

TERMINATION OF PARENTAL RIGHTS HEARING

TIMEFRAME

The TPR hearing must be held within 90 days of the TPR petition being filed. The order of disposition must be issued no later than 30 days following the hearing.

PURPOSE

To determine, by clear and convincing evidence, whether one or more grounds for TPR exist and, if so, whether TPR is in the child's best interests. These are separate questions: proof of a ground does not necessarily mean TPR is in the child's best interests.

- ▶ Refer to the **At Every Hearing** guide for findings, practices, and considerations that apply across all hearings.

WHEN DFCS MUST FILE A TPR PETITION

DFCS must file a petition for Termination of Parental Rights when:

- The child has been in DFCS custody for 15 of the most recent 22 months;
- The court has found the parent subjected the child to aggravated circumstances; or
- The court has determined the parent was convicted of murder or voluntary manslaughter of the child's sibling or other parent; aiding, abetting, attempting, conspiring, or soliciting such an offense; or committing felony assault resulting in serious injury to the child or the child's sibling. (This requires a conviction, not merely a charge or arrest.)

EXCEPTIONS TO THE FILING REQUIREMENT

- The child is in a relative placement intended to be permanent within a timeframe consistent with the child's developmental needs;
- The case plan documents a compelling reason that TPR is not in the child's best interests, such as:
 - ▶ the parents are successfully participating in services;
 - ▶ another permanency plan is better suited for the child; examples include:
 - a child age 14+ who objects to TPR after the court personally questions them in chambers to determine whether their objection is a voluntary and knowing choice;
 - a child age 16+ who specifically requests APPLA as their permanent plan;
 - a significant parent-child bond where the parent cannot care for the child due to disability and the caregiver commits to raising the child to 18 and facilitating visitation; or
 - ▶ a child in residential treatment whose needs could not be met in a less restrictive placement;

- The child lives with a relative unable or unwilling to adopt but willing and capable of providing a stable, permanent home, and removal would be detrimental to the child's emotional well-being;
- A court or judicial citizen review panel previously determined DFCS did not make reasonable efforts on a reunification case plan;
- The child is an unaccompanied refugee, or international legal obligations or foreign policy considerations preclude TPR; or
- DFCS has not provided services deemed necessary for the child's safe return home, consistent with the case plan's timeframes.

DFCS's determination that TPR is not in the child's best interests must be based on present circumstances and does not preclude a different recommendation later if circumstances change.

At least 30 days before the child has been in foster care 15 months, the court must review DFCS's determination that filing TPR would not be in the child's best interests. This review may occur alongside other matters. At this hearing, the court may appoint an attorney GAL who, after independent determination, may file a TPR petition on the child's behalf.

COURT FINDINGS

1. WHETHER A STATUTORY GROUND FOR TPR HAS BEEN PROVEN

The court must find any one of the following by clear and convincing evidence:

- The parent has given written consent to termination or voluntarily surrendered parental rights;
- The parent has subjected the child to aggravated circumstances;
- The parent has wantonly and willfully failed for 12 months or longer to comply with a decree to support the child;
- The child has been abandoned by the parent; or
- The child is dependent due to lack of proper parental care or control, reasonable efforts to remedy the circumstances have been unsuccessful or were not required, the cause of dependency is likely to continue, and either returning the child to the parent or continuing the parent-child relationship is likely to cause serious physical, mental, moral, or emotional harm to the child or threaten the child's safety or well-being.

In determining lack of proper parental care or control, the court considers factors including:

- A medically verified deficiency of the parent's physical, mental, or emotional health rendering them unable to adequately provide for the child;
- Excessive use of or chronic, unrehabilitated substance use rendering the parent incapable of providing for the child's physical, mental, emotional, or moral condition and needs;
- A felony conviction and imprisonment for an offence which has a demonstrably negative effect on the quality of the parent-child relationship;
- Egregious conduct or evidence of past egregious conduct of a physical, emotionally, or sexually cruel or abusive nature;
- Physical, mental, or emotional neglect or evidence of past neglect; and
- Serious bodily injury or death of a sibling under circumstances which constitute substantial evidence that the injury or death resulted from parental neglect or abuse.

