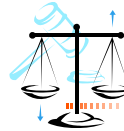


Introducing Child Welfare Law and the Juvenile Court



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Civil vs. Criminal Court Processes



- Different standards of proof
- Criminal:
 - Prosecution of child abuse perpetrators
 - Beyond a reasonable doubt
- Civil:
 - Focus on protecting the child
 - Preponderance of the evidence
 - Clear and convincing evidence

Juvenile Court Participants



- Judge
- Parents
- Child
- Relatives/Foster Parents
- DFCS caseworkers
- Special Assistant Attorney General (SAAG)
- Attorney(s) for Parents
- CASA
- Legal Advocate for Child(ren)
- Court Reporter
- Security Personnel
- Service Providers

Right to Counsel and GAL

- A child has a right to an attorney, who owes to his client the duties imposed in an attorney-client relationship (15-11-103)
- Right to an attorney cannot be waived by child or his representative
- Appointment must be made as soon as practicable, but prior to first court hearing that may substantially affect the child's interests
- Representation shall continue in any subsequent appeals unless excused by the court
- The court shall appoint a GAL (15-11-104)
- Child's attorney may serve as GAL unless or until there is a conflict
- The court shall appoint a CASA to act as GAL whenever possible, and a CASA may be appointed in addition to an attorney who is serving as GAL



Role of the GAL/CASA

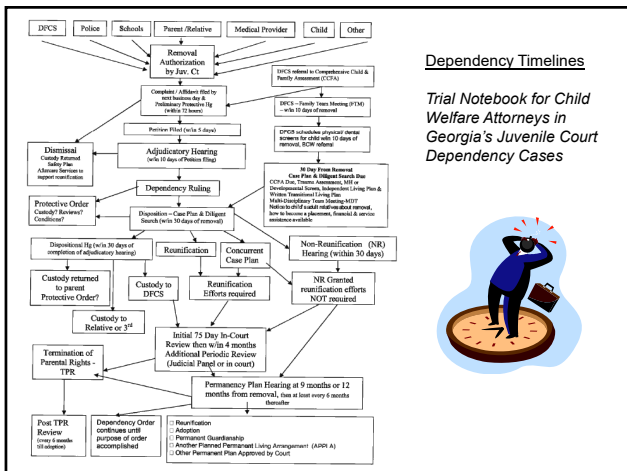
1. Maintain regular and sufficient in-person contact and meet and interview child prior to court
2. Ascertain child's needs, wishes, and views
3. Conduct an independent assessment
4. Consult with the child's attorney
5. Communicate with health care, mental health, and other professionals
6. Review case study and educational, medical, psychological and other relevant reports relating to child and respondents
7. Review all court-related documents
8. Attend all court hearings and other proceedings
9. Advocate for timely court hearings to obtain permanency
10. Protect the cultural needs of the child
11. Contact child prior to any proposed change in placement
12. Contact child after changes in child's placement
13. Request a judicial citizen review panel or judicial review
14. Attend panels
15. Provide written reports to court and parties on child's BIC
16. When appropriate, encourage settlement and use of ADR
17. Monitor compliance with case plan and all court orders



Dependency Timelines



- Day 1: Removal
- By Day 4: Preliminary Protective Hearing (within 72 hrs. of pick-up)
- By Day 9: File Petition (within 5 days of PPH)
- By Day 19: Adjudication (within 10 days of filing petition)
- By Day 30: Case plan and diligent search (Disposition held within 30 days of adjudicatory hearing)
- By Day 75: Initial Review (within 75 days of removal)
- Month 6: Periodic Review (within 4 months of Initial Review)
- Month 9, 12: Permanency Plan Hearing (then every 6 months thereafter)



Dependency Purpose

- Assist and protect children who are at risk of harm from abuse, neglect, or exploitation
- Ensure dependency proceedings are conducted expeditiously to avoid delays in permanency
- Provide the greatest protection as promptly as possible
- Ensure that the health, safety, and *best interests of a child* are the paramount concerns in all dependency proceedings



