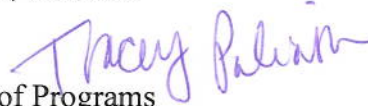


**DEPARTMENT OF HUMAN RESOURCES  
SOCIAL SERVICES ADMINISTRATION  
311 W. SARATOGA ST.  
BALTIMORE, MD 21201**

**DATE:** September 15, 2015

**POLICY #:** SSA-CW # 16-14  
(Supersedes and Replaces Policy SSA-CW 15-9)

**TO:** Directors, Local Departments of Social Services  
Assistant Directors, Services

**FROM:** Tracey Paliath   
Deputy Secretary of Programs

**RE:** Waiver of Reunification

**PROGRAMS AFFECTED:** Out-of-Home Placement

**ORIGINATING OFFICE:** Out-of-Home Placement

**ACTION REQUIRED OF:** All Local Departments

**REQUIRED ACTION:** Implement Policy and Procedures

**ACTION DUE:** October 1, 2015

**CONTACT PERSON:** Steven Youngblood, LCSW-C  
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**PURPOSE:**

The purpose of this policy directive is to provide guidelines to the Local Departments of Social Services (LDSS) on requesting a waiver of reunification services. A waiver of reunification allows the LDSS to waive reunification services to one or both parents or legal guardian of a child who enters out-of-home placement. **A waiver of reunification can only be granted by the court.** This policy directive provides step-by-step instruction on how the LDSS shall screen cases and- under which circumstances it should file for a waiver of reunification.

**BACKGROUND:**

The Adoption and Safe Families Act of 1997 (“ASFA”) made significant changes to child welfare law in response to two significant concerns: (1) children were languishing in foster care for years while local departments engaged in excessive, but futile, efforts to achieve reunification with hopelessly dysfunctional families and (2) children were being reunited with parents when it was not safe to do so in the name of reasonable efforts. Under the provisions of ASFA, reasonable efforts to preserve or reunify the family are not required if the parent subjected the child to “aggravated circumstances” as defined by State law. ASFA left it to the state legislatures to define “aggravated circumstances,” which could include, *but need not be limited to*: abandonment, torture, chronic abuse, and sexual abuse.

The Maryland General Assembly passed legislation in 1998 permitting a local department of social services to seek a waiver of reunification efforts under specified circumstances Md. Code Ann., Cts. & Jud. Proc. § 3-812.

In 2015, the Maryland General Assembly enacted Senate Bill 150 (Anayah’s Law), expanding the circumstances under which “reasonable efforts” to reunify a child with a parent or guardian are not required. The bill also specifies “severe physical abuse” as an aggravated circumstance and permits waiver when a parent or guardian has abused or tortured a sibling of the child or another child in the home. These amendments to Md. Code Ann., Cts. & Jud. Proc. § 3-812 ultimately will help prevent a child from being returned to an abusive parent or guardian.

While the LDSS is vested with the discretion, for children who are not ICWA, of whether to seek a waiver, Section 3-812(d) provides that a juvenile court “shall waive the requirement that reasonable efforts be made to reunify the child with the child’s parent” if there is clear and convincing evidence that one of the specified circumstances exists. Once there is clear and convincing evidence of one of the specified circumstances, the juvenile court “shall” grant the Department’s request to waive its obligation to make reasonable efforts toward reunification. Cts. & Jud. Proc. 3-812(d). The Court of Special Appeals recently clarified that the “shall” language makes the juvenile court’s granting of the LDSS’s waiver request mandatory. *In re Joy D.*, 216 Md. app. 58 (2014).

**ACTION:****Waiver Eligibility**

Reunification is the desired permanency outcome for the first 15 months of a child entering out-of-home placement. During that time, the LDSS is tasked with the responsibility of providing “reasonable efforts” to preserve and reunify families, to make it possible for a child to safely return home.

It is further expected that the LDSS make reasonable modifications in policies, practices, services, activities or procedures to prohibit “making child custody decisions on the basis of generalized assumptions about disability, relegating parents with disabilities to lesser services and opportunities, imposing overprotective or unnecessarily restrictive rules.” 42 U.S.C. § 12101 (a)(5).

If the parent or guardian, however, meets the criteria for waiver of reunification services, the caseworker shall evaluate the unique facts of each case and consider requesting a waiver of reunification through the juvenile court. The LDSS shall make an assessment that the waiver of reunification is not contrary to the best interest of the child. Each parent or guardian individually must meet the criteria in order to request a waiver for that particular parent or guardian. The waiver can be requested for one parent and not the other or for both parents.

