recognized that family privacy and parental rights are fundamental rights guaranteed by the Fourteenth Amendment and subject to substantive and procedural protections of due process. Beginning in the early twentieth century, the Supreme Court held that a parent's right to make child-rearing decisions is subject to constitutional protection. In *Meyers v. Nebraska*, the Court invalidated a Nebraska statute that prohibited the teaching of any foreign language until a child had passed the eighth grade, holding that rights of parents to control the education of their children deserved constitutional protection.¹⁴ Two years later in *Pierce v. Society of Sisters*, the Court cited its holding in *Meyers* and affirmed a lower court order enjoining public officials from enforcing the Compulsory Education Act.¹⁵ The Act required every parent, guardian, or person in control of a child between eight and sixteen years to send their children to "a public school for the period of time a public school shall be held during the current year" in the district where the child resides.¹⁶ The Court in *Pierce* held that the Act unreasonably interfered with the liberty of parents to direct the upbringing and education of the children under their control.¹⁷

More recently, the Supreme Court has reiterated the

12. *Id.* at 41, 50-51.

13. *Id.* at 50-51 (quoting Mary Ann Mason, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CHILD CUSTODY IN THE UNITED STATES 102 (Columbia University Press 1994)).

14. *Meyers v. Nebraska*, 262 U.S. 390 (1923).

15. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

16. *Id.* at 530

17. *Id.* at 534.

constitutional protection of parental rights under the Fourteenth Amendment in cases that determine the rights of the parent in relation to the rights of others in a child's life. In *Smith v. Organization of Foster Families for Equality and Reform*, the Court stated that a biological parent's right to conceive and raise one's children is an essential right.¹⁸ The Court held that the biological parent's essential right does not apply to foster parents, and thus, a foster parent's rights to her foster child are not subject to substantive and procedural protections of due process.¹⁹ Additionally, in *Troxel v. Granville*, the Supreme Court affirmed a lower court ruling that reversed an order of visitation for a grandparent that was opposed by the mother.²⁰ The Court in *Troxel* found the order of visitation to be an unconstitutional infringement on the mother's fundamental right to make decisions concerning the care, custody, and control of her children.²¹

The Supreme Court has also cited the constitutional protection of parental rights through case law dealing with the procedures and processes of state welfare agencies in removing children from their parents' care. In *Santosky v. Kramer* the Court held that the clear and convincing evidence standard of proof applies to proceedings for the termination of parental rights.²² The Court found that the preponderance of the evidence standard was inconsistent with due process because the private interest in parental rights affected was substantial, whereas the countervailing governmental interest favoring the preponderance standard was relatively slight.²³ Additionally in *M.L.B. v. S.L.J.*, the Court held that because parents' rights to their children are protected by the Fourteenth Amendment, a state court could not condition the taking of an appeal from the termination of parental rights on the affected parent's ability to pay record transcription costs.²⁴ In this case, the Court declared that parental termination decrees were "among the most severe forms of state action."²⁵

The Supreme Court has continuously recognized parental rights as subject to the substantive and procedural protections of the due process clause of the Fourteenth Amendment of the Constitution. Thus, for state and federal child welfare statutes that

18. *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1977).

19. *Id.* at 847-48.

20. *Troxel v. Granville*, 530 U.S. 57 (2000).

21. *Id.* at 75.

22. *Santosky v. Kramer*, 455 U.S. 745 (1982).

23. *Id.* at 768.

24. *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996).

25. *Id.* at 128.

interfere with parental rights to pass constitutional muster, they must pass strict scrutiny analysis and be supported by a compelling state interest that is narrowly tailored to that interest.

C. Federal Child Welfare Statutes Leading Up to ASFA

Until 1973, policies regarding child welfare were exclusively a matter of state concern. States had the freedom and responsibility to enact child welfare statutes, such as reporting laws for medical and educational professionals, and laws establishing parental rehabilitation programs. Because of variability across states, effective child welfare programs existed in only some communities and some state programs completely failed in their protection of children and families in crisis.²⁶

The Child Abuse Prevention and Treatment Act of 1973 ("CAPTA")²⁷ was Congress' original attempt to deal with failures in the state child welfare systems. CAPTA was the first federal legislation to address child abuse.²⁸ CAPTA defined child abuse in broad terms, including physical, mental, and sexual abuse of children by an adult responsible for their care.²⁹ CAPTA created national centers of personnel trained in prevention, identification, and treatment of child abuse and established a National Center on Child Abuse and Neglect, which was required to publish an annual summary of child abuse research, list successful programs, provide training materials, and create an advisory board composed of members of various federal agencies.³⁰ CAPTA set up procedural requirements that states had to follow to deal with child abuse and shifted the emphasis of state laws towards intervention and treatment of families in crisis.³¹

Motivated by the growing number of children placed in foster care by state child welfare agencies, Congress enacted the Adoption Assistance and Child Welfare Act of 1980 ("AACWA").³² AACWA was designed to change the focus of child welfare policies, looking to "deemphasize the use of foster care and encourage greater efforts to place children in permanent homes."³³ AACWA reflected the

26. Hillary Baldwin, *Legislative Reform: Termination of Parental Rights: Statistical Study and Proposed Solutions*, 28 J. LEGIS. 239, 244-45 (2002).

27. 42 U.S.C. §§ 5101-5107.

28. Baldwin, *supra* note 26, at 245.

29. *Id.*

30. 42 U.S.C. § 5014.

31. 42 U.S.C. § 5106; Baldwin, *supra* note 26, at 246.

32. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

33. Baldwin, *supra* note 26, at 252 (quoting S. Rep. No. 96-336 (1997) reprinted in 1980

"idea that permanency would best be provided by reunifying children with their biological families."³⁴ AACWA required that states make "reasonable efforts" to prevent removal of the child from his home, and once a child was removed, AACWA required "reasonable efforts" to return a child home.³⁵ However, despite the AACWA's requirement of "reasonable efforts," the statute neglected to define what "reasonable efforts" entailed.³⁶ In addition to "reasonable efforts," AACWA required states to provide preventive services, review cases every six months, and hold dispositional hearings every eighteen months.³⁷

The enactment of AACWA exemplified an increased effort by the federal government to assert control over state statutes regarding family law, an area of law traditionally controlled solely by the states. Congress encouraged compliance with AACWA by creating financial incentives for states that included the policy considerations of AAWCA in their child welfare statutes and procedures. AAWCA provided federal reimbursement for states that used "reasonable efforts" for reunification.³⁸ In order to receive these federal reimbursements, states were required to submit case plans to the Department of Health and Human Services, showing that "reasonable efforts" were being made on behalf of each child.³⁹ Thus, the federal government conditioned the receipt of federal money on a state's cooperation with the policy goals of AACWA, emphasizing "reasonable efforts" to preserve the family.

In the 1990s, statistics, lawsuits, and news accounts brought national attention to the failures of AACWA. "The half million children in foster care, the media's attention to horrific accounts of children reunified and then killed, the plight of children waiting for years in foster care, and the twenty-one class action suits against states with inadequate welfare systems," advertised the deficiencies of AACWA in addressing child welfare concerns.⁴⁰ Public sentiment began to disfavor reunification efforts and congressional support for a change in federal child welfare policy began to

U.S.C.C.A.N. 1448, 1459).

34. Amy Wilkinson-Hagen, *The Adoption and Safe Families Act of 1997: A Collision of Parens Patriae and Parents' Constitutional Rights*, 11 GEO. J. POVERTY L. & POL'Y. 137, 142 (2004).

35. Adoption Assistance and Child Welfare Act of 1980, *supra* note 32.

36. The "reasonable efforts" provision was clarified somewhat in the American Safe Families Act, enacted in 1997. See, *infra* Part I.D. Additionally, in some cases, state legislation and case law have provided a definition for "reasonable efforts." See, *infra* Part II.B.

37. Gendell, *supra* note 10, at 27.

38. *Id.*

39. Wilkinson-Hagen, *supra* note 34, at 143.

40. Gendell, *supra* note 10, at 27.

increase. This social and political climate ushered in the enactment of a new child welfare policy that moved away from the preference for family preservation and reunification reflected in the AACWA.

D. Adoption and Safe Families Act of 1997

The Adoption and Safe Families Act of 1997 ("ASFA") was signed into law by President Clinton, after receiving bipartisan support from Congress. The ASFA amended AACWA, expanding and clarifying some provisions of the earlier statute, as well as modifying other provisions. The ASFA reasserted the child welfare goal of permanence found within the AACWA, but declared that permanence would best be achieved through adoption of children in the system, not family preservation or reunification.⁴¹ Congress supported compliance with the ASFA's promotion of adoption through financial incentives. The ASFA provides incentive payments to states of \$4,000 to \$6,000 for each adoption once a base number has been exceeded.⁴² These monetary incentives for states are not dependent on whether the state made "reasonable efforts" to reunify the family.⁴³ Additionally, "no financial incentives are attached to the achievement of permanency through any other means, including successful reunification" of families.⁴⁴ Thus, where states previously received federal funds where their case plans demonstrated "reasonable efforts to reunify children with their biological families, under ASFA states now become 'incentive-eligible' once they exceed a base number of adoptions from the foster care system."⁴⁵ Therefore, under ASFA states are paid to promote adoption in the child welfare context and family reunification is no longer the primary goal for state agencies dealing with families in crisis.

The reliance on adoption can be attributed to the power of adoption lobbyists, who were given a forum to express their views on the state of the current child welfare system during congressional hearings on the ASFA.⁴⁶ The goal of many of these lobbyists was to eliminate the "reasonable efforts" provision entirely because it "may result in children being left with or returned to abusive families, and may be a barrier to permanent placement and adoption of

41. 42 U.S.C.S. § 671.

