

# Aggravated Circumstances

The Child Welfare Act of 1980 (PL 96-272) required agencies to make "reasonable efforts" to prevent the placement of a child or to reunite a child with the family (once placement has occurred) before attempting to proceed with a termination of parental rights. The Adoption and Safe Families Act (ASFA), implemented by amendments to the Juvenile Act, adds a provision to that requirement by stating that there are certain circumstances under which "reasonable efforts" to reunite a family may not be necessary. These circumstances have been defined as "aggravated circumstances." An aggravated circumstance exists when:

- A situation is so egregious that a child's safety may be in serious jeopardy, and even with services, it is unlikely that safety can be assured.
- OR
- A situation has occurred in which a child has been subjected to such egregious circumstances that reunification of the child with his or her family should not occur.

## **Five Aggravated Circumstances Identified by Pennsylvania:**

### **1. A child is abandoned**

A child is considered to be abandoned in the following two circumstances:

- The identity or whereabouts of the parents is unknown and cannot be ascertained and the parent does not claim the child within three months of the date the child was taken into custody  
Explanation: It is incumbent upon the child welfare agency to ascertain the identity or whereabouts of the parents through such means as the County Assistance Office, the Bureau of Motor Vehicles, the Social Security Administration, and other local contacts that can help in obtaining information on missing persons such as the police, school records etc. Agencies have access to the Federal Parent Locator Service to request the following information: parent's social security number and address/location; employer's name and address; the parent's wages and benefits.
- The identity or whereabouts of the parent *are known*; however the parents have failed to maintain substantial and continuing contact with the child for a period of six months

Explanation: The focus of assessing "substantial and continuing" contact is parental intent, not hard and fast rules. An agency is to consider "substantial contact" within the circumstances and abilities of the parent. The "extent," "quality" and "affect" of contact upon the child must be considered by the agency. In considering "continuing contact," the type, pattern and frequency of contacts should be considered.

### **2. The child or a sibling of the child has been subject to serious bodily injury, sexual violence or aggravated physical neglect**

Serious Bodily Injury is defined in the same way as it is in the Child Protective Services Law (CPSL): "Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ." A conviction is *not required* for

aggravated circumstances based on serious bodily injury.

Sexual Violence includes rape or indecent contact as defined in the Crimes Code § 3101, incest or using, causing, permitting, persuading or coercing the child to engage in a prohibited sexual act as defined in the Crimes Code § 6312 (a) or a simulation of a prohibited sexual act for the purpose of photographing, videotaping, epciting on computer or filming involving the child. A conviction is ***not required*** for aggravated circumstances based on sexual violence. The definition for Sexual Abuse in the CPSL is broader than the definition for Sexual Violence in that the CPSL definition of sexual abuse includes sexual exploitation. Sexual Exploitation is not included in the definition of aggravated circumstances.

Aggravated Physical Neglect: Any omission in the care of a child which results in a life-threatening condition or seriously impairs the child's functioning. A conviction is ***not required*** for aggravated circumstances based on aggravated physical neglect.

3. **The parent of the child has been convicted of certain crimes where the victim was a child**

The following crimes have been identified to meet aggravated circumstances:

- Criminal homicide
- A felony relating to aggravated assault, relating to rape, relating to statutory sexual assault, relating to involuntary deviate sexual intercourse, relating to sexual assault, relating to aggravated indecent assault
- A misdemeanor relating to indecent assault
- An equivalent crime in another jurisdiction

The crimes as listed above could involve any child and could be committed in Pennsylvania or any other jurisdiction. Agencies must access Criminal History information if a crime is alleged.

4. **The parent of the child attempted, solicited or conspired to commit the above crimes**

Aggravated circumstances exist if the parent of the child has been ***convicted*** for having attempted to solicit or conspire to commit an of the offenses referenced above either in Pennsylvania or another jurisdiction.

5. **Parental rights to another child of the parent were involuntarily terminated**

The termination of parental rights to another child must have been involuntary terminated to qualify under aggravated circumstances. There is no time limit on when the parental rights to the other child were terminated.