**The local department may consider petitioning the court for a waiver of reunification if any of the following circumstances exists:**

- The parent or guardian has facilitated in or subjected the child, a sibling of the child or another child in the household to: torture, chronic or severe physical abuse, sexual abuse, or chronic and life-threatening neglect;
- The parent or guardian has been convicted, in any state or any court of the United States, of a “crime of violence,” as defined in Criminal Law Article, §14-101, Annotated Code of Maryland, against :
  - The child;
  - A minor offspring of the parent or guardian;
  - Another parent or guardian of the child; or
  - Aiding or abetting, conspiring, or soliciting to commit a crime of violence against one of the above-named individuals.
- The parent has involuntarily lost parental rights of a sibling of the child.
- The parent or guardian knowingly failed to take appropriate steps to protect the child after a person in the household inflicted sexual abuse, severe physical abuse, life-threatening neglect, or torture on the child or another child in the household;
- The child, a sibling of the child, or another child in the household has suffered severe physical abuse or death resulting from abuse by the parent or guardian or another adult in the household and all persons who could have inflicted the abuse or caused the death remain in the household; or

- The parent or guardian has abandoned the child. Under the Md code Ann., Ct & Proc. 3-812, Abandon means to leave a child without any provision for support and without any person who has accepted long-term responsibility to maintain care and have custody and control of the child when the whereabouts of the parent or legal guardian are unknown and; the local department has made reasonable efforts to locate the parent or guardian over a period of at least 6 months and has been unsuccessful.

### ***Process to Request Waiver***

For children who are not ICWA, the LDSS petitions the court for a waiver of reunification services within 30 days of the CINA hearing or anytime after CINA if the LDSS becomes knowledgeable that the parent(s) meet the criteria of a waiver, subject to the exceptions set forth in the next section.

The LDSS shall also take into consideration filing a petition if another party requests the LDSS to file a petition and provides evidence to support the petition. The LDSS will have knowledge if the child meets any of the eligibility requirements of the waiver if the nature of the abuse or neglect is the reason the child entered out-of-home placement. The LDSS also should determine whether the parent(s) have a prior history of having tortured, chronically or severely physical abused, sexual abused, or chronically and life-threateningly neglected the child's sibling or another child in the household in order to determine if the child is eligible for the waiver.

The LDSS shall complete the following to determine if the parent(s) may meet the criteria for filing a waiver of reunification:

- **Prior to consideration of filing the petition the LDSS shall assess the best interest of the child and the current situation of the parent.**
- **The Bureau of Indian Affairs should be notified prior to considering a waiver of reunification services for either a member of a Native American tribe, or a child eligible for tribal enrollment and membership. Only the Bureau of Indian Affairs can file a petition for waiver of reunification for a member of a Native American tribe, or a child eligible for tribal enrollment and membership.**
- MD CHESSIE search on both parents to determine any prior Child Protective Services cases to determine if the parent(s) were the alleged maltreater and if the abuse or neglect meets the criteria for a waiver. Review any out-of-home placement records to determine if the parent(s) involuntarily lost parental rights to any children. If a parent(s) has involuntarily lost parental rights to a sibling in the jurisdiction, another jurisdiction in Maryland, or in another state, the LDSS may move forward with petitioning the court for a waiver of reunification services if appropriate in light of the best interests of the child and the current situation of the parent. The LDSS shall request a copy of the termination of parental rights order from the other jurisdiction to ensure that the parental rights were involuntarily lost.
- When a child enters out-of-home placement, the LDSS shall check Maryland Judiciary Case Search, <http://casesearch.courts.state.md.us> for any violent crime history of each

parent or legal guardian. If the parent has been convicted of a crime of violence, as defined in Criminal Law 14-101, against the child, the other parent of the child, or another child, a waiver of reunification services shall be requested.

**Exception of Filing Waiver**

The LDSS may elect not to file a waiver of reunification services in extenuating circumstances when the waiver is contrary to the child's best interest. The LDSS must make a clinical determination that a waiver is not in the best interest of the child. The LDSS child welfare program staff has the sole discretion, for children who are not ICWA, in determining if a waiver of reunification shall be filed. **It is important when making this decision that the parent(s) desires reunification and is able to be reunified with the child.** The LDSS must assess the safety and risk of the child if returned to the parent and determine if services offered would remedy the factors that led to removal and placement in out-of-home care. The following are examples of situations when the LDSS may determine filing a waiver is not in the child's best interest:

- A court involuntarily terminated a parent's rights to a sibling a significant number of years ago, but at this time the LDSS determines that the parent could be safely reunified with the current child. The factors that led to the involuntary TPR have been resolved.
- A parent was convicted of a crime of violence against a parent of the child however this occurred many years ago and parent has resolved the issue that caused the act. Such as, if the parent was a substance abuser at the time of the crime of violence and can show documentation that the parent has been through treatment and is currently substance free. The LDSS must also be able to make the determination that the child would not be at risk if reunification was achieved.