42. Wilkinson-Hagen, *supra* note 34, at 146.

43. *Id.*

44. Susan L. Brooks, *The Case For Adoption Alternatives*, 39 FAM. CT. REV. 43, 45 (2001).

45. Wilkinson-Hagen, *supra* note 34, at 146.

46. Baldwin, *supra* note 26, at 256.

children.”⁴⁷ Although Congress did not eliminate the “reasonable efforts” provision in the ASFA, as adoption lobbyists would have preferred, it did to some extent clarify the provision. The ASFA states that “in determining reasonable efforts to be made with respect to a child . . . the health and safety of the child should be of paramount concern.”⁴⁸ The ASFA also establishes certain circumstances where the state child welfare agency is excused from providing “reasonable efforts” to preserve or reunify the family.⁴⁹ In circumstances where no reasonable efforts are required, the state must hold a hearing to terminate parental rights within thirty days of a determination that “reasonable efforts” do not apply.⁵⁰ Additionally, the ASFA allows for concurrent planning to occur in child welfare cases.⁵¹

In addition to the ASFA’s modification of the “reasonable efforts” requirement, Congress codified a strict timeline in child welfare cases. The ASFA set forth a “shorter time frame for permanency hearings and thus for decisions about permanency plans” for children who have been removed from their parents.⁵² Under the ASFA, a permanency hearing must take place within twelve months of the child’s removal from their parents.⁵³ Additionally, the ASFA’s permanency hearing requires the composition of a permanency plan which includes whether the child will return to the parent, or be placed for adoption with the parent’s rights being terminated.⁵⁴ The timing and focus of the permanency hearing under the ASFA is in contrast with the “dispositional

47. *Id.*

48. 42 U.S.C.S. § 671(a)(15)(A).

49. “Reasonable efforts” are not required under the ASFA when a parent has: subjected the child to “aggravated circumstances” as defined in state law; committed, or aided and abetted in a conspiracy to commit murder or voluntary manslaughter of another of the parent’s children; committed felony assault that results in serious bodily injury to the child or other children of the parent, or; the parental rights to a sibling have been terminated involuntarily. (42 U.S.C.S. § 671(15)(D)(i-iii)).

50. Wilkinson-Hagen, *supra* note 34, at 145.

51. The ASFA states that “reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently” with reasonable efforts to preserve and reunify families. 42 U.S.C.S § 671(15)(F). Concurrent planning has recently been criticized by some child welfare workers that describe “the difficulty of being fully committed to two outcomes that seem to be in direct opposition to one another.” SUSAN CHIBNALL, ET AL., U.S. DEPT. HEALTH & HUMAN SERV., ADMIN. CHILDREN & FAM., CHILDREN OF COLOR IN THE CHILD WELFARE SYSTEM: PERSPECTIVES FROM THE CHILDREN WELFARE COMMUNITY 4-1 (Dec. 2003), available at http://www.acf.hhs.gov/programs/opre/abuse_neglect/respon_coc/reports/persp_ch_welf/cccws_pers_title.html [hereinafter CHILDREN OF COLOR].

52. Gendell, *supra* note 10, at 28.

53. 42 U.S.C.S. § 675(5)(C).

54. *Id.*

hearing" required under the AACWA. The AACWA required that a "dispositional hearing" be held within eighteen months of the child being removed from his or her parents.⁵⁵ This "dispositional hearing," considered to be a procedural safeguard to ensure that parental rights be considered, required that all possible options for the future be discussed, including reunification with the parents and a longer stay in foster care until family reunification was possible.⁵⁶ In addition to permanency hearings, the ASFA sets a strict timing requirement for termination of parental rights when a child has been in foster care for fifteen out of the last twenty-two months, absent specifically stated exceptions.⁵⁷

Under the ASFA, the federal government takes a proactive role in mandating compliance with and implementation of ASFA requirements and goals. Every five years, the Administration for Children and Families division of the U.S. Department of Health and Human Services conducts reviews designed to ensure that "State child welfare agency practice is in conformity with Federal child welfare requirements."⁵⁸ States that are not in compliance must develop improvement plans and may suffer financial penalties.⁵⁹ Thus, state child welfare law is now substantially controlled by federal child welfare legislation and state child welfare statutes often end up mirroring the federal statute in place, currently the ASFA.

II. California Child Welfare Law: California Welfare and Institutions Code and Relevant Case Law

A. California Welfare and Institutions Code

In California, child welfare jurisdiction, procedures, and decisions are guided by the California Welfare and Institutions Code ("CWIC"). This Code mirrors the ASFA in many ways, most significantly, focusing on adoption rather than family reunification as the path to permanence.

55. Baldwin, *supra* note 26, at 258.

56. *Id.*

57. Within this timeline, the state does not have to begin proceedings to terminate parental rights if: at the state's option, the child is being cared for by a relative; a state agency has documented in the case plan a compelling reason for determining that filing for parental rights would not be in the child's best interests; or the state has not provided reunification services for the family. 45 U.S.C.S. § 675(5) (E)(i-iii).

58. Admin. Children & Fam., Child Welfare Monitoring, <http://www.acf.hhs.gov/programs/cb/cwmonitoring/index.htm> (last visited March 23, 2008).

59. Gendell, *supra* note 10, at 29.

Section 300 of the CWIC defines jurisdiction of the juvenile court over minors who may become dependents of the court.⁶⁰ In general, such minors include those who have suffered or are at substantial risk of suffering: serious physical harm inflicted intentionally by a parent or guardian; serious physical harm or illness from a parent's failure to adequately supervise, protect, or provide adequate food, shelter, clothing, or medical treatment; serious emotional damage due to a parent's conduct; sexual abuse; or, acts of cruelty by a parent or member of the parent's household.⁶¹ Additionally, a minor may become dependent on the juvenile court if the minor's parent caused the death of another child through abuse or neglect, or the minor's sibling has been abused or neglected and the minor faces substantial risk of abuse or neglect.⁶²

To remove a child from his home, the minor must be in immediate danger of abuse or neglect, need immediate medical care, or there must be an immediate threat to the safety of the child due to the physical environment.⁶³ Within forty-eight hours of a child being taken into temporary custody, a child welfare worker must file a petition with the juvenile court requesting that the court take jurisdiction over the child, declaring the child a ward of the juvenile court.⁶⁴ Upon receipt of this petition, the court will hold a detention hearing, where the court determines whether the child should remain under custody of the child welfare department, away from his home, and whether reasonable efforts were made by the child welfare agency to prevent initial removal.⁶⁵

If the juvenile court declares the child to be detained, the court must hold a jurisdictional hearing within fifteen court days.⁶⁶ The purpose of the jurisdictional hearing is for the court to decide whether the child falls under Section 300 of CWIC, allowing the court to take jurisdiction over the child.⁶⁷ Once jurisdiction is found, the court must hold a dispositional hearing to determine who is going to care for the child and where the child is going to live.⁶⁸

If the court determines at the dispositional hearing that a child should remain outside the custody of his parent or parents, the child may be placed in foster care or, if the court determines it is within

60. Cal. Welf. & Inst. Code § 300.

61. *Id.*

62. *Id.*

63. Cal. Welf. & Inst. Code § 305, § 306(2).

64. Cal. Welf. & Inst. Code § 313(a).

65. Lori Klein, *Doing What's Right: Providing Culturally Competent Reunification Services*, 12 BERKELEY WOMEN'S L.J. 20, 25 (1997).

66. Cal. Welf. & Inst. Code § 319(f).

67. Cal. Welf. & Inst. Code § 319(b).

68. Cal. Welf. & Inst. Code § 358.

the child's best interests, with a relative who is willing to assume care of the child.⁶⁹ Families for whom the juvenile court has determined should remain separate at the dispositional hearing, must be provided services, with an aim to reunify the child with his parent or parents.⁷⁰ Reunification services for a family generally shall not exceed twelve months, or if a child is under three when removed from his home, the services shall not exceed a period of six months.⁷¹ However, under circumstances where it is shown that by extending the period of services, "there is substantial probability that the child will be returned to the physical custody of this parent or guardian," the court may elect to extend the services to up to eighteen months from initial removal.⁷² Additionally, under certain circumstances, the court may determine that reunification services need not be provided and begin termination of parental rights proceedings.⁷³

After the dispositional hearing and placement of the child in the custody of a non-parent, review hearings must be held every six months.⁷⁴ At a review hearing the court must consider the continuing necessity and appropriateness of the placement and the extent to which the child welfare agency is making reasonable efforts to return the child home or to finalize a permanent placement for the child.⁷⁵ After eighteen months, the court holds a final review hearing.⁷⁶ At the eighteen-month review hearing, if the court determines that it is detrimental to return the child to his parent's custody, the court terminates reunification services, orders the development of a permanent plan, and schedules a selection and implementation hearing.⁷⁷ At the selection and implementation hearing, the court determines whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.⁷⁸ At

69. *Id.*

70. Cal. Welf. & Inst. Code § 361.5.

71. *Id.*

72. *Id.*

73. Reunification services need not be provided to a parent or guardian, where the court finds with clear and convincing evidence: that the whereabouts of the parent are unknown; the parent is suffering from a mental disability that renders him incapable of utilizing the services; that the parent caused the death of another child through abuse or neglect; that the child is under three and suffered severe abuse by the parent; or that the child, the child's sibling, or half-sibling was removed from the home because of severe sexual abuse or severe physical harm inflicted by a parent. Cal. Welf. & Inst. Code § 361.5(b).

74. Cal. Welf. & Inst. Code § 366(a).

75. Cal. Welf. & Inst. Code § 366(a)(1).

76. Cal. Welf. & Inst. Code § 366.21.

77. *Id.*; Cal. Welf. & Inst. Code § 366.22.

78. *Id.*

this point, if adoption is identified as the permanent placement goal for the child and it is shown by clear and convincing evidence that the child is likely to be adopted, the court may terminate parental rights.⁷⁹ If adoption is not a likely outcome, the court may decide not to terminate parental rights and to allow the parent continued visitation with the child, but with reunification services no longer provided.⁸⁰

B. Relevant Case Law

The federal requirement that the state make "reasonable efforts" towards family reunification reflected under provisions of AACWA and ASFA is found in Section 361.5 of California Welfare and Institutions Code. CWIC states that "the juvenile court *shall* order the social worker to provide child welfare services" to the child and the parents.⁸¹ An emphasis on the importance of these services and a description of what they entail is found in California case law and other California statutory provisions. California case law has recognized that reasonable reunification services must be offered to a parent involved in dependency proceedings and that the "reunification plan is a 'crucial part of the dispositional order.'" ⁸² "Reasonable" reunification services are defined by the California Rules of the Court and include those "services provided by the county welfare agency or probation department to prevent or eliminate the need for removing the child, or to resolve the issues that led to the child's removal in order for the child to be returned home, or to finalize permanent placement of the child."⁸³

California courts have determined that reunification services, in order to be reasonable and pass court muster, must be tailored to fit the specific needs and circumstances of each family.⁸⁴ However, *reasonable* reunification services need not be perfect or include every potential service available.⁸⁵ The standard to determine whether services provided sustain the obligation of the state under CWIC is "not whether the services provided were the best that might be provided in an ideal world, but whether they were reasonable under

79. Cal. Welf. & Inst. Code § 366.26; Klein, *supra* note 65, at 29.

80. *Id.*

81. Cal. Welf. & Inst. Code § 361.5(a).

82. Mark N. v. Super. Ct. of L.A. County, 70 Cal. Rptr. 2d 603, 612 (1998) (quoting In re John B., 205 Cal. Rptr. 321, 324 (1984)).