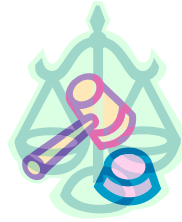
Best Interest of the Child Factors

1. Physical safety, welfare (food, shelter, health, clothing)
2. Love, affection, bonding, and emotional ties between child and parent/caretaker
3. Love, affection, bonding, and emotional ties between child and siblings
4. Child's need for permanence—stability and continuity of relationships
5. Sense of attachments—security, familiarity, continuity of affections
6. Capacity and disposition of parent/available caretakers for love, affection, guidance
7. Home environment of parent/available caretaker for nurturance, safety, not materialism
8. Stability of family unit and presence or absence of support systems
9. Mental and physical health of all involved
10. Home, school, and community record and history of such child and health or educational special needs of child
11. Child's community ties, including church, school, friends
12. Child's background and ties, including familial, cultural, and religious
13. Least disruptive placement alternative
14. Uniqueness of every family and child
15. Risks for being in substitute care
16. Child's wishes and long-term goals
17. Preferences of persons available to care for child
18. Evidence of family violence, substance abuse, criminal history, or sexual, mental, physical abuse in any current, past, or considered home
19. Any recommendation by custody evaluator or GAL
20. Any other relevant factors



9

Dependency Proceedings



- Preliminary Protective Hearing
- Adjudication Hearing
- Dispositional Hearing
- Initial and Periodic Reviews
- Non-reunification Hearing
- Permanency Plan Hearing
- Termination of Parental Rights
- Post TPR Reviews
- Reinstatement Hearing

Preliminary Protective Hearing

- First hearing after the removal of the child
- Only “reasonable oral or written notice” is required
- All parties entitled to counsel
- Purpose:
 - To determine whether there is probable cause to believe a child is a dependent child; and
 - Whether protective custody of a child is necessary to prevent abuse or neglect pending the hearing on the petition



Preliminary Protective Hearing

- Court's options:
 - Required elements not proven: case dismissed and child returned home
 - Burden proving protective custody is necessary not met: Return child to parents pending the adjudicatory hearing, or
 - Burden met: place the child in DFCS temporary custody pending adjudicatory hearing
- Removal order based upon a finding that
 - 1. Continuation in home is contrary to welfare
 - 2. Removal is in best interests of the child





Preliminary Protective Hearing,

- Court order should contain findings:
 - whether DFCS made reasonable efforts to prevent or eliminate removal and to make it possible to return safely home and description of preventative and reunification efforts
 - Why it is in the BIC to be removed or continue in foster care
 - An order for any examinations, evaluations, or immediate services
 - Date of adjudicatory hearing

PPH, Issues to Consider

- Prior history with DFCS and/or court
- Medical and mental health records and evaluations
 - Completed or needed?
- Education Records
 - Switching schools?
- Are the siblings placed together?
- Visitation scheduled?
- Are there any relatives available to take the child(ren)?
- Are any trauma assessments required?
- When is the Family Team Meeting?



Petition

- Can be filed by DFCS, law enforcement, anyone having knowledge of facts alleged, or who is informed and believes them to be true
- Filed within 5 days of Preliminary Protective hearing if child was removed.
- If child was not removed or returned at the PPH, petition must be filed within 30 days of PPH
- Petition shall be verified and set forth:
 - Facts that bring child within court's jurisdiction
 - May rely on information and belief
 - Name, DOB, and address of child
 - Name and residence of parents or if out of state or unknown, name of other adult relative
 - Whether child is in protective custody
- Can be amended by petitioner to cure defects or form or prior to adjudication, to add new allegations of fact



Adjudication Hearing

- Purpose: to determine
 - whether there is clear and convincing evidence that the child is presently dependent based upon the allegations in the petition
 - Whether continued protective custody is necessary
 - Written, case-specific findings of fact of the cause of dependency
- Formal notice required
- All parties entitled to counsel



Adjudication Hearing, Cont'd

- Formal rules of evidence apply
 - GAL's report not admitted until disposition
- If the child is removed, within 10 days of filing of petition
- If the child is not removed, within 60 days after filing petition
- If not completed within 60 days from date child taken into custody, petition may be dismissed w/o prejudice
- If the court finds that the child is not dependent, petition dismissed and child returned



Adjudication Hearing, Cont'd



The adjudicatory findings of abuse and neglect are the benchmark against which later case progress is measured.

- Court order should contain:
 - Specific facts supporting findings of dependency
 - Legal basis for continued court intervention
 - Reasonable efforts
 - Whether dependency is related to substance abuse by parents
 - Date of next hearing
- Disposition may occur immediately or within 30 days



Adjudication Hearing, Cont'd.

