

AAL TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

Statutory Authority; A.C.A. '9-27-338 and '9-27-341

Purpose:

- To provide permanency in a child's life where return home is contrary to the child's health, safety or welfare and cannot be accomplished in a reasonable period of time, as viewed from the child's perspective. **A.C.A. '9-27-341(a)(3)**
- To clear the child for permanent placement. **A.C.A. '9-27-341(a)(2)**

Time constraints:

- ⌚ Upon the court's determination that the goal is termination of parental rights, DHHS shall file a TPR petition within 30 days of the permanency planning hearing that establishes TPR as the permanency goal. **A.C.A. '9-27-338(f)**
- ⌚ If the Court determines the new permanency goal to be termination of parental rights, DHHS shall file the TPR petition no later than the 15th month after the child's entry into foster care. **A.C.A. '9-27-359(c)**
- ⌚ The court shall conduct and complete the TPR hearing within 90 days from the date the TPR petition is filed, unless continued for good cause as articulated in the written order of the court. **A.C.A. '9-27-341(d)(1)**
- ⌚ A written order shall be filed by the court or by a party or party's counsel as designated by the court within 30 days of the date of the termination hearing or before the next hearing, whichever is sooner. **A.C.A. '9-27-341(e)**
- ⌚ After the TPR hearing, the court shall review the case at least every 3 months when the goal is adoption and in other cases the court shall review every 6 months. The permanency planning hearing shall be held each year after the initial permanency planning hearing until permanency is achieved for that child. **A.C.A. '9-27-341(f)**

Petitioners:

- ✓ DHHS
- ✓ Attorney Ad Litem

Notice:

The petitioner shall provide the parent(s) or putative parent actual or constructive notice. **A.C.A. '9-27-341(b)(2)(A)**

The petitioner shall also contact the Putative Father Registry when the name or whereabouts of a putative father are unknown. **A.C.A. '9-27-341(b)(2)(B)**

The Petition to TPR must contain the specific Ground(s) to TPR with specific facts to support each ground.

Pre-trial Preparations:

- Ensure that the foster parent or temporary custodian has been provided with notice of the hearing by DHHS.
- Attend and participate in staffing and discuss case goal and concurrent goal.
- Interview client, caseworker, and all witnesses.
Best Practice: AAL should discuss in detail with the client permanency, visitation, and the child's wishes. If the child wishes sibling visitation, the AAL should request the visitation order prior to TPR.
- Review all evidence to be submitted during the hearing.
- Share with opposing counsel all evidence to be submitted by AAL during the hearing.
- Discuss with the child's counselors whether a closure visit is in the child's best interests, how such visit should be arranged, and who should be present.

Present at Hearing:

- ✓ Judge;
- ✓ Parties, including children unless excused for good cause by court;
- ✓ Attorneys for parties;
- ✓ CASA volunteer, if appointed;
- ✓ Case worker, adoption specialist, ILP specialist, and relevant witnesses;
- ✓ Foster parents or relative caregivers; and
- ✓ Court Reporter

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Burden of Proof: Clear and convincing evidence
A.C.A. §9-27-325(h)(2)(C)

Issues:

Best Practice: The AAL should thoroughly investigate prior to the hearing:

- ✓ Is TPR in the child's best interest?
- ✓ Has petitioner proved all of the statutory TPR grounds?
- ✓ Does an appropriate permanency plan exist? What efforts have been made to place the child in an adoptive home?
- ✓ What type of visitation with relatives and siblings is appropriate?