83. CAL. CT. R. 1401(a)(21).

84. In re Michael S., 234 Cal. Rptr. 84, 90 (1987); In re Edward, 178 Cal. Rptr. 694, 701 (1981).

85. Elijah R. v. Super. Ct., 78 Cal. Rptr. 2d 311, 313 (1998); In re Misako R. 3 Cal. Rptr. 2d 217, 221 (1991).

the circumstances."⁸⁶ Reunification services must be designed to eliminate those conditions that led to the juvenile court's jurisdictional finding.⁸⁷ In other words, the services must attempt to remedy the scenario that brought the child under Section 300 of CWIC. The California Court of Appeal, Fourth District, explains in detail exactly how reasonable reunification services provided to a family in crisis should look.

The record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of service plan, and made reasonable efforts to assist the parents where compliance proved difficult.⁸⁸

Reasonable services may include case management, drug testing, substance abuse counseling and/or treatment, general psychological counseling, housing assistance, transportation, parenting classes, individualized instruction, and supervised visitation.⁸⁹

The state's responsibility, through the county welfare worker, to provide reasonable reunification services has an important effect on the procedure and outcome of a child welfare case. A court cannot terminate a parent's rights unless it finds clear and convincing evidence that reasonable services have been provided or offered to the parent.⁹⁰ Additionally, failure to formulate an adequate reunification plan that can be realistically implemented within the time limitations required by the ASFA and CWIC can cause reversal of a juvenile court's order to terminate parental rights.⁹¹

III. Overrepresentation of Culturally Diverse Families in the Child Welfare System

California is an extremely diverse state and the numbers of culturally diverse families in the child welfare system are astounding.⁹² However, despite this diversity, the California

86. *Id.*

87. *In re Dino E.*, 8 Cal. Rptr. 2d 416, 421 (1992).

88. *In re Riva M.*, 285 Cal. Rptr. at 599.

89. Klein, *supra* note 65, at 26-27.

90. Cal. Welf. & Inst. Code § 366.26.

91. *In re Bernadette C.*, 179 Cal. Rptr. 688, 693 (1982).

92. Statistics showing the numbers and ethnicities of children in the California child welfare system in out-of-home placements reflects an overrepresentation of children of

Welfare and Institutions Code ("CWIC") neglects to make any mention of culture in its statutory requirements for family reunification.⁹³ Additionally, there is no reference to culture in any of the case law definitions of "reasonable efforts" to reunify. California's failure to recognize culture in statutory and case law definitions of "reasonable efforts" is irresponsible and dangerous, creating potentially disastrous results for children, families, and communities that fall outside the dominant American culture.

As the United States becomes dramatically more diverse, the need for recognition of cultural differences by state child welfare agencies and dependency courts increases. According to the 2000 national census, one out of every four Americans is a race other than white, as opposed to one in eight as recorded in the 1990 national census.⁹⁴ Close to one-fourth of children and youth in the United States are children of immigrants or immigrants themselves.⁹⁵ The new immigrant groups are more culturally diverse than immigrant groups of the past, many coming from non-European countries and representing religions that do not share the Judeo-Christian background of the dominant American culture.⁹⁶ In California, diversity of the population is especially pronounced. About two-thirds of immigrants are highly concentrated in six states, California, New York, Texas, Florida, Illinois, and New Jersey, which have been labeled "major destination states."⁹⁷ In 2006, non-white children represented almost eight million of California's total population of children of just over eleven million.⁹⁸

color: Black-24,573; Hispanic-32,680; American Indian/Alaskan Native- 1,561; Asian/Pacific Islander-2,493; White-23,653. CAL. DEPT. SOC. SERV., CHILD WELFARE SERVICES/CASE MANAGEMENT SYSTEM: CHARACTERISTICS OF CHILDREN IN OUT OF HOME CARE FOR THE MONTH OF AUGUST 2006 1 (2006), <http://www.dss.cahwnet.gov/research/res/pdf/CWS2/2006/cws2aug06.PDF> (Last visited March 19, 2008).

93. CWIC does explicitly mention culture in defining when child welfare services are necessary. Cal. Welf. & Inst. Code § 16503. Additionally CWIC also requires that child welfare programs competing for public funding be culturally and linguistically appropriate. Cal. Welf. & Inst. Code § 18961. However, neither of these provisions specifically address reunification services, nor require that reunification services for families be culturally competent.

94. FRANK HOBBS & NICOLE STOOPS, DEMOGRAPHIC TRENDS: RACE AND HISPANIC ORIGIN 76 (2002).

95. ANNE E. CASEY FOUNDATION, UNDERCOUNTED, UNDERSERVED: IMMIGRANT AND REFUGEE FAMILIES AND THE CHILD WELFARE SYSTEM 3 (2006) (citing RANDY CAPPS & JEFFREY S. PASSEL, THE URBAN INSTITUTE, DESCRIBING IMMIGRANT COMMUNITIES (2004)) [hereinafter UNDERCOUNTED].

96. *Id.*

97. *Id.*

98. B. NEEDELL, ET AL., UNIV. CAL. BERKELEY CTR. SOC. SER. RES., CHILD WELFARE SERVICES REPORTS FOR CALIFORNIA (2006), available at <http://cssr.berkeley.edu/CWSCMSreports> (last visited Nov. 2006).

Not only do culturally diverse families represent a growing percentage of the population in California and the country overall, these families are also overwhelmingly overrepresented in the child welfare system. African-American children comprise less than one-fifth of the nation's children, yet they represent nearly half of the national foster care population.⁹⁹ Latinos and Native Americans also are disproportionately represented in the child welfare system.¹⁰⁰ In addition to being overrepresented in the system, culturally diverse children are often more likely to be removed from their families than white children. A national study of children protective services by the United State Department of Health and Human Services reported that "minority children, and in particular African American children, are more likely to be in foster care placement than to receive in home services, *even when they have the same problems and characteristics as white children.*"¹⁰¹ California's child welfare system reflects this national trend.¹⁰²

A. Poverty

The overrepresentation of culturally diverse children in child welfare systems in California and at the national level can be explained in a variety of ways. Studies show that poverty is inextricably linked to the child welfare system and that poverty is one of the most important predictors of negative child outcomes.¹⁰³ Circumstances of poor families often lead to involvement of state child welfare agencies. Poor families are "less likely to have adequate back-up arrangements or private support systems in times of emergency . . . are more likely to have trouble acquiring safe housing (or any housing); they are less likely to have adequate nutrition, medical care, child care and education, and . . . are more likely to suffer emotional harms from the stress of their

99. African-American children comprise 45 percent of the total number of children in foster care. CHILDREN OF COLOR, *supra* note 51, at Chap. 2.

100. U.S. DEPT. HEALTH & HUMAN SER., ADMIN. CHILDREN & FAM., THE AFCARS REPORT (June 2006), *available at* http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report10.htm.

101. Susan L. Brooks & Dorothy E. Roberts, *Family Court Reform: Social Justice and Family Court Reform*, 40 FAM. CT. REV. 453, 454 (Oct. 2002) (citing U.S. DEPT HEALTH & HUMAN SER., CHILDREN'S BUREAU, NATIONAL STUDY OF PROTECTIVE, PREVENTATIVE, AND REUNIFICATION SERVICES DELIVERED TO CHILDREN AND THEIR FAMILIES (1997)) (emphasis added).

102. *See supra* note 92.

103. *See* Wilkinson-Hagen, *supra* note 34, at 139; UNDERCOUNTED, *supra* note 95, at 4; Poverty is the "single most important predictor of placement in foster care and the amount of time spent there." Brooks & Roberts, *supra* note 101, at 453.

situations.”¹⁰⁴ Additionally, poor families; utilization of public programs increases their contact with public officials, heightening the possibility that these families will be subject to scrutiny in their child-rearing practices. As social work scholars Pelczarski and Kemp write, “The lives of families who live clustered in apartments or public housing, for example, are more open to external scrutiny than those of middle class families, who tend to live in more secluded suburban neighborhoods.”¹⁰⁵

Culturally diverse or minority families are often overrepresented in poverty statistics. The 2000 national census, which reported the poverty rates of Americans according to their ethnicity, showed that a higher percentage of culturally diverse Americans were represented in poverty rates as compared to white Americans.¹⁰⁶ Immigrant families are also overwhelmingly impoverished. Over one-fourth of children in immigrant families are poor, compared to one-fifth of non-immigrant children.¹⁰⁷ Immigrant families often lack access to federal support available to non-immigrant families. Recent welfare and immigration reform “severely restricts certain immigrants’ access to government services during their first five years as a legal immigrant — food stamps, public health insurance, Supplemental Security Income (SSI) and Temporary Aid to Needy Families (TANF).”¹⁰⁸

B. Cultural Difference

In addition to poverty, cultural differences of families that fall outside of the dominant American culture often account for the increased involvement in their lives of child welfare systems. Characteristics of a particular culture, different from the dominant culture, may alert child welfare agencies and act as justification for intervention. Law professor Shauna Van Praagh articulates three ways in which particular characteristics of cultural communities may conflict with dominant views of child welfare and increase

104. Wilkinson-Hagen, *supra* note 34, at 139.

105. Yoshimi Pelczarski & Susan P. Kemp, *Patterns of Child Maltreatment Referrals Among Asian and Pacific Islander Families*, 85 CHILD WELFARE 5, 23 (Jan./Feb. 2006).