- Issues to consider:
 - Issues that led to removal
 - What actions must the parents take to have the child returned
 - Relative resources to be explored
 - Visitation between child and parent, siblings, other relatives
 - Putative father—legitimate
 - Child under 3—Babies Can't Wait referral
 - Was the child present?

Social Study



- Following dependency adjudication or admission, the court may order a written social study and report be made by a person designated by the court.
- Shall include a factual discussion:
 - Plan for reunification or permanency
 - Siblings: stresses the need for information about sibling relationship, placement and visitation
 - Appropriateness and placement with a relative, visitation with relatives
 - Whether a caregiver desires/is willing to provide legal permanency if reunification is unsuccessful



Diligent Search



- Diligent search and notice to relatives must be filed within 30 days of child's removal
- Diligent search must include:
 - Interviews with the child's parent
 - Interviews with the child
 - Interviews with identified relatives
 - Interviews with any other person who is likely to have information about identity or location of person being sought
 - Comprehensive searches of data bases available to DFCS
 - Appropriate inquiry during course of hearings, and
 - Any other reasonable means that are likely to identify relatives or others with ongoing commitment to child

Disposition Hearing



- Purpose
 - Decide where child will be placed
 - Discuss best long-term plan for child
 - Decide what services family and child need
 - Receive case plan
 - Receive diligent search
- If not held with adjudication, must be within 30 days of it
- Order continues until its purpose is accomplished (No more motions to extend custody)



Disposition - Evidence



- Court may consider any evidence, including hearsay, that the court finds relevant, reliable, and necessary
- Court shall receive in evidence:
 - Social study (if applicable)
 - Case plan (both filed 48 hours in advance)
 - Any study or evaluation made by a GAL
 - Any psychological, medical, developmental, or educational study or evaluation, and
 - Other relevant and material evidence
- Prior to disposition and upon request, the parties and their attorneys shall be afforded an opportunity to examine any written reports received by the court

Disposition Options



- Permit child to remain w/ parents under certain conditions
- Transfer temporary custody to:
 - Any individual who is found to be qualified to care *relative priority
 - agency or other private organization authorized to care
 - public agency authorized to care (not DJJ), or
 - individual in a another state under ICPC
- Transfer jurisdiction under ICPC
- Order child to and parents to participate in counseling
- Order parents to participate in educational or counseling program
- Order temporary child support
- If dependency related to substance abuse, may order no return of custody w/o substance abuse treatment and 6 consecutive months of negative, random drug screens

Disposition Findings

- Before making disposition order, court shall consider:
 - Why BIC and safety are served by disposition and case plan as to
 - Interaction and relationship of child with parents, siblings, and others who significantly impact BIC
 - Child's adjustment to home, school, and community
 - Mental and physical health of all involved
 - Wishes of child as to placement
 - Wishes of parent as to child's custody
 - Availability of relative who passed home study, and
 - Ability of parent to care for child in the home w/o harm
 - Availability of services in case plan
 - Appropriateness of particular placement, and
 - Reasonable efforts



Disposition Hearing

Held at adjudication or no later than 30 days after its conclusion
to determine the needs of a child adjudicated as dependent and the most appropriate disposition considering any evidence that the court finds to be relevant, reliable, and necessary.

