

OCC

TERMINATION OF PARENTAL RIGHTS HEARING CHECKLIST

A.C.A. 9-27-338 and 9-27-341

Purpose:

To provide permanency in a child's life where return to the family 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. 9-27-341(a)(1)(B)

To clear the child for permanent placement. 9-27-341(a)(1)(B)

Time constraints:

☉ Upon the court's determination that the goal is termination of the parental rights, DHHS shall file a TPR petition within 30 days of the permanency planning hearing that establishes TPR as the permanency goal. 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. 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. 9-27-341(d)(1)

Petitioners:

- DHHS
- Attorney Ad Litem

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

If the AAL has filed a petition to TPR, OCC must join the petition if (1) the juvenile has been in foster care for 15 of the past 22 months; (2) the juvenile is an abandoned infant (less than 9 months old); or (3) the parent(s) of the juvenile have been convicted of one of the felonies in the list to fast track a case.

Notice:

The parents must be served with the Summons and Petition to TPR and a summons pursuant to the Rules of Civil Procedure. Include a notice of hearing.

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

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

Pre-Trial Activities:

- Share a copy of the TPR petition with the caseworker and review the grounds in the petition with the caseworker
- Assess whether only one parent should have rights terminated.
- Ensure foster parent or temporary custodian has been provided with notice of hearing by caseworker
- Provide notice of hearing to parties
- Communicate with counsel for all parties to see if any facts can be stipulated
- Ensure that the responsible attorney has obtained a transport order for incarcerated parents
- Request time specific hearing
- Provide written notice of the TPR Hearing to the caseworker if written notice not given at last hearing.
- Identify witnesses for TPR Hearing and issue subpoenas. Obtain witness fee check.
- Try not to be repetitive with testimony
- Communicate with all witnesses prior to TPR hearing regarding their testimony.
- Identify, copy and mark each exhibit.
- Share exhibits counsel prior to hearing.
- Bring calendar to court.

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Hearing Issues:

- Whether TPR in the child's best interest
- Proving facts support one of the statutory TPR grounds (see list below)
- Whether an appropriate permanency plan exists (this means calling the adoption specialist as a witness to prove that adoption is a viable plan for this child)
- Ask the court to make a credibility finding as to witnesses' testimony
- If TPR is granted, whether the parent will have a good-bye visit and under what circumstances
- Whether visitation with relatives continues after TPR
- Visitation with siblings, if appropriate

Grounds to TPR (9-27-341)

The juvenile has been adjudicated dependent-neglected and has continued out of the custody of the parent for 12 months and, despite a meaningful effort by DHHS to rehabilitate the parent and correct the conditions which caused removal, those conditions have not been remedied; 9-27-341(b)(2)(B)(i)

The juvenile has lived outside the home of the parent for a period of 12 months, and parent willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile; 9-27-341(b)(2)(B)(ii)

Best Practice: Include this ground to TPR in your petition when a parent has had infrequent contact with the child or failed to provide consistent child support for the child while the child was in the out-of-home placement.

The presumptive legal father is not biological father and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father; 9-27-341(b)(2)(B)(iii)

A parent has abandoned the juvenile; 9-27-341(b)(2)(B)(iv)

A parent has executed consent to TPR or adoption subject to the court's approval; 9-27-341(b)(2)(B)(v)

The court has found the juvenile dependency-neglected as a result of neglect or abuse that could endanger the child's life, sexual abuse or sexual exploitation, any of which was perpetrated by the juvenile's parent(s); 9-27-341(b)(2)(B)(vi)

Subsequent to the dependency-neglect petition, other factors or issues arose which demonstrate that return of the juvenile to the custody of the parent is contrary to juvenile'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 or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent; 9-27-341(b)(2)(B)(vii)

Best Practice: Ensure that the subsequent factor or issue has been adjudicated or a parent can challenge the TPR for lack of due process.

The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the child's life 9-27-341(b)(2)(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.

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- Had parental rights involuntarily terminated as to a sibling of the child;
- Abandoned an infant 9-27-341(b)(2)(B)(ix)
- **Distribute a copy of the order to all parties, CASA and CFS within 30 days.**
- **Inform caseworker of date and time of next hearing (Pulaski staff add to docket calendar).**
- **Key data in legal screens on CHRIS.**

Best Practice: Plead and prove all applicable grounds to TPR. Always check the putative father registry.

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. 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. 9-27-341(c)(2)

A TPR order may authorize DHHS to consent to adoption of the juvenile. 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. 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. 9- 9-215 (c)

Post Trial Activities:

- A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the hearing, or prior to the next hearing, which ever is sooner.