106. The percentage of impoverished individuals for various ethnic groups: Black- 24.7 percent; Hispanic- 22 percent; Asian- 10 percent; American Indian- 25.3 percent, Pacific Islander- 12.2 percent; white- 8.4 percent. This report also noted that the poverty rate in America was 12.6 percent overall. CARMEN DENAVAS-WALT, BERNADETTE D. PROCTOR & CHERYL LEE HILL, U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2005 5 (2006), available at www.census.gov/prod/2006pubs/p60-231.pdf.

107. UNDERCOUNTED, *supra* note 95, at 3.

108. *Id.* at 5.

intervention of child welfare agencies into families of these communities.¹⁰⁹ Various cultural communities are insulated, to prevent their particular culture from being diluted through assimilating interactions with the dominant culture and often to avoid negative stereotyping for falling outside the dominant culture. Additionally, this isolation can be reinforced in certain cultures where family privacy is highly valued and disclosing family problems to outsiders is frowned upon.¹¹⁰ Isolation can act as a justification for state intervention in the name of child welfare when it shields children from needed help.¹¹¹ As Van Praagh notes, "the very 'walls' that serve to define and preserve the community and its families may also act as barriers to remedies understood to lie outside the community's boundaries."¹¹²

In addition to isolation, cultural communities often have standards that are followed to ensure conformity with cultural norms.¹¹³ Failure to meet these standards by the children of the community may result in "extreme, and potentially abusive, punitive measures taken by parents," which often justifies state intervention to protect child welfare.¹¹⁴ In these scenarios, a parent may insist that their actions are justified and necessary to maintain the standards of the community and preserve its culture.¹¹⁵ Additionally, when cultural standards are not followed by children in these communities, the parent's reputation or standing in the community will often be at stake, thus extreme measures to enforce the standards by parents are often motivated by a need to ensure the family's communal membership.¹¹⁶ For example, Pelczarski and Kemp note that in Samoan culture physical discipline is widely accepted and is used to ensure "proper behavior from children."¹¹⁷ These scholars also note that Chinese families often view physical punishment "as a valid technique for assuring parental authority, rather than as abusive behavior."¹¹⁸

Occasionally, the teachings, practices, and norms of a cultural community may themselves be harmful and dangerous to

109. Shauna Van Praagh, *Faith, Belonging and the Protection of "Our" Children*, 17 WINDSOR Y.B. ACCESS JUST. 154, 179-85 (1999).

110. Pelczarski & Kemp, *supra* note 105, at 10 (noting the Asian value of "saving face by not disclosing problems to outsiders and not discussing family issues with a stranger.").

111. Van Praagh, *supra* note 109, at 179.

112. *Id.*

113. *Id.* at 180.

114. *Id.*

115. *Id.* at 180-81.

116. *Id.*

117. Pelczarski & Kemp, *supra* note 105, at 11.

118. *Id.* at 10.

children,¹¹⁹ justifying state intervention. Cultural communities may “endorse what the society in which they exist labels unacceptable violence or abuse, and they may actively prevent access to remedial help.”¹²⁰ Severe physical punishment of children as a form of discipline, refusal of certain forms of medical treatment, and various cultural rituals, such as female clitoridectomy, are examples of practices and teachings of particular cultural communities where the harm inflicted on children may justify action on the part of child welfare agencies.¹²¹ As noted in a report published by the Anne E. Casey Foundation, entitled *Undercounted, Underserved: Immigrant and Refugee Families and the Child Welfare System*, “Many refugees and immigrants come from countries where corporal punishment is generally accepted and Western parenting styles appear too permissive.”¹²²

C. Welfare Worker and Judicial Decision-Making

Another explanation for overrepresentation of culturally diverse children in child welfare systems nationally and in California is the subjectivity present in the decisions of child welfare agencies and dependency courts. The statutory language of the California Welfare and Institutions Code and the Adoption and Safe Families Act fails to create “bright line” rules regarding many services and proceedings relating to child welfare. Social workers are responsible for making highly subjective decisions about intervention, removal, and services in child welfare cases.¹²³ Similarly, in child welfare proceedings, the dependency judge must make subjective decisions about the ability and fitness of a parent, as well as whether termination of parental rights is necessary.¹²⁴ Subjectivity by state actors often allows for individual biases and personal values to enter into decisions in child welfare cases and serve as a standard for measuring parental compliance and fitness. This power to make highly subjective decisions in child welfare cases and the possibility that personal biases and values of state actors will influence these decisions is especially threatening to culturally diverse families because the majority of state actors represent the dominant culture. Law professor Amy Sinden notes the disparity in culture, class, and education between state actors in

119. Van Praagh, *supra* note 109, at 182.

120. *Id.*

121. *Id.* at 182-84.

122. UNDERCOUNTED, *supra* note 95, at 5.

123. Klein, *supra* note 65, at 31.

124. *Id.* at 32.

child welfare proceedings and the families they are enlisted to work with and help.¹²⁵

The professionals in the system are by and large well-educated, middle class, and predominantly white. Meanwhile, many of the accused parents and their children are members of racial minority groups and virtually all are extremely poor with little formal education.¹²⁶

Undercounted, Underserved: Immigrant and Refugee Families and the Child Welfare System reports that all child welfare agencies interviewed reported a "severe shortage of staff with multilingual and multicultural skills,"¹²⁷ indicative of the cultural disparity between child welfare workers and their clients. These examples refer to the cultural disparity on a national level; however California statistics are also reflective of this disparity. A recent study of California child welfare workers found that over 50 percent identified as Caucasian and that over 56 percent¹²⁸ held masters degrees.¹²⁹ Additionally, the majority of California Superior and Municipal Court judges are overwhelmingly white and male.¹³⁰

The poverty and cultural differences of families in the child welfare system combined with the power of state actors to make highly subjective decisions play an important role in child welfare proceedings. These factors often influence the identification of families in crisis, the dynamic between state actors and families in the system, the services provided, and the outcomes of child welfare cases. Sinden suggests the deceptive use of the word "cooperation" in social work discourse to refer to the interaction of social workers and parents in dependency proceedings, whereas social workers are often influenced by "powerful cultural stereotypes and expectations attached to [parenthood]."¹³¹ Sinden points out the underlying power dynamic, noting that "cooperation" is merely a "code word for the parent doing whatever the social worker tells her to" and

125. Amy Sinden, "Why Won't Mom Cooperate?": A Critique of Informality in Child Welfare Proceedings, 11 YALE J.L. & FEMINISM 339, 352 (1999).

126. *Id.*

127. UNDERCOUNTED, *supra* note 95, at 4.

128. SHERRILL CLARK & GINGI FLUCHER, CAL. SOC. WORK CTR. (CALSWEC), THE 2004 CALIFORNIA PUBLIC CHILD WELFARE WORKFORCE 65 (April 2005), available at http://calswec.berkeley.edu/CalSWEC/WorkforceStudy_2004.pdf (last visited Nov. 4, 2006).

129. *Id.* at 53,

130. 89.3% of California superior court judges are white and 77.3% are white men. Edward M. Chen, *The Judiciary, Diversity, and Justice For All*, 91 CALIF. L. REV. 1109, 1112 n.19 (July 2003) (citing Final Report of the Cal. Jud. Council Advisory Comm. on Racial and Ethnic Bias in the Cts. 126 (1997)).

131. Sinden, *supra* note 125, at 354.

that when the parties disagree, "it is the [parent], not the social worker, who is labeled as 'uncooperative.'" ¹³² As stated by one child welfare administrator, "[w]hen you have [workers] who are disconnected from the cultural dynamic of a community that is poor and minority and you send them into that particular community with the force of the law to remove children . . . [t]hey'll determine the environment to be unsafe. . . . The system does not have controls to limit the subjectivity of the worker." ¹³³ Cultural differences between a social worker and a family in crisis may also influence a social worker's assessment of parental compliance with reunification services provided. Factors such as "tolerance of strangers in one's home (especially from another culture), the ability to communicate in another language, cultural ease with seeking help from nonfamily members, and sensitivity to cultural differences in parenting values" may influence a social worker's impression of compliance with the reunification plan by culturally diverse families. ¹³⁴

D. Effect of Removal

1. *Effect on Culturally Diverse Children*

Ultimately, poverty, cultural differences, and subjective decision-making that can embody biases, lead to removal of culturally diverse children from their homes. Removal of children from their families and cultural community has potentially devastating effects on the identity and psychological health of the removed children. One's identity "goes beyond genetic inheritance" and "embraces psychological completeness, and a sense of cultural belonging." ¹³⁵ A stable, ongoing, intimate relationship with an adult is imperative for a child. ¹³⁶ Even in families in crisis, this imperative child-adult relationship is often between a child and her parent. As Professor Brooks notes, "A considerable body of theoretical and empirical literature indicates that children benefit from maintaining important family attachment in their lives, even if

132. *Id.*

133. CHILDREN OF COLOR, *supra* note 51, at 4-1 (2003).

134. Klein, *supra* note 65, at 32.

135. Cynthia R. Mabry, "Who is My Real Father?" - The Delicate Task of Identifying a Father and Parenting Children Created From an In Vitro Mix-Up, 18 NAT'L BLACK L.J. 1, 37 (2004).

136. Sinden, *supra* note 125, at 363 (citing JOSEPH GOLDSTEIN, ET AL., BEYOND THE BEST INTERESTS OF THE CHILD 40 (MacMillan Publishing Co. 1973) ("So far as the child's emotions are concerned, interference with the tie, whether to a "fit" or "unfit" psychological parent, is extremely painful.")).

those attachments are faulty or if the family members have significant defects."¹³⁷ In fact, in some instances disruption of the parent-child relationship through removal may inflict worse psychological harm than the removal was intended to prevent.¹³⁸

In addition to psychological issues that may arise in children removed from their families, upon removal from their cultural communities, children are likely to suffer identity issues relating to their heritage and cultural belonging. Recognition of one's cultural membership affects their "very sense of self and personal identity."¹³⁹ Studies show that ethnicity is relatively central to a child's identity in comparison to other social group identities and that children from minority ethnic groups "considered ethnicity to be more central to their self-concept than did ethnic majority children."¹⁴⁰ Social science scholars have recognized that "cutting people off from their cultures and histories has a devastating impact upon the self, dividing peoples from 'the wealth of experience and reflection that constitutes the language in which we understand ourselves in the world.'"¹⁴¹ Removal of children from their cultural communities may likely "cut off an important source of personal development and of intellectual, imaginative and social enrichment."¹⁴²

2. *Effect on Culturally Diverse Parents*

In addition to the effect on the child, removal of a child from their family and termination of parental rights often has a distressing impact on the psychological well-being of the parent from whom the child is being removed. The Supreme Court has recognized the importance of parental interest in their child and has

137. Brooks, *supra* note 44, at 47.

138. Martin Guggenheim, *The Effects of Recent Trends to Accelerate Termination of Parental Rights of Children in Foster Care: An Empirical Analysis in Two States*, 29 FAM. L.Q. 121, 140 (1995) (discussing how termination of parental rights often leaves children worse off because they become "unnatural orphans").