<p>Before making an order of disposition, the court shall consider the following:</p> <p>Why the best interests and safety of the child are served by the disposition and case plan ordered, but not limited to:</p> <p>The interaction and relationship of the child with parents, siblings, and others who significantly impact the best interests of the child</p> <p>The child's adjustment to placement, school, and community</p> <p>The mental and physical health of all involved</p> <p>The wishes of the child as to placement and wishes of the parent as to the child's custody</p> <p>Whether there is a relative who DFCS has qualified to receive and care for the child, and the ability of the parent to care for the child in the home so that no harm will result to the child?</p> <p>What is the availability of services recommended in the case plan?</p> <p>What alternative dispositions or services under the case plan were considered, and why were they inappropriate?</p> <p>How appropriate is the particular placement made or to be made by the placing agency?</p> <p>Were reasonable efforts made to prevent or eliminate the necessity of removal and to reunify family?</p>	<p>The court may make any of the following orders of disposition or a combination of those suited to the child:</p> <p>Permit the child to remain with his parent, guardian, or legal custodian subject to conditions and limitations as the court prescribes.</p> <p>Grant temporary custody to any individual who is found by the court to be qualified to receive and care for such child, a public or private agency or other private organization authorized to receive and provide care, or an individual in another state with or without supervision by an appropriate official.</p> <p>Transfer jurisdiction over the child in accordance with ICJCF.</p> <p>Order the child and his parent, guardian or legal custodian to participate in counseling. Order the parent, guardian or legal custodian to participate in a court approved educational or counseling program.</p> <p>Order DFCS to implement and the child's parent, guardian or legal custodian to cooperate with any plan approved by the court.</p> <p>Order temporary child support to be paid by a person determined to be legally obligated to support the child.</p>		
<p style="text-align: center;">CASA responsibilities prior to and during the hearing:</p> <table style="width: 100%; font-size: x-small;"> <tr> <td style="width: 50%;"> <p>Identify needs of the child and family and offer input into case plan drafting.</p> <p>Evaluate and advocate the best interests of the child factors for the court's consideration.</p> <p>Monitor diligent search results and completed social study.</p> <p>Consider the best long-term plan for the child.</p> </td> <td style="width: 50%;"> <p>Create report and share with appropriate parties before hearing.</p> <p>Be prepared to testify in court and expect to be cross-examined on the contents of the report.</p> <p>Continue responsibilities from previous hearings as applicable.</p> </td> </tr> </table>		<p>Identify needs of the child and family and offer input into case plan drafting.</p> <p>Evaluate and advocate the best interests of the child factors for the court's consideration.</p> <p>Monitor diligent search results and completed social study.</p> <p>Consider the best long-term plan for the child.</p>	<p>Create report and share with appropriate parties before hearing.</p> <p>Be prepared to testify in court and expect to be cross-examined on the contents of the report.</p> <p>Continue responsibilities from previous hearings as applicable.</p>
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Use the Quick Reference Hearing Guides when preparing your court report!

Case Plans

- A case plan shall be designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available
 - in close proximity to the parent's home
 - In proximity to the school in which child was enrolled at the time of placement
 - Consistent with best interests and special needs of child



Case Plans Must Include:

- Description of circumstances that resulted child in care
- Assessment of child and family strengths and needs and type of placement that is best
- Description of type of home/institution child is placed, including safety and appropriateness
- Specific, time-limited goals
- Assignment of specific responsibility
- Projected date of completion
- Date time-limited services will be terminated
- Schedule of visits between child and siblings and other appropriate family members and explanation if no visits scheduled



Case Plan Contents



- If placement is substantial distance from child's parent or out of state, specify reasons why most appropriate and in BIC
- Out-of-state placement: comply with ICPC, documentation of MDT, in-state facilities and services
- Reasonable efforts statement: to place siblings together or for meaningful visitation
- Educational stability: appropriateness of school, proximity to school child was in, ensure child remains in school of origin, or immediate/appropriate enrollment in new school w/ records
- Account of health and education information and records (immunizations, known medical problems, prescriptions, grade performance, etc.)

Case Plan Contents



- Recommendation for permanency plan
 - FOR APPLA FOR 16 YR OLD: Documentation of a compelling reason(s); of the intensive, ongoing, and unsuccessful efforts made by DFCS to achieve another option; of DFC steps to ensure child's placement follows RPP standard and that child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including by consulting with child about opportunities to participate in such activities
- Statement that parents and child were given opportunity to participate and review plan or explanation of why no participation or signature
- Develop a personalized transition plan within 90 days of child's 18th birthday or before his exit if after 18

Case Plan Contents



- 14+: services from foster care to independent living
 - Document including rights of child with respect to education, health, visitation, and court participation; right to be provided with a consumer report, & right to stay safe and avoid exploitation
 - Requires plan to include signed acknowledgement by the child that he's been provided with document and it's been explained in an age-appropriate way.
 - Case plan for youth over 14 must be developed and revised in consultation with the child
 - child may opt to include up to 2 members of own choosing to participate, who are not a foster parent or case manager (1 may be designated to be child's advisor and may advocate with respect to the RPP standard to child)
- Identity of person within DFCS who is responsible for implementation

Initial and Periodic Reviews

- Initial review must be within 75 days and held by the court
- Additional review must be within 4 months following the initial review and can be done by the court or citizen review panel
- Court has discretion to hold any subsequent review hearings as necessary
- Court must issue a supplemental order after each review incorporating any accepted change to the case plan into the original order.



