



Child Abuse and Neglect Institute

Improving Outcomes for Children and Families

MODULE: THE TERMINATION OF PARENTAL RIGHTS HEARING

National Council of Juvenile and Family Court Judges





LEARNING OBJECTIVES

- Understand how to prepare for and conduct effective termination of parental rights hearings
- Discuss best practice strategies for improving termination of parental rights hearings



TERMINATION OF PARENTAL RIGHTS HEARING CASE SCENARIO





SOME QUESTIONS TO CONSIDER:

- If the matter comes on for a Termination of Parental Rights Hearing, what key decisions and findings do you need to make to comply with federal and your state's law?
- If you grant the Termination of Parental Rights, what post-TPR key decisions do you need to make?



SETTING THE STAGE FOR BETTER PERMANENCY OUTCOMES

Hearing Best Practices

Termination of Parental Rights Hearings





ASFA AND TPR

ASFA requires that filing for TPR must be instituted when:

- ⦿ A child of any age has been in foster care for 15 of the most recent 22 months (unless exceptions apply);
- ⦿ The child is an abandoned infant;
- ⦿ The parent has committed, aided, or attempted the murder or voluntary manslaughter of a sibling of the child;
- ⦿ The parent has committed a felony assault resulting in serious bodily injury to the child or a sibling of the child



ASFA AND TPR

When addressing whether parental rights should be terminated involuntarily, ASFA requires that a Court:

- ⦿ Determine, by clear and convincing evidence, that the parent is unfit
- ⦿ Determine whether severing the parent-child relationship is in the child's best interests



ASFA AND TPR

Most common statutory grounds for determining parental unfitness include:

- ⦿ Severe or chronic abuse or neglect
- ⦿ Abuse or neglect of other children in the household
- ⦿ Abandonment
- ⦿ Long-term mental illness or deficiency of the parent(s)
- ⦿ Failure to support or maintain contact with the child
- ⦿ Involuntary TPR of the parent to another child
- ⦿ Felony convictions of parent(s)
- ⦿ Length of time in foster care



ASFA AND TPR

Exceptions to TPR filing

- ❑ The child has been placed under the care of a relative
- ❑ The State Agency has documented in the case plan a compelling reason to believe that terminating the parent's rights is not in the best interests of the child.
- ❑ The parent has not been provided with the services required by the service plan for reunification of the parent with the child.



BEST INTEREST BURDEN

- In addition to the legal grounds for TPR it must be shown that TPR is in the child's best interest.



“Snowman Watching over My House” -Eric, Age 6



BEST INTEREST BURDEN

- It is every child's best interest to be in a permanent placement with at least one primary caregiver who is willing and able to meet the child's physical, mental, emotional, and moral needs necessary to achieve normal development.



NEEDS' BASED ANALYSIS

- Effective evidence on best interest focuses on the child's needs and the parent's ability to meet those needs.
 - At the time of removal
 - At the time of TPR trial
- Unfit means unable to meet the child's needs (parent assessment)
- Neglect means the parent has failed to meet the child's needs in the past (child assessment)



ICWA AND TPR

- Differences between State and Tribal Child Welfare values and practice perhaps most evident with TPR and Adoption
 - Tribal concept of community permanency
 - Emphasis on permanency alternatives that help child stay connected to extended family and Tribe
 - Many tribal communities do not agree with TPR and may use “customary adoption” instead



ICWA AND TPR

25 U.S.C. 1912 (a) Notice

- ⦿ Party seeking the foster care placement of, or TPR to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe
- ⦿ No foster care placement or TPR proceeding shall be held until at least 10 days after receipt of notice by the parent, Indian custodian or Tribe
 - ⦿ Upon request, parent or Indian custodian or tribe shall be granted up to 20 additional days to prepare for such a proceeding



ICWA AND TPR

25 U.S.C. 1912 (f) Burden of Proof for TPR

No TPR may be ordered in the absence of determination, supported by **evidence beyond a reasonable doubt**, including testimony of qualified experts, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child