139. Phillip Lynch, *Keeping Them Home: The Best Interests of Indigenous Children and Communities in Canada and Australia*, 23 SYDNEY L. REV. 501, 510 (Dec. 2001) (quoting WILL KYMLICKA, LIBERALISM, COMMUNITY, AND CULTURE 165 (Oxford University Press 1989) (citations omitted)).

140. Kelly Turner & Christia Spears Brown, *The Centrality of Gender and Ethnic Identities Across Individuals and Contexts*, 16 SOC. DEV. 700, 702, 709 (2007).

141. Lynch, *supra* note 139, at 510 (quoting J. Webber, *Individuality, Equality and Difference: Justifications for a Parallel System of Aboriginal Justice in CANADIAN ROYAL COMMISSION ON ABORIGINAL PEOPLES, ABORIGINAL PEOPLES AND THE JUSTICE SYSTEM: REPORT OF THE NATIONAL ROUND TABLE ON ABORIGINAL JUSTICE ISSUES* (Ottawa: RCAP, 1993)).

142. Van Praagh, *supra* note 109, at 177.

granted this interest a "distinguished legal pedigree," labeling this interest a fundamental right.¹⁴³ The bundle of parental rights encompasses "the custody and companionship of the child, opportunities to influence the child's values and moral development through religious training, and important education and health care decisions."¹⁴⁴ The importance ascribed to parental rights often results in these rights being linked to an individual's identity. Many people see raising children as "the primary source of fulfillment, purpose, and meaning in their lives."¹⁴⁵ Thus, child welfare agency decisions to remove a child from their parent and to terminate parental rights represent "an official decision directed precisely at [the parent's] abilities and identity as a parent."¹⁴⁶ This link between parental rights and identity exacerbates the likelihood of parent psychological harm upon removal of a child.

For a person whose central purpose in life is to raise children and whose sense of self-derives primarily from her relationship with her children and her roles as a parent, the disruption of that relationship — even temporarily — may be the most grievous injury short of death that the state inflict . . . It deprives her of her liberty at act in the world in the only way that really matters to her: as parent to her children.¹⁴⁷

The harm suffered by the parent upon removal of a child is not independent of the child's psychological harm. Often times, when a child is removed from their parent's care the psychological effect on the parent and child is "reciprocal and synergistic."¹⁴⁸ The knowledge that the child is experiencing fear and anxiety due to the removal adds to the parent's psychological distress.¹⁴⁹ Reciprocally, the parent's feelings of inadequacy, helplessness, and loss of identity add to the child's psychological distress, as well as the child's view that their parental authority it being challenged.¹⁵⁰

143. Eric G. Anderson, *Children, Parents, and Nonparents: Protected Interests and Legal Standards*, 1998 BYU L. REV. 935, 942 (1998).

144. *Id.*

145. Sinden, *supra* note 125, at 362.

146. *Id.*

147. *Id.* at 363.

148. *Id.*

149. *Id.*

150. *Id.* at 363-64.

3. *Effect on Cultural Community*

Similar to the interdependence of child-parent psychological well-being, the well-being of the child in a culturally diverse community and the well-being of the community itself are interdependent. In fact, some scholars argue that the relationship between children and their cultural community is so important that it may "relegate the biological link between parent and child to secondary importance."¹⁵¹ Thus, removal of a child from their cultural community through removal from their parent's care and termination of parental rights can have ruinous effects on the community as well as the child. The organization and institution of the cultural community depends heavily on its role in the lives and the development of its youngest members.¹⁵² Child welfare measures that remove children from their cultural communities act as a direct attack on the "tenets, teachings, authority, and even viability" of these communities.¹⁵³ Thus, removal of a community's children inhibits the ability of the community to pass its cultural beliefs, practices, and identity to the next generation of individuals. Removal of the next generation of individuals in a cultural community threatens the future existence of that community. As Van Praagh writes, the cultural community's loss of its children "is akin to the loss of freedom and even of life."¹⁵⁴

History has shown that removal of children from cultural communities often reflects more than a state interest in protecting the best interests and welfare of the child. As Van Praagh states, society's attitude toward "any given community may well be expressed through its approach to the children of that community."¹⁵⁵ A historical example includes the removal of Native American children from their parents and their cultural communities in the late nineteenth and into the twentieth century by placing them in residential schools. States justified the removal of Native American children from their homes and communities as being in the name of child welfare; removal was considered necessary in order to educate, civilize, and assimilate these children.¹⁵⁶ Thus, assimilation and dilution of the Native American culture was considered to be beneficial to the welfare of the cultural

151. Van Praagh, *supra* note 109, at 174.

152. *Id.*

153. *Id.* at 186.

154. *Id.* at 202.

155. *Id.* at 187.

156. JON REYHNER AND JEANNE EDER, *AMERICAN INDIAN EDUCATION: A HISTORY* 71 (University of Oklahoma Press 2004) (citing the 1878 Annual Report of the Commissioner of Indian Affairs).

community's children. However, hindsight reveals the disastrous effects these boarding schools had on Native American children, parents, and communities.¹⁵⁷ As Van Praagh writes in reference to the assimilating boarding schools, "As the horrendous legacy of that experience is now exposed, it is clear that the action was far from beneficial to the children's welfare."

With reference to the "horrendous legacy" of removing Native American children from their parents and cultural communities, the numbers of culturally diverse families represented in the child welfare system is alarming. Poverty, cultural difference, and subjective and potentially biased decision-making by those in positions of power often propel culturally diverse families into the child welfare system and affect their ability to utilize and maneuver the system. Noting the potential for extreme damage that removal can have on the child, the family, and the community at large strengthens the argument that "reasonable efforts" require culturally competent services.

IV. The Role of Culture in California Child Welfare Law

Despite the cultural diversity of California and the overwhelming number of culturally diverse families within the child welfare system, relevant statutes and case law neglect to make any mention of the necessity of culturally competent reunification services for families in crisis. This non-recognition of culture by California child welfare law has potentially disastrous effects, as permanent removal of culturally diverse children from their families and communities can detrimentally impact all parties involved.

A. "Reasonable Efforts" Under California Case Law: Tailored to a Family's Unique Circumstances and Needs

California courts define reasonable reunification services as "a reunification service plan [that is] well-defined, specific, and tailored to provide services that will lead to the resumption of a family relationship."¹⁵⁸ An adequate reunification plan must "be appropriate for each family and based on the unique facts relating to that family"¹⁵⁹ and must reflect a good faith effort on the part of the child welfare worker to "provide suitable services, in spite of the

157. See Van Praagh, *supra* note 109, at 187 (explaining the abusive conditions in the schools); Lynch, *supra* note 139, at 501-02.

158. *In re Mario C.*, 276 Cal. Rptr. 548, 550 (Cal. Ct. App. 1990).

159. *In re Dino E.*, 8 Cal. Rptr. at 421 (quoting *In re Edward C.*, 178 Cal. Rptr. at 701).

difficulties of doing so or the prospects of success."¹⁶⁰ Under these requirements, California court precedent requires that reasonable reunification services include specific services to meet the needs of the parents in particularly difficult circumstances.

California courts have held that reunification services, in order to be reasonable, must be tailored to meet the needs of parents who are mentally disabled or mentally ill and parents who are incarcerated. *In re Victoria M.* involved the termination of parental rights for a developmentally disabled mother due to her failure to comply with the reunification plan.¹⁶¹ The appellate court reversed termination, finding that the record was "clear that no accommodation was made for [the mother's] special needs in providing reunification services."¹⁶² Similarly, in the case of *In re Elizabeth R.*, the California appellate court reversed a termination of parental rights for a mentally ill parent.¹⁶³ The court stated that the reunification services provided for a mentally ill parent "must accommodate the family's unique hardship."¹⁶⁴

In addition to a parent's mental capacity, California courts have held that constraints on parents' ability to utilize services due to incarceration must be taken into account in designing reunification plans and that a reasonable reunification plan will be tailored to the incarcerated parent's circumstances. For example, in the case of *In re Precious J.*, a California appellate court reversed a trial court's termination of parental rights for an incarcerated parent after finding that the child welfare agency did not facilitate visitation as provided for in the reunification plan.¹⁶⁵ Additionally in *Mark N. v. Superior Court of Los Angeles County*, the California Court of Appeal ordered a writ of mandate directing the trial court to vacate its order terminating reunification services and setting a hearing for termination of parental rights.¹⁶⁶ This case involved an incarcerated father who received no reunification services and evidence showed that the child welfare department made no effort to determine whether any services were available or could be provided to the father in prison.¹⁶⁷

Case law exemplifies that California courts interpret "reasonable efforts" at reunification as requiring reunification services tailored to each family's unique needs. Relevant case law

160. *Id.* (citing *In re John B.*, 205 Cal. Rptr. at 325).

161. *In re Victoria M.*, 255 Cal. Rptr. 498 (1989).

162. *Id.* at 504.

163. *In re Elizabeth R.*, 42 Cal. Rptr. 2d 200 (1995).

164. *Id.* at 209.

165. *In re Precious J.*, 50 Cal. Rptr. 2d 385, 394 (1996).

166. *Mark N. v. Super. Ct. L.A. County*, 70 Cal. Rptr. 2d 603 (1998).

167. *Id.* at 614.

further demonstrates how this interpretation has been extended to cases of parental mental disability, mental illness, and incarceration. This interpretation leads to the analogy that "reasonable efforts" at reunification should also require services to be culturally competent and reflective of the family's unique cultural perspective.¹⁶⁸ Yet, when culturally competent services are not provided to culturally diverse families, removal and eventual termination of parental rights are likely to occur. As examined previously, child welfare statistics exemplify that culturally diverse children are overrepresented within the child welfare system.¹⁶⁹ This overrepresentation of culturally diverse families involved in child welfare proceedings permits the inference that at present, reunification services are likely not culturally competent, and they are not adequately meeting the needs of these families.