Initial Review Should Address:

- Approve completion of relative search
- Schedule subsequent 4 month review
- Determine whether child is still dependent
- Whether existing case plan is still adequate, needs changes, or to become concurrent
- Extent of compliance with case plan by all participants
- Whether appropriate progress made on permanency plan
- Whether legally required services are being provided to child, foster parents, parents
- Whether visitation is appropriate and to establish reasonable schedule
- 14+: ILP services
- Reasonable efforts



Periodic Review Hearing

- At periodic review conclusion or upon review of CRP report, court's written findings:
 - Why child continues to be dependent
 - If case plan is still the best plan
 - Extent of compliance with case plan
 - If at any review the court finds that there is a lack of substantial progress towards the completion of the case plan, court shall order DFCS to develop non-reunification or concurrent plan
 - Basis for any changes to placement of a child
 - Whether visitation continues to be appropriate
 - Progress on permanency plan
 - If all legally required services are being provided to child, foster parents, parents
 - 14+: ILP services, and
 - Reasonable efforts



Periodic Review, cont'd.

- Court shall order one disposition:
 - Return child to parents w/ or w/o conditions
 - Allow child to remain in current custodial placement b/c it is appropriate
 - Allow child to remain in current custodial placement even though it is no longer appropriate and direct DFCS to devise a plan:
 - Submitted within 10 days for court approval
 - Furnished to all parties after court approval, and
 - Provide to the caregiver (FP, pre-adoptive, relative), or
 - Make additional orders regarding treatment plan or placement to protect child's best interested if court finds DFCS failed in implementing material provisions of case plan or abused discretion of placement



Reasonable Efforts

- Reasonable efforts must be made to prevent or reunify families or find a permanent home at every hearing
 - Prior to DFCS custody to prevent removal, or
 - Return child safely home at the earliest time
- Child's health and safety of paramount concern regarding appropriateness of RE
- In determining RE, court shall consider whether services were:
 - Relevant to safety and protection of child
 - Adequate to meet needs of child and family
 - Culturally and linguistically appropriate
 - Available and accessible
 - Consistent and timely, and
 - Realistic under the circumstances



Reasonable Efforts, cont'd.

- Orders must make findings of fact that
 - Child's continuation in or return to home would be contrary to his welfare
 - Whether reasonable efforts have been made, and
 - Whether reasonable efforts should continue to be made
- Reasonable efforts not required under certain circumstances



Reasonable Efforts Not Required

- Subjected the child to aggravated circumstances i.e., abandonment, torture, chronic abuse, sexual abuse;
- Convicted of murder of another child of parent;
- Convicted voluntary manslaughter
- Convicted of aiding, abetting, attempting, conspiring the murder or voluntary manslaughter...
- Convicted of rape, sodomy, child molestation, incest, sexual battery....
- Committed felony assault that results in serious bodily injury ...
- Required to register as sex offender and continuation of parent –child relationship is not in BIC, or
- The parental rights of the parent to a sibling have been terminated involuntarily and circumstances that led to TPR have not been resolved

Non-reunification Hearing

- If DFCS files for non-reunification, court holds hearing to determine if reunification plan is not appropriate
- Hearing held no more than 30 days from time report is filed
- DFCS informs court if it will proceed with TPR, and court will hold permanency plan hearing
- DFCS has burden of showing by clear and convincing evidence that reunification is not appropriate
- Presumption reunification is detrimental and no reunification services provided if court finds by c/c evidence:
 - Parents have unjustifiably failed to comply w/ reunification case plan
 - Child has been removed from his home at least 2 occasions and reunification services were made available
 - Grounds for TPR exist, or
 - No RE are necessary



Permanency Plan Hearing

- Must be held:
 - No later than 30 days after DFCS submits non-reunification plan/court finds RE not required
 - For children under 7 when the petition was filed, no later than 9 months from when child entered care
 - For children over 7 when petition was filed, no later than 12 months from when child entered care, or
 - For children in a sibling group who were removed at the same time and which one child was under 7 when petition was filed, no later than 9 months from when kids entered care
- After the initial permanency plan hearing, shall be held no less than every 6 months or more frequently



Permanency Plan Hearing, cont'd.

