Statement of Consideration (SOC)

PPTL 20-16 SOP 11.30 Permanency Hearings and ASFA Exemption Request form

The following comments were received in response to SOP drafts sent for field review. Thanks to those who reviewed and commented. Comments about typographical and grammatical errors are excluded; these errors have been corrected as appropriate.

**SOP 11.30**

1. **COMMENT: A. (i) When the child is being cared for by relatives or fictive kin and the cabinet plans to recommend that the caregiver become a permanent custodian;**

In the above section, some FSOS’s don’t think ASFA should be exempt if a child is in our custody just because he/she is placed with a relative or fictive kin.  This may cause workers to allow children to linger.  Staff feel the point of them being in foster care is so that the relative can be a foster parent and get the same benefits, which include the process of TPR.  This will allow courts not to have to pursue permanency when a child is with a relative/fictive kin and in our custody.  The court also has to grant it on the Permanency order.  SOP does not specify this or where it is to be written and how.  Many workers complete these orders and sometimes Judges don’t complete them correctly.

**RESPONSE:** Relatives will continue to have the option to become a foster parent. However, there may be situations where it is appropriate to seek an ASFA exemption. For example, a child is in residential due to treatment needs, after 10 months in OOHC a relative is identified. At that time, the service array is offered and the relative chooses to seek custody. An ASFA exemption is applied as the child transitions to the relative.

[Section 475(5) of the Social Security Act (42 U.S.C. 675(5)(E)(i)](https://www.ssa.gov/OP_Home/ssact/title04/0475.htm)  indicates “the State shall file a petition to terminate the parental rights of the child’s parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless— ‘‘(i) at the option of the State, the child is being cared for by a relative;”

Individual courts determine how orders are written/documented. In regions where the worker prepares the document for the judge to sign, information should be included on the order that an ASFA exemption is approved. This should be completed on DNA-9.

1. **COMMENT: A. (iii)The parent(s) are making significant progress on the case plan goals and objectives; or**

In the above section, staff feel this is a bit vague and might be perceived differently case-by-case and region by region.  Some parents may not begin services until 2 or 3 months prior to the permanency hearing and they may be doing well at that time, would we consider that significant progress even though they just recently began services but are doing much better?

**RESPONSE:** All cases should have a pre-permanency conference at nine months, at that time the case specifics can be discussed and assessed jointly with Office of Legal Services regarding a goal change or ASFA exemption.

[KRS 610.125 (4) (d)](https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=45706) advises that the Cabinet shall provide evidence to the court concerning the efforts and progress of the child’s parent since the last case permanency plan and case progress report, including the number and dates of parental visits and the extent, quality, and frequency of the parent’s communication with the child.

1. **COMMENT:** In cases we say the parents are making significant progress so we grant an ASFA exemption, how long do the parents have then to complete that case plan before we look toward TPR or other alternatives for that child?  FSOS’s feel that staff should be required to submit this form every 6 months for review in cases where we use iii as the reason for exemption because people make significant progress and then disappear or relapse and regress sometimes.  This would ensure that children continue to move towards permanency if the parents failed to meet their case plan goals.

**RESPONSE:** There is no need to re-submit the exemption form as cases will be reviewed every 90 days in court and the case can be re-assessed at that time.

1. **COMMENT:** We don’t need the court’s approval to do an ASFA exemption.  We approve them and chose not to file TPR accordingly.  This is worded as though we need the court’s approval.  The federal law does NOT require that.

This wording that implies that we need the court’s permission to NOT file a TPR per an ASFA exemption.  That is problematic in terms of separation of powers under the Kentucky Constitution.  The state agency elects to file a TPR or not, and we are not required to file a petition or TPR based on the direction of the court.  We do NOT need the court’s permission to NOT file a TPR.

**RESPONSE:** ASFA requires that permanency hearings be completed every 12 months. KRS 610.125 requires that a judge conduct the permanency hearing/review. Language in the statute states that DCBS makes a recommendation regarding the permanency goal for the child. Upon conclusion of the hearing, the court shall make a written order determining the permanency plan for the child. [Public Law 105-89](https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf) Sec. 302 Permanency Hearings, requires that the state document a ‘‘permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, … the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement.”

**ASFA Exemption Request form**

1. **COMMENT:** Staff really like the ASFA Exemption Request form.  There should be a timeframe when the memo needs to be completed and submitted instead of just prior to requesting it from the court.  For example, 30 days prior to the permanency hearing.

**RESPONSE:** The form is a template. Additional requirements can be added at the regional level