B. Case Examples: Cultural Implications Result in Negative Outcomes for Culturally Diverse Families

Three California cases show how culture can affect a parent's utilization of the services provided and how lack of full recognition of cultural differences can result in termination of parental rights. *Maria L. v. Superior Court of San Diego County* involved a Pilipino mother whose four daughters were removed by child welfare services because the children were left unattended during the day without food.¹⁷⁰ The family did not have a place to live and the mother admitted to spending the rent money on gambling.¹⁷¹ The mother's case plan included parent education, individual counseling, a psychological evaluation, and Gamblers Anonymous meetings.¹⁷² The family also started receiving services addressing inter-family sexual abuse due to inappropriate acts of the father with one daughter.¹⁷³ Although the mother originally complied with the case plan, she was inconsistent in her attendance at Safe Paths, the service addressing sexual abuse issues in the family.¹⁷⁴

168. "The courts have recognized that there are barriers to that prevent developmentally disabled, mentally ill, or incarcerated parents from effectively utilizing the usual array of reunification services offered. Language and cultural diversity may be seen as analogous barriers, requiring reunification services to be tailored so as to be culturally competent when appropriate." Klein, *supra* note 65, at 36.

169. See *supra*, text accompanying notes 99-102.

170. *Maria L. v. Super. Court San Diego County*, 2004 Cal. App. Unpub. LEXIS 2311, at *3 (Cal. Ct. App. March 12, 2004).

171. *Id.* at *4.

172. *Id.*

173. *Id.* at *5.

174. *Id.*

The mother was eventually discharged from the Safe Paths program due to language and cultural issues.¹⁷⁵

The Safe Paths counselor wrote: [The mother] seems to have difficulty with understanding the group material. . . . The facilitators are concerned that the language barrier may be too great for Maria to benefit from the group at all . . . it is felt that she would benefit more from a culturally competent provider of services (in Tagalog).¹⁷⁶

The dependency court terminated reunification services after twelve months, noting that the mother has not made substantial progress in her case plan, and finding that reasonable services had been provided.¹⁷⁷ The mother sought a writ to review from the appellate court, contending that the services she received were not reasonable because the services provided were not in her native language of Tagalog.¹⁷⁸ The appellate court denied the writ, finding that most of the services provided to the mother were in Tagalog and citing California court precedent that reunification services need not be the best services available, merely what is reasonable under the circumstances.¹⁷⁹

In another California appellate case, *M.V. v. Superior Court of Orange County*, a Vietnamese mother petitioned for relief from the trial court's scheduling of a termination hearing.¹⁸⁰ The mother conceded that she did not move for the trial court to extend her period of reunification past the 18-month statutory maximum, but asserted that the trial court erred in failing to do so *sua sponte*.¹⁸¹ The appellate court's discussion of the facts shows that the mother refused to participate in Vietnamese language parenting classes and her interpreter suggested that her refusal was due to Vietnamese culture being "nosey" and that the mother wanted to maintain anonymity with other Vietnamese-speaking parents as to her family's problems.¹⁸² As mentioned previously, studies show that Asian cultures value family privacy, and discussion of family problems with outsiders is not generally culturally accepted.¹⁸³ The trial court terminated reunification services due to the mother's

175. *Id.* at *6.

176. *Id.*

177. *Id.* at *7.

178. *Id.* at *8.

179. *Id.* at *11.

180. *M.V. v. Super. Ct. Orange County*, 2004 WL 605200, at *1 (Cal. Ct. App. March 26, 2004).

181. *Id.*

182. *Id.* at *2.

183. See *supra* note 110.

failure to make significant progress based on the county social services agency's recommendation; however the agency also noted that the mother has "expressed willingness to resume the children's custody and has maintained a positive relationship with the children by visiting them consistently."¹⁸⁴ The appellate court denied the mother's petition noting that there is no showing that the reunification services provided to the mother were "inadequate or unsuitable to her situation."¹⁸⁵

A third case, *Nahid v. Superior Court of Sacramento County*, involved an Irani mother petitioning for an extraordinary writ to compel the trial court to vacate its order setting a permanency planning hearing for her daughters.¹⁸⁶ The trial court set the permanency hearing even though no reunification plan was implemented because the children did not want to return to their mother's care due to her suspected involvement with the Mujahedin, a minority political group within Iran.¹⁸⁷ In setting the hearing and denying reunification services, the trial court relied on the children's perception that their mother's involvement with the Mujahedin would put them at serious risk of physical or emotional harm.¹⁸⁸ An enlightened appellate court granted the mother's writ and ordered reunification services, emphasizing the need for cultural relativity in the proceedings of the case.

It is important for the Department to make a fresh start. This may require reassignment of the case to social workers who are utterly without preconceptions and who will not reflexively conclude the best interest of the minors can be served only within the cultural milieu of this society and the political system of this jurisdiction.¹⁸⁹

The appellate court recognized that all too often child welfare decision-makers fail to take into account the culturally diverse perspectives of their clients by asserting, "[j]uvenile dependency law does not codify the dominant culture or the regnant political system."¹⁹⁰

184. *M.V.*, 2004 WL 605200, at *3.

185. *Id.* at *8.

186. *Nahid v. Super. Court of Sacramento County*, 62 Cal. Rptr. 2d 281, 282 (1997).

187. *Id.* at 284-85.

188. *Id.* at 292.

189. *Id.* at 294.

190. *Id.*

C. Practical Problems That Inhibit Culturally Competent Reunification Services From Being Provided

Maria L., M.V. and Nahid illustrate the need for a broader recognition of culture in child welfare reunification services and proceedings. These cases exemplify several practical problems with the ability of the current California child welfare system to provide culturally competent services, such as lack of culturally or linguistically appropriate services and the refusal of personnel within the system to take a culturally relative viewpoint in response to child welfare cases.

1. *Lack of Culturally and/or Linguistically Appropriate Services*

Nationwide, child welfare systems lack interpretation-translation or bilingual staff members at all levels, from hotline workers, to social workers and psychologists, to attorneys.¹⁹¹ Additionally, a review of services for families in the child welfare system shows that most states lack culturally relevant services such as parenting classes and drug treatment programs.¹⁹² The combination of the small number of culturally relevant services and the overwhelming number of culturally diverse families in child welfare systems result in long waiting lists that often exceed the allowable time table for services under the ASFA.¹⁹³ Additionally, a review of child welfare studies from the past two decades demonstrates that "fewer treatment and reunification options are available for families of color" and that these families "consistently receive fewer services than white families."¹⁹⁴

2. *Lack of Culturally Relative Viewpoint in Child Welfare Workers and the Judiciary*

In addition to the unavailability of culturally competent reunification services, failure to provide such services can also be due to the inability of individuals working within the system to address child welfare cases from a culturally relative viewpoint. As mentioned previously, child welfare workers and judges in dependency proceedings often make highly subjective decisions, and this subjectivity can allow for cultural biases and values to enter

191. UNDERCOUNTED, *supra* note 95, at 4.

192. *Id.* at 5.

193. *Id.* at 16.

194. Klein, *supra* note 65, at 30.

into child welfare decisions.¹⁹⁵ The probability for cultural biases and values to influence child welfare decision-making increases with the recognition of the ethnic, cultural, and educational disparity often present between families within the child welfare system and the social workers and judges that interact with them.¹⁹⁶ Sinden suggests that courts in child welfare proceedings fail to "consider ways of experiencing the world that may differ from the culturally constructed white male norm."¹⁹⁷ Often times in the child welfare system, the "white middle-class family" is the "norm to which all families are compared."¹⁹⁸ As Professor Brooks writes of a trend across child welfare systems, "we discount and devalue cultural backgrounds. . . . In trying to protect children, we disregard the parents' rights and their communities' cooperative value."¹⁹⁹ The reliance on a culturally myopic norm and disregard for cultural differences contributes to the scarcity of culturally competent services for families in crisis.

3. *Overburdened Child Welfare System*

A third problem plaguing the California child welfare system which prevents families from being provided culturally competent services is the massive overburdening of the child welfare system. Reunification plans that recognize and address the cultural needs of diverse families take child welfare workers time to create, yet statistics show that these workers often do not have time. Social workers are often burdened with large caseloads. Additionally, the ASFA exacerbates the child welfare worker's burden by increasing reporting and documentation requirements and by requiring the worker to create concurrent plans for reunification and adoption.²⁰⁰ The heavy workload placed on child welfare workers makes it more difficult for these workers to adequately assess each family's unique needs and provide services that address these needs. What results is the likely use of "boilerplate" reunification plans, in which the family's problems "become interchangeable, the serious ones indistinguishable from the minor ones; and the needs are generalized and defined according to what services are currently available."²⁰¹ The overburdened child welfare system thus becomes

195. See *supra* text accompanying notes 123-134.

196. See *id.*

197. Sinden, *supra* note 125, at 367.

198. Brooks & Roberts, *supra* note 101, at 454.

199. Brooks, *supra* note 44, at 50.

200. See *supra* note 51.

201. Kathleen Bailie, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of Lawyers Who Represent Them*, 66 FORDHAM L. REV. 2285,

more about meeting documentation requirements than about protecting children and reuniting families.

Because the underfunded, understaffed, and mismanaged child welfare agencies are responsible for handling and evaluating families' problems, these agencies cannot meet their mandates and families suffer in the process. Although states must make "reasonable efforts" to keep families together, in practice child welfare agencies make "efforts [that] are reasonable in relation to funding available."²⁰²

Thus, even with a substantial increase in the availability of culturally competent services and a more culturally relative perspective exhibited by child welfare decision-makers, diverse families would still be faced with the problems of the overextended child welfare system in seeking and obtaining culturally appropriate reunification services.

V. Proposal: Statutory Recognition and Best Practices

A. Statutory Recognition

Noting the various problems in the California child welfare system's ability to provide culturally competent services to families in need and the potentially disastrous effect culturally inadequate services may have on culturally diverse families, children, and communities, California law should statutorily require culturally competent reunification services for families within the child welfare system.