- Court's findings:
 - Reasonable efforts
 - Necessity for, appropriateness of placement
 - Parties' and DFCS compliance with permanency plan
 - Efforts to involve other providers in meeting needs of child and family
 - Efforts to eliminate the cause of the child's removal, return the child home, or find permanent placement
 - Anticipated permanency date
 - Appropriateness of placement if child placed out of state
 - 14+: transitional living services
 - When APPLA is permanency plan: Whether DFCS documents efforts towards permanency, whether DFCS documented whether home is following the RPP standard (including consulting with child about activities), asking child what his desired permanency outcome is, and if child is 14 if he participated in permanency plan with 2 individuals of choosing
 - Compelling reasons must be documented for APPLA for 16 yr old



Permanency Plan Contents

- At least 5 days prior to hearing, DFCS submits report and plan
- Permanency Plan Goal:
 - Reunification
 - TPR and adoption
 - Permanent Guardianship
 - Compelling Reason for Another Planned Living Arrangement (APPLA) if 16 and older
- If child is 14+, Written Transitional Living Plan (WTLP)
 - Anticipated age discharged from foster care
 - Anticipated time needed to prepare child
 - Anticipated location and living situation of child after discharge
 - Description of assessment processes, tools, and methods that have been/will be used to assist child, and
 - Rationale for each program or service used



Permanency Plan Hearing, cont'd.

- Permanency Plan incorporated into court's order shall include:
 - Whether child will be returned to parent
 - Whether child will be referred for TPR and adoption
 - Whether child will be placed with permanent guardian, or
 - In the case when DFCS has documented a compelling reason that none of the options are in the BIC, whether, and if applicable, the child shall be placed in APPLA
- If there is a compelling reason why not in the BIC to be reunified, TPR/adoption, or guardianship, order shall document compelling reason and child placed in APPLA (if over 16)
- The court must issue a supplemental order.



Reunification

- Child is returned to his birth parents
- Preferred permanent placement
- Barriers to reunification:
 - Parental capacity
 - Child's needs
 - Services not available





Adoption

- The social and legal process designed to establish a new legal family, giving a child the same rights and benefits of those born into a family
- When is adoption an appropriate permanency plan?
 - When reunification is not possible
 - When suitable permanent home is not provided by relatives (and even when there are relatives!!)
 - When permanent, legal separation from birth family is necessary and sanctioned by the court
 - When a child is capable of accepting and responding to family life and a home of his own
- Consider voluntary post-adoption contracts

Guardianship



- Guardianship is granted to a relative or non-relative for a child who is unlikely to return home and where adoption is not in BIC
- Why guardianship?
 - Does not sever birth parents' rights/responsibilities
 - Maintains bond/connections between child and family
 - May be considered when TPR has occurred
 - Relatives and non-relatives can access subsidized guardianship payments
- Remember: barriers to achieving permanency thru probate (temporary guardianships)
 - Parents can petition court to dissolve guardianship

Guardianship, cont'd.



- Notice must be given to biological family
- Court must make findings:
 - RE to reunify would be detrimental
 - TPR and adoption is not in the BIC
 - Proposed guardian can provide safe, permanent home, and
 - Appointment of guardian is in the BIC and chosen person is most appropriate considering BIC
- Court may order child support
- Guardianship orders:
 - Remain in effect until child is 18
 - Not subject to review by court, and
 - Establish reasonable visitation schedule which allows child to maintain meaningful contact with parents through visits, calls, letter, or other forms of communication or specifically includes any restrictions on parents right to visitation



Guardianship, cont'd.

- Court retains jurisdiction for purpose of entering order following petition to modify, vacate, or revoke and appoint a new guardian
- Superior courts have concurrent jurisdiction for enforcement or modification of child support or visitation
- Guardianship shall be modified, vacated, or revoked base upon clear and convincing evidence there has been material change in circumstance of child or guardian and the modification/vacation/revocation of order and appointment of new guardian is in BIC

APPLA



- Only available for youth over 16
- Child/youth remains in agency custody until he reaches age of majority
- Long term foster care: agreement with caregiver for placement until foster care is no longer needed
- Emancipation: Planned arrangement for maintaining child in foster until he ages out
- Why select it?
 - Youth does not want to be adopted
 - Youth is in safe, stable placement w/ adult who is committed to youth until he reaches the age of majority
 - Medical needs