For a child not in the parent's custody, the court also considers whether the parent, without justifiable cause, has failed significantly for the six months prior to the termination hearing to:

- Develop and maintain a meaningful parental bond;
- Comply with a court-ordered reunification plan; and
- Provide for care and support for the child as required by law or decree.

A parent's reliance on prayer or other religious nonmedical healing practices, in the exercise of sincere religious belief, shall not by itself be the basis for finding a parent unwilling or unable to provide adequate safety and care.

2. IF A GROUND IS PROVEN, WHETHER TPR IS IN THE CHILD'S BEST INTERESTS

The court considers the following factors:

- The child's sense of attachment, including security, familiarity, and continuity of affection;
- The child's wishes and long-term goals;
- The child's need for permanence, including stability and continuity of relationships;
- The child's future physical, mental, moral, or emotional well-being;
- Any benefit to the child of being integrated into a stable, permanent home and the likely effect of delaying that integration;
- The detrimental impact of the lack of a stable, permanent home on the child's safety, well-being, or physical, mental, or emotional health; and
- Any other factors the court considers relevant and proper.

PLACEMENT AFTER TPR

When the court terminates parental rights or accepts a surrender, it must place the child in a placement found to be in the child's best interests, considering:

- The child's need for a placement offering the greatest degree of legal permanence and security;
- The least disruptive placement for the child;
- The 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.

Any adoptive placement must agree to abide by any terms and conditions imposed by the court.

Note: At the dispositional phase, the court must hear from any potential adoptive placement with whom the child lived for 12 consecutive months, as long as that period did not end more than 90 days before the TPR petition was filed. This testimony should address the bond between the child and the placement; the child's health, safety, and well-being; and anything else relevant to disposition.

PREPARING FOR THE HEARING

Preparing for a TPR hearing means having a clear, evidence-based view on two distinct questions: whether a legal ground for termination exists, and whether termination truly serves this child's best interests.

QUESTIONS TO CONSIDER

- Has a ground for TPR been proven by clear and convincing evidence? Which one(s)?
- If a ground is proven, is TPR in the child's best interests considering the factors above?
- Is the parent-child relationship irretrievably broken, or is there a meaningful bond and healthy visitation? If the relationship is not broken, would permanent guardianship better serve the child?
- If the child is age 14 or older, does the child want to be adopted?
- What does the child's current placement look like, and what is the bond between the child and that caregiver?



PRACTICE POINTS

- Review files and previous reports, and be prepared to make a recommendation on whether TPR is in the child's best interests, as well as any post-dispositional considerations, such as the attachment and bonding between the child and current caregiver.
- Prepare and submit a court report consistent with local practice.
- Be prepared to testify and to be cross-examined on the factual basis for any recommendations.

AT THE HEARING



PRACTICE POINTS

- Be present in court to testify. CASA is often a critical witness possessing a longstanding relationship with the child and family and continuity over the life of the case. The court may direct CASA to appear if absent.
- If foster parents or caregivers are present, ensure they are acknowledged and given the opportunity to address the court.
- If the placement after TPR is being addressed, be prepared to share your observations on the bond between the child and the prospective placement and the placement's appropriateness.

KEY PRACTICE NOTES

THE WRITTEN REPORT MAY NOT BE ADMISSIBLE

A written CASA report may not be entered into evidence over a party's objection at a TPR hearing. Oral testimony is essential.

A MEANINGFUL BOND CHANGES THE CALCULUS

If the parent-child relationship is not irretrievably broken, meaning the attachment and bond are strong and visitation is healthy, termination may not be appropriate, and permanent guardianship should be explored instead. At minimum, encourage caregivers to agree to a voluntary post-adoption contact agreement (open adoption) to preserve connections.

A CHILD'S OBJECTION MATTERS

When a child age 14 or older does not want to be adopted, termination may not be appropriate.

"BETTER OFF" IS NOT THE LEGAL QUESTION

Whether a child would be better off with a foster parent or other caregiver is irrelevant to whether a ground exists to terminate parental rights. Stay focused on the statutory grounds.

PROVING A GROUND IS NOT THE END OF THE ANALYSIS

A ground for TPR being proven does not mean TPR is automatically in the child's best interests. These are independent questions, and a sound recommendation requires a thorough understanding of both prongs of the test.