Statutory recognition of culture in child welfare cases and a requirement that culturally competent services be provided would reflect the growing number of culturally diverse families in the child welfare system and address the issue of these families' disproportionate representation in the system. Statutory requirements of culturally competent services would also facilitate access to these services by requiring child welfare agencies to find or create service providers that are representative of all cultures, thus increasing the number of culturally competent services available. By requiring child welfare decision-makers to recognize the culture of each family and implement it into their decisions, the likelihood that individual biases and values will come to influence their

2319 (1998).

202. *Id.* (quoting Dan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children From Their Homes for Poverty Alone*, 70 TEMP. L. REV. 447, 454 (1997)).

creation of reunification plans and case decisions decreases.

Although a statutory requirement of culturally competent reunification services would not directly ameliorate the burdens of time and workload of child welfare workers, it is likely to force workers to discontinue their reliance on boilerplate plans. Eliminating boilerplate plans removes a Band-Aid on many of the system's problems of underfunding and staff shortages and is likely to compel reform of the system to address these problems. Additionally, a statutory requirement of culturally competent reunification services would give parents legal recourse to challenge termination of their parental rights when the services provided did not consider and account for the family's unique and/or diverse culture. Most importantly, a statutory recognition of culture and requirement of culturally competent reunification services will increase the ability of the child welfare system to do its job of addressing the needs of individual families, protecting children, and reuniting families.

B. Promising Practices: Guidelines and Example Practices for Child Welfare Agencies and Attorneys

Statutory law requiring culturally competent reunification services remains the best way to ensure that the rights of culturally diverse families are protected within the California child welfare system. However, until such a statute is in place, culturally diverse families are left to interact with the system as it currently exists. The remainder of this note presents information to culturally diverse families and service providers and attorneys who work with these families. The information provided is an attempt to suggest elements of culturally diverse reunification services through a discussion of promising practices that currently incorporate cultural competence in their interaction with culturally diverse families. Additionally, information is provided for attorneys who act as advocates for members of families situated within the child welfare system to ensure that the rights of their clients are protected and the culture of those families is considered in the design of the reunification plan.

1. Defining Culturally Competent Services

Culturally competent services have been described as "systems, agencies, and practitioners that have capacity, skills, and knowledge to respond to unique needs of populations whose cultures are different than that which might be called dominant or mainstream

American."²⁰³ These services require that practitioners not only recognize the need for cultural sensitivity, but also require an ongoing process "involving the ability to implement and to fully integrate cultural knowledge through specific polities, practices, and attitudes responsive to the strengths and interests of a minority culture."²⁰⁴ Several fundamental components have been recognized as necessary for services to be culturally competent:

- (1) knowledge of the history, culture, tradition, custom and value orientation of families;
- (2) understanding social problems, such as poverty, unemployment, truncated education, morbidity, violence, and their effect on minority families;
- (3) understanding systemic oppression, discrimination, racism, sexism, and classism; and
- (4) knowledge about culturally appropriate and inappropriate behavior, childrearing practices, methods of discipline, nurturing, and meeting the physical and psychosocial needs of children.²⁰⁵

Clearly these components are extensive, demonstrating the complexity of culture and recognizing the overlap between culture and other classifications, such as race, ethnicity, religion, and class. A more simplified explanation of culturally competent services recognizes the requirement that service providers identify and gain knowledge of the unique culture of the family and then "transform knowledge and cultural awareness into interventions that support and sustain healthy client-system functioning in the appropriate cultural context."²⁰⁶

Various definitions of culturally competent services, ranging from the general to the more specific, have been put forth by scholars and practitioners in an attempt to provide guidance for those working with culturally diverse families. In light of these varying definitions, and the fact that cultures themselves are "highly subjective, always changing with nebulous boundaries, and are highly heterogeneous," this note does not adopt any particular definition of culturally competent services. Rather this note

203. Klein, *supra* note 65, at 21 (quoting Terry Cross the Executive Director of the National Indian Child Welfare Association in Portland, Oregon).

204. Brooks, *supra* note 7, at 739.

205. Pelczarski & Kemp, *supra* note 105, at 26-27.

206. Cheryl Waites, et al., *Increasing the Cultural Responsiveness of Family Group Counseling*, 49 SOCIAL WORK 291, 293 (2004).

discusses several promising practices that require child welfare workers to consider culture in their assessment of families within the child welfare system and their creation and implementation of reunification plans. Many aspects of these programs, whether considering culture directly or indirectly, exemplify one of the underlying purposes of the ASFA and its codification in CWIC: making reasonable efforts to preserve families. These programs recognize that reasonable efforts include attention to a family's cultural perspective. Culturally competent programs also recognize that helping these families requires offering services that reflect this perspective. A discussion of programs that exhibit cultural competence is helpful to show what culturally competent services look like; to articulate examples for California child welfare agencies to emulate. Additionally, a look at these programs shows that culturally competent services can exist within the constraints of the child welfare system and that they are often successful at helping to reunify families. Though some of the "promising practices" discussed below are located outside of California, they are still subject to the requirements and time constraints of the ASFA and are present practices that California can adopt under the requirements of CWIC.

2. Promising Practices: Direct Recognition and Consideration of Culture

Several child welfare agencies have adopted programs which accept the notion that to best protect children and aid families involved in the system is to directly address the culture of clients and implement aspects of their culture into services provided. All of these programs recognize that to provide culturally competent services to diverse families, the cultural community must be involved. A partnership between the child welfare agency and the cultural community can "ensure that information and assistance is provided in a culturally and linguistically appropriate manner" as well as raise awareness within the cultural community as to how the child welfare system works.²⁰⁷ The direct recognition of culture within these programs incorporates the interests of the cultural community into the interests of the child. Thus, by considering the interests of the culturally diverse child and the cultural community together, these programs recognize the interdependence of "culture, identity and survival."²⁰⁸

The Family Group Counseling Service Model ("FGC") is one such model that requires service providers to directly recognize and

207. UNDERCOUNTED, *supra* note 95, at 6.

208. Lynch, *supra* note 139, at 529.

address the unique culture of the families with whom they work. FGC reflects a partnership between the service provider and the child's "family," defined to include the child's immediate family, relatives, and cultural community.²⁰⁹ FGC recognizes the power imbalances between child welfare workers and their clients, and seeks to alleviate these imbalances by deliberately promoting the voice of the family group in the development of a plan to resolve child welfare concerns.²¹⁰ Within the FGC model, the child welfare worker acts as a coordinator and works to:

organize the conference; inviting the family group to attend; preparing them for participation; following their wishes on the time, location and format of the conference; providing sufficient information for developing a plan without imposing solutions; leaving the family group to deliberate in privacy; negotiating with them the final plan; and reconvening if necessary.²¹¹

FGC requires that the child welfare worker have knowledge and understanding of the family's unique culture, but the worker also gains cultural guidance through the partnership with the family's cultural community. FGC has been implemented in numerous countries after originating in New Zealand through reference to the indigenous Maori culture.²¹² From 1998 to 2002, FGC was implemented in North Carolina through the North Carolina Family Group Counseling Project ("NC-FGC"), funded by the North Carolina Division of Social Services.²¹³ At the end of the four year implementation, the program noted successes including: benefiting children by decreasing child maltreatment and expanding placement possibilities; solidifying collaborations with other community organizations; and training in the FGC model of child welfare workers, increasing cultural recognition of these workers.²¹⁴

In addition to involving the cultural community in the care of diverse families in crisis, programs that are successful at providing culturally appropriate services require extensive training of their staff in cultural competence. A promising practice is found in El

²⁰⁹ Waites, et al., *supra* note 206, at 292.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 292.

²¹⁴ Joanne Pennell, et al. *North Carolina Family Group Counseling Project: Building Partnerships With and Around Families*. Final Report to the North Carolina Division of Social Services (2002), available at <http://social.chass.ncsu.edu/jpennell/nfcgcp/NCFGCPF%Summary.htm>.

Paso, Texas, a border community that has been providing culturally competent family preservation services to Mexican-American families for over a decade. The child welfare system in El Paso values the importance of culturally competent services for their diverse clients and requires training for their social workers, which recognizes that obtaining "cultural competence is a developmental process, not an inherited trait."²¹⁵ An article describing the practices of the El Paso child welfare system gives a case example of culturally competent family preservation involving a Mexican American family where child protection services was alerted due to the mother's physical abuse of the children.²¹⁶ The case example gives a detailed explanation of the social worker's utilization of cultural competent services and recognition of culture in every aspect of her intervention in the family.

She was able to recognize the importance of being aware of her own culture and of the difference between her values and the more traditional family mores of the client family. She showed restraint in not moving the family toward adaptation to United States' cultural traditions unless the family made that choice. She was able to identify and respond to the complexity of the cultural influences on this family and remained nonjudgmental . . . Finally, she was able to modify her intervention based on the family's needs and its cultural background.²¹⁷

The social worker's training in cultural competence and the El Paso system's expectation that culturally competent care would be provided enabled the worker to successfully aid in the preservation of the family.²¹⁸

These promising practices that directly address culture in their aid to families in crisis involve both involvement of the cultural community and extensive training of staff to be able to develop a culturally competent perspective. They recognize the interdependence of children and their cultural communities and value the community's input as to how to provide culturally

215. Patricia A. Sandau-Beckler, Ricardo Salcido, & John Ronnau, *Culturally Competent Family Preservation Services: An Approach for First Generation Hispanic Families in an International Border Community*, 1 FAM. J.: COUNSELING AND THERAPY FOR COUPLES & FAM. 313, 315 (1993) (stating that obtaining cultural competence requires five steps on the part of the social worker: (1) awareness of the importance of culture, (2) awareness of the impact of one's own culture on practice, (3) understanding the complexity and diversity of culture, (4) planning for the ongoing development of cross-cultural knowledge, and (5) modification of practice behavior).

216. *Id.* at 317.

217. *Id.* at 321.

218. *Id.*

competent services. Additionally, these practices realize that developing cultural competence in staff is vital to address the needs of diverse families and that development of cultural competence is a process requiring continual training. Additionally, both of these programs recognize that reasonable efforts at family reunification require recognition of each family's culture and expect that services will be culturally appropriate.