Placement w/ Fit & Willing Relative

- The development of a relationship between a related adult and child that is permanent
- Why select?
 - Custody until 18
 - Adoption and guardianship have been considered but ruled out
 - Supports family continuity and support
 - Does not require TPR



Termination of Parental Rights

- Purpose:
 - To protect a dependent child from parent who is unwilling or unable to provide safety and care adequate to meet child's needs
 - To eliminate need for dependent child to wait unreasonable periods of time for parent to correct conditions which prevent reunification
 - To ensure continuing needs of dependent child for proper physical, mental, and emotional growth and development are decisive considerations in all proceedings
 - To ensure constitutional rights of all parties are recognized and enforced in all TPR proceedings, while ensuring child's fundamental needs are not subjugated to interests of others
 - To encourage stability in dependent child's life by ensuring all proceedings are conducted expeditiously to avoid delays in resolving status of parent and in achieving permanency for the child
- Standard of proof is clear and convincing evidence
- All parties entitled to counsel
- Formal notice required



TPR, cont'd



- DFCS shall file a petition for termination in the following circumstances:
 - The child has been in DFCS custody for 15 out of the most recent 22 months;
 - The court has determined parent subjected child to aggravated circumstances, or
 - The court has determined that the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter of another child of the parent or parent;
 - The court has determined that the parent has committed felony assault that has resulted in serious bodily injury to the child or to another child of the parent;

Situations when TPR is not BIC

- The child is being cared for by a relative;
- The case plan documents a compelling reason that termination would not be in the best interests of the child;
 - Parent successfully participating in services
 - another permanency plan is better suited
 - Child is 14+ and objects to TPR
 - Child is 16+ and specifically requests emancipation
 - Significant bond, but parent can't care for child b/c of emotional or physical disability and caregiver committed to raising child and facilitating visitation, or
 - Child is in residential treatment facility specifically designed for needs
 - Child is living with relative who is unable/unwilling to adopt but is providing child with stable and permanent home environment and removal of child would be detrimental to well being
 - In a prior hearing or review, it was found DFCS did not make RE on reunification case plan, or
 - Child is unaccompanied refugee or international legal obligation/foreign policy reason precluding TPR, or
- DFCS has not provided services necessary for the return of the child



Timing of TPR

- Unless just cause for delay, court must conduct hearing within 90 dates of petition being filed
- Unless just cause for delay, court must issue order within 30 days after the conclusion of the TPR hearing



Grounds for TPR

- Court may terminate parental rights if one of the following grounds for TPR has been proven:
 - Written consent of parent; acknowledgement before the court or voluntary surrender,
 - Aggravated circumstances,
 - Wanton and willful failure to comply with a lawful court order to provide support for the child for a period of 12 months or longer
 - Abandonment of the child, OR

4-Prong Evaluation



- The child is a dependent child; AND the *lack of proper parental care or control* by the parent in question is the cause of the child's status as dependent; AND
- Reasonable efforts to remedy the circumstances were unsuccessful or not required
- Such cause of dependency is likely to continue or will not likely to be remedied; AND
- Returning such child to his or her parent is likely to cause serious physical, mental, moral, or emotional harm to such child or threaten the physical safety or well-being of such child; OR
- Continuation of the parent and child relationship will cause or is likely to cause serious physical, mental, moral, or emotional harm to such child.

“Lack of Parental Care and Control”

- Medically verified deficiency of such child's parent's physical, mental, or emotional health
- Excessive use of or history of chronic un-rehabilitated substance abuse
- Parent's felony conviction and imprisonment (murder of sibling, voluntary manslaughter of sibling, voluntary manslaughter of other parent, aiding, abetting, attempting, conspiring, soliciting to commit murder or VM of sibling or other parent, felony assault resulting in serious bodily injury to child or sibling)
- Current or past egregious conduct toward child or sibling
- Current or past physical, mental, emotional neglect of child or sibling, and
- Serious bodily injury or death of a sibling due to abuse or neglect
- For children not in parent's custody, whether he/she failed for period of 6 months prior to TPR hearing to:
 - Develop and maintain parental bond
 - Provide financial support as required by law and court order, and
 - Comply with reunification case plan



Is TPR in the BIC?