A.C.A. §9-27-341

It is in the child's best interest and one of the following grounds:

- The child was adjudicated d-n, and has been out of home for 12 months & despite meaningful efforts to rehabilitate, conditions which caused removal have not been remedied; A.C.A. §9-27-341(b)(3)(B)(i);
- The child lived outside home for 12 months and parent willfully failed to support or maintain contact; A.C.A. §9-27-341(b)(3)(B)(ii);
- The presumptive legal father is not biological father; A.C.A. §9-27-341(b)(3)(B)(iii);
- The child was abandoned; A.C.A. §9-27-341(b)(3)(B)(iv);
- The parent has executed consent to TPR or adoption; A.C.A. §9-27-341(b)(3)(B)(v);
- The court has found the child to be a victim of dependency-neglect as a result of neglect or abuse that could endanger the child's life, sexual abuse or sexual exploitation perpetrated by the juvenile's parent(s); A.C.A. §9-27-341(b)(3)(B)(vi);
- Subsequent to the dependency-neglect petition, other factors/issues arose which demonstrate return is contrary to child's health, safety or welfare & that despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors which prevent return to the family home; A.C.A. §9-27-341(b)(3)(B)(vii);
- The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the child's life A.C.A. §9-27-341(b)(3)(B)(viii); or
- The parent is found by a court of competent jurisdiction to have:
 - Committed murder or voluntary manslaughter of any child;
 - To have aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter;
 - Committed a felony battery or assault that results in serious bodily injury to any child;
 - Subjected the child to aggravated circumstances as defined in A.C.A. §9-27-303(6) including:
 - < abandonment;
 - < chronic abuse;
 - < subjected to extreme or repeat cruelty;
 - < sexual abuse; or
 - < child who has been removed from the custody of the parent and placed in foster care or custody of another person more than 3 times in the last 15 months; or
 - < judicial determination that there is little likelihood that services will result in successful reunification.
- Had parental rights involuntarily terminated as to a sibling of the child; or
- Abandoned an infant A.C.A. §9-27-341(b)(3)(B)(ix)

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Exhibits:

- All evidence to prove TPR. This will include any evidence from prior hearings that will be used to prove grounds for TPR;
- Current case plan and court reports; and
- Service provider reports.

Best Practice: This hearing is not to re-adjudicate or re-try any parts of the prior hearings of the case. It is to prove the specific grounds of the TPR petition.

Consequently, parties are not allowed to incorporate the entire record of the case. Any evidence to prove the TPR must be presented on the day of the hearing.

Attorneys should meet prior to the TPR to exchange and discuss any evidence. Best practice is to have such meeting before the court several weeks prior to the TPR hearing.

Post-Trial Activities:

- Review court order for accuracy and completeness.
- AAL must monitor compliance with court orders.
- AAL must explain to age-appropriate clients the hearing outcome and its meaning.

Effect of a TPR order:

A TPR order terminates the parent-child relationship and divests the parent and the child of all legal rights, powers and obligations between each other, including the right to withhold consent to adoption. A child has a right to inherit until the final adoption is entered.

A.C.A. §9-27-341(c)(1)

TPR between a child and one parent does not affect the relationship between that child and the other parent if those rights were legally established and not terminated. If no legal rights have been established, a putative parent must prove significant contacts existed with the juvenile in order for the rights to attach. **A.C.A. '9-27-341(c)(2)**

A TPR order may authorize DHHS to consent to adoption of the juvenile. **A.C.A. '9-27-341(c)(3)**

A TPR order does not preclude adoptive parents from allowing contact between the adoptive child and birth siblings or other birth family members.

A.C.A. '9-27-341(c)(4)

Sibling visitation shall not terminate if the adopted child was in the custody of DHHS and had a sibling who was not adopted by the same family and before the adoption the circuit court in the dependency-neglect case or FINS case determined that it was in the best interest of the siblings to continue visitation and ordered sibling visitation to continue after the adoption. **A.C.A. '9-9-215 (c)**

Best Practice: If termination is granted and if the child's counselors believe that a closure visit is recommended for the child, request appropriate orders to accomplish this. Counselor may want to be a part of this visit.

Request specific findings on the order for TPR.

Request that DCFS obtain a new Social Security number for the child.

Make sure parents are aware of the Mutual Consent Voluntary Adoption Registry.

Ask that the next hearing be set after the parents have left the courtroom.