3. *Promising Practices: Indirect Recognition and Consideration of Culture*

In addition to services that directly recognize culture, several promising practices exemplify an indirect recognition of culture in services provided to families. Promising practices that indirectly recognize culture include the family-centered approach and the intensive services approach. These practices facilitate the utilization of culturally competent services by implementing programs that eliminate several of the problems plaguing many child welfare systems. The family centered approach increases the involvement of the individual family in the creation of the reunification plan and the decision-making process in child welfare proceedings. This increased family involvement decreases the chance that decisions in child welfare cases will reflect solely the viewpoint of state actors and that these decisions will be influenced by the cultural biases and values of these actors instead of the cultural perspective of the family. Programs that exemplify the intensive services approach work to eliminate the administrative constraints on the child welfare system by increasing staff and resources. Thus, these programs increase the ability of child welfare staff to take the time to consider the culture of each family, locate culturally appropriate services, and create a culturally competent reunification plan.

Child welfare agencies that utilize the family centered approach work to empower families within the child welfare system by allowing them to participate in decision-making regarding child welfare proceedings. Practices that utilize this family-centered approach modify the power dynamic between parents in the system and state actors, diminishing the effect of biases or cultural values of state actors on child welfare decisions. The family centered approach shifts the child welfare system's traditional narrow focus on children to a broad focus on the family, and suggests that the "best approach to protect children is to strengthen families."²¹⁹ A family centered practice contains four essential elements that "guide the development of policies, programs, and practices in child

219. *Can We Put Clothes on This Emperor?*, BEST PRACTICE/NEXT PRACTICE, Summer 2000, at 7, 9.

welfare.”²²⁰

(1) The family as a unit is the focus of attention. (2) Emphasis is placed on assessing and building on family strengths and on the capacity of families to function effectively. (3) Families are engaged in designing all aspects of the policies, treatment, and evaluation. (4) Families are linked with a more comprehensive, diverse, and community-based network of supports and services.²²¹

The family centered approach originated at the Hunter College School of Social Work through its National Child Welfare Resource Center for Family Centered Practice,²²² and it is considered a hallmark of many successful child welfare programs that boast faster, safer, and lasting family reunification.²²³

Additionally, child welfare agencies that provide intensive services to families in crisis allow for an indirect recognition of culture. Agencies that provide intensive services enable child welfare workers to spend more time with families in crisis, learning about their unique circumstances and developing an appropriate reunification plan. Thus, intensive service programs eliminate the need to use “boilerplate” plans and allow for child welfare workers to consider culture in their assessment and planning for diverse families. The National Family Preservation Network, an agency that advocates for family preservation in child welfare proceedings, recommends that intensive reunification services include ten components.²²⁴

Staff are available on call, 24 hours a day, 7 days a week. Caseloads are limited to two to four families. Families see a reunification worker within three days of referral [to the child welfare agency]. Most reunification services are delivered to a family’s home. Intensive services are provided 5 to 20 hours a week. Services are available during the evenings and on weekends. Services are limited to 60 to 90 days.²²⁵

The availability of intensive services has been recognized as an important component of reunification programs that appear to be

220. *Id.* at 8.

221. *Id.*

222. *Id.* at 10.

223. Susan Dougherty, Nat. Resource Center for Foster Care & Permanency Planning, PROMISING PRACTICES IN REUNIFICATION, Apr. 2004, at 1.

224. *Id.* at 3.

225. *Id.*

achieving good results.²²⁶ However, providing services of this intensity requires funding that is often not readily available to child welfare agencies; therefore, to implement these intensive services agencies must creatively allocate necessary funds.²²⁷

Mendocino County, California, refers all families whose children are removed from the home to their Family Center ("MFC") for services that incorporate the family centered approach and intensive services approach discussed above.²²⁸ Parents participate in two support groups ("Intake" and "Empowerment") and are provided with services that are "designed to be therapeutic as well as oriented toward skill development."²²⁹ At the MFC, while participating in parenting classes, parents develop an "Empowerment Plan" with staff, translating the court ordered plan into "parent-friendly language."²³⁰ The parents' participation in the development of the "Empowerment Plan" exemplifies an adoption of the family-centered approach in the MFC model. MFC holds the importance of relationships at the heart of its model, encouraging meaningful relationships between staff and clients facilitated by lower caseloads, thus recognizing that high caseloads often damage the worker-client relationship.²³¹ Additionally, MFC encourages relationships amongst clients, which allows peers to provide additional support where staff members cannot.²³² The MFC is funded through the Mendocino County of Department of Social Services' Child Welfare Budget, as well as various state funds.²³³ The MFC model has received positive review from both staff and clients who report a "high degree of engagement" in the services and "clear goal-orientation that translates into action."²³⁴ Thus, MFC exemplifies a California child welfare program that utilizes the family centered approach and intensive services approach, both of which facilitate the ability of the child welfare agency to create and employ culturally competent reunification plans for diverse families.

226. *Id.* at 1.

227. *Id.* at 4.

228. Laura Frame, Amy Conley, & Jill Duerr Berrick, *Birth Parents and the Reunification Process: A Study of the Mendocino County Model*, CENTER FOR SOCIAL SERVICES RESEARCH, UNIVERSITY OF CALIFORNIA BERKELEY, Dec. 6, 2004, at 2.

229. *Id.* at 4.

230. *Id.* at 5.

231. *Id.* at 10.

232. *Id.*

233. *Id.* at 6 (MFC is also supported from Family Preservation Permanent Transfer Allocation, CalWORKS, Performance Incentives, CAPIT's Promoting Safe and Stable Families programs and a small amount available from certified birth certificates.)

234. *Id.* at 48.

4. *Attorney Best Practices in Representing Culturally Diverse Children and Parents*

In addition to child welfare agencies, the lack of cultural recognition in California child welfare statutes and case law has implications for attorneys who represent children and parents from families in crisis. Professor Brooks notes several best practices identified in the area of child representation;²³⁵ these best practices also apply to attorneys representing parents in child welfare proceedings.

(1) [R]espect the dignity of all individuals and families; (2) approach every child as a member of a family system, (3) respect individual, family, and cultural differences; (4) adopt a non-judgmental posture that focuses on identifying strengths and empowering families; and (5) appreciate that families are not replaceable.²³⁶

Included within these best practices are aspects of cultural competence, especially necessary for attorneys working within the child welfare system. Attorneys working within this system must respect cultural differences and attempt to understand each family's culture, "to try to work within their cultural norms and expectations to find mutually agreeable solutions."²³⁷ This respect and understanding is facilitated through an attorney's self-education about their client's unique culture and how their own cultural perspective can interfere with adequately advocating their culturally diverse client. This attorney self-education creates benefits that improve the ability to advocate successfully: "better attorney-client communication, more knowledge of community resources, and a more creative approach to adapting existing reunification services to meet the client's needs."²³⁸

An attorney's recognition of their individual client's cultural perspective should come into play at every stage of the child welfare proceedings. Attorneys for both children and parents should assist the child welfare worker by "suggesting culturally competent services available in the community or modifications of existing services" to meet the particular needs of the culturally diverse family.²³⁹ All suggestions should be sent to the child welfare

235. Brooks, *supra* note 7, at 745.

236. *Id.*

237. *Id.*

238. Klein, *supra* note 65, at 39.

239. *Id.* at 40.

worker in writing, so that they become part of the worker's file and are recorded if it becomes necessary to refer to the suggestions in later proceedings.²⁴⁰ At status review hearings, if the child welfare worker has resisted the attorney's suggestions of culturally competent services, the attorney should advocate for a "no reasonable efforts finding," thus requiring the court to order the child welfare agency to modify and extend the services provided.²⁴¹ The attorney's argument requiring a finding of "no reasonable efforts" can be supported by written and recorded suggestions of culturally competent services provided to the child welfare worker by the attorney as well as information from social science literature or expert witnesses about available culturally competent services.²⁴² The same strategies apply for attorneys at final review hearings and termination hearings, illustrating the child welfare worker's resistance to supplying culturally competent services and educating the trial court as to effects and availability of culturally competent services.²⁴³ Finally, if a family is denied culturally competent services, attorneys representing children and parents of that family should keep record and object to this denial, so as to preserve the issue for appeal.²⁴⁴

Cultural competence and the insistence that culturally appropriate services are provided are vital to attorneys representing culturally diverse children and parents in child welfare proceedings. As reflected in the suggested best practices, attorneys need to respect individual, family, and cultural differences and appreciate that families are not replaceable. These best practices recognize that the interests of children, their families, and their cultural communities are interdependent and should be considered together in protecting children and aiding families in crisis.

Conclusion

No clear line can be drawn between 'different' and 'harmful' behaviour. But a general sense that the two are not identical and that a diverse spectrum of norms, principles and practices affecting children lies at the foundation of a pluralist society, constitutes a valid and valuable guiding principle in decision making with respect to child welfare.²⁴⁵

240. *Id.*

241. *Id.* at 41.

242. *Id.*

243. *Id.* at 41-42.

244. *Id.* at 42.

245. Van Praagh, *supra* note 109, at 197.

Cultural pluralism is a foundational concept of American society. This is especially so in California where communities of color represent a majority of the population.²⁴⁶ Removing children from their families and thus, their cultural communities, denies children their cultural identity and denies the cultural community their children and thus, their future. To assure the cultural pluralism of our society, our laws, courts, and government agencies must recognize and consider culture in dealing with culturally diverse individuals, families, and communities.

Recognition of culture through a statutory requirement of culturally competent reunification services does not ignore or excuse harmful family practices due to the cultural diversity of the family involved. Rather, statutory recognition merely requires that the family's unique culture be taken into account when fashioning a reunification plan. This recognition assures that culturally diverse families are not identified by the child welfare system simply because their child-rearing practices are "different." Finally, this recognition also assures that the stated purpose of reunification services, "to prevent or eliminate the need for removing the child, or to resolve the issues that led to the child's removal in order for the child to be returned home,"²⁴⁷ is fulfilled for all families in crisis regardless of their cultural affiliation.

246. See U.S. Census Bureau, State and County Quickfacts: California, <http://quickfacts.census.gov/qfd/states/06000.html> (last visited Apr. 20, 2008) (stating that for 2006, white, non-Hispanic persons represented 43.1 percent of the California population).

247. CAL. CT. R. 1401(a)(21).