- If any grounds for termination have been met, then court will consider if TPR is in the BIC considering
 - 1. Child's sense of attachments
 - 2. Child's wishes and long-term goals
 - 3. Child's need for permanence
 - (4) Any benefit to such child of being integrated into a stable and permanent home and the likely effect of delaying such integration into such stable and permanent home environment;
 - (5) The detrimental impact of the lack of a stable and permanent home environment on such child's safety, well-being, or physical, mental, or emotional health;
 - (6) Such child's future physical, mental, moral, or emotional well-being
 - 7. Any other factors, including the list of 20, considered to be relevant and proper
- Exception: when ground is aggravated circumstance b/c of murder of child's other parents, TPR is presumed in BIC

Impact of TPR Order



- Without limit to duration
- Divests parent and child of all legal rights, power, privileges, duties, obligations, except
 - Right of child to receive child support until adopted
 - Right of child to inherit from parent until adopted
 - Right of child to pursue civil action against parent
- Parent has no right to notice regarding adoptions
- Child's relationship with siblings not terminated until adoption
- Relatives remain relatives for purpose of placement and permanency until adoption

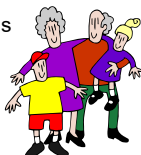
After TPR...

- GAL should continue to represent child until permanent placement is established
- Post TPR placements must be made in accordance with both child's existing permanency plan and BIC determination ~~*priority to relative~~
- What placement is in BIC? Court should consider:
 - Placement that offers greatest degree of legal permanence and security
 - Least disruptive placement for child
 - Child's sense of attachment and need for continuity of relationships
 - Value of biological and familial connections and
 - Any other factors court deems important



Post TPR Reviews

- When permanency plan is adoption and adoption petition is not filed within 6 months following the dispositional order, the court holds reviews every 6 months until child is adopted
- Court shall:
 - Make written findings as to whether reasonable efforts were made to achieve permanency
 - Assess whether the child's permanency plan is still appropriate
 - Issue any orders necessary to further child's permanency



Post-TPR Review

If adoption petition not filed within 6 months, then, and of least every 6 months thereafter to review the circumstances of the child and to determine what efforts have been made to assure child is adopted.

When a court enters TPR order, a placement may be made only if the court finds that placement is in the best interests of the child and is in accordance with the child's court-approved permanency plan. In determining if the placement is in a child's best interests, the court shall consider:

Child's need for placement that offers the greatest degree of legal permanency and security.
The least disruptive placement for the child.
Child's sense of attachment and need for continuity of relationships.
The value of biological and familial connections, and
Any other factors the court deems relevant to its determination.

During the hearing, the court shall:

Make written findings of fact regarding whether reasonable efforts have been made to move the child to permanency.

Evaluate whether the permanency plan remains appropriate, and

Enter an order necessary to further adoption, including, but not limited to, another placement.

CASA responsibilities prior to and during the hearing:

Consider whether an open adoption is appropriate and discuss with the child as applicable.

Continue to visit the child and monitor the case until adoption is finalized.

Identify and assist in resolving any barriers preventing a timely adoption.

Consider whether it is appropriate for the child to petition for reinstatement of parental rights.

Prepare report and be prepared to testify or give oral recommendations in court.

Consider all of the factors affecting the best interests of a child in the context of a child's age and developmental needs.

Don't forget the Quick Reference Hearing Guides!



Reinstatement



- A child who has not been adopted for at least 3 years post-TPR and for whom the court has determined that adoption is no longer the permanent plan may petition the court to reinstate parental rights
 - Child may petition before expiration of 3 year period if DFCS stipulates that the child is not likely to be adopted
 - A child 14+ years must sign the petition
- If the child's best interests may be promoted by reinstatement, the court shall set a hearing and notify all parties
 - The former parent and foster parents, if any, shall have a right to be heard but are not parties to the proceeding
 - The child's petition must be dismissed if his former parent cannot be located or objects to reinstatement



Reinstatement

- The court shall grant the petition if it finds by clear and convincing evidence that the child is no longer likely to be adopted and that reinstatement of parental rights is in the child's best interests. Evaluation of best interests shall include:
 - Whether a parent is fit and has remedied parental deficits
 - Age and maturity of child and ability of child to express his or her preference
 - Whether reinstatement will present risk to child's health, welfare or safety, and
 - Other material changes in circumstances, if any, that may have occurred which warrant granting the reinstatement petition
- A review hearing shall be scheduled w/in 6 months, and the court can immediately place child in parent's custody or order a gradual transition with services, if necessary

The End.