ICWA AND TPR

25 U.S.C. 1912 (d)

“...any party seeking to effect a ...TPR to, an Indian child under state law shall satisfy the court that **active efforts** have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”



ICWA AND TPR

25 U.S.C. 1915(b) establishes the following order of preference for foster care placement of an Indian child:

- (1) A member of the Indian child's extended family
- (2) A foster home licensed, approved or specified by the Indian child's tribe;
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
- (4) An institute approved by an Indian Tribe



TPR -THE COURT'S RESPONSE TO FILING OF PETITION

- ◉ Ensure all parties represented by counsel
- ◉ Set a pre-trial date within 30 days
 - Unless prohibited by statute, all proceedings should be scheduled before the same judge who handled case since original filing
- ◉ At pre-trial establish
 - Date for completion of discovery, mediation, pre-trial settlement conference
 - Trial dates (consecutive and begin within 90 days of petition filing)



CONDUCTING THE TPR HEARING

What information should the Court have?

In both cases of voluntary relinquishment and trial, court needs

- ◉ Reports, case plans, findings, orders and chronology of child's out of home placements and treatment;
- ◉ Age of child and needs at removal;
- ◉ Current report of the child's status and well-being;
- ◉ Circumstances leading to the filing of TPR petition; and
- ◉ Agency report of concurrent efforts to identify, recruit and place child with an adoptive family



CONDUCTING THE TPR HEARING

Questions that must be answered

Voluntary Relinquishment

- ◉ Was parental consent to relinquishment voluntary and informed?
- ◉ Have both biological parents consented to relinquishment?
- ◉ Why is relinquishment and adoption in the best interests of the child?
- ◉ Is there a recommendation for adoption with contact? How is contact, or lack thereof, in the best interests of the child?



CONDUCTING THE TPR HEARING

Voluntary Relinquishment for Indian Children to comply with ICWA, 25 USC 1913 must be

- ⦿ Executed in writing
- ⦿ Recorded before a judge and accompanied by presiding judge's certificate that the terms and consequences of the consent were fully explained and understood
- ⦿ Certified by the court that Indian parent or custodian understood the explanation in English or that it was translated and understood
- ⦿ Any consent given prior to or within 10 days after the birth of the child shall not be valid



CONDUCTING THE TPR HEARING

When the Case Goes to Trial - Questions that must be answered

- ⦿ Were all parties properly identified and served?
- ⦿ Does the evidence presented show that statutory grounds for TPR exist?
- ⦿ Depending on the grounds alleged in the petition, were reasonable efforts made to reunify?
- ⦿ Is TPR in the best interests of the child?



CONDUCTING THE TPR HEARING

After court has determined whether ground exist for TPR and whether TPR and Adoption are in the best interests of the child, and TPR is granted

In hearing without the birth parent, the court should proceed to determining whether reasonable efforts have been made and will be made toward adoption and finalization of the permanent plan



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- ◉ What are the child's special needs?
- ◉ If plan is relative or foster home adoption
 - What remains to be done to approve the home?
 - Is there another person in the home involved with the family, and if so, has that person been interviewed for appropriateness?
 - Full disclosure to relative or foster parent regarding child's history and current or potential disabilities?



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- If plan is relative or foster home adoption
 - What is the time frame for finalization?
 - Have all appropriate subsidies been identified and paperwork completed?
- If an adoptive home has been recruited
 - Detailed description of the home
 - Is there another person in the home involved with the family, and if so, has that person been interviewed for appropriateness?



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- If an adoptive home has been recruited
 - If Indian child, does home meet placement preferences in ICWA? What efforts has the agency made to identify a placement under ICWA?
 - Has there been full disclosure to the adopting family of the child's circumstances/ special needs?
 - What remains to be done to approve the home?
 - What is visitation and placement plan and timeframe?



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- If an adoptive home has been recruited
 - If the family's ethnicity is different from the child's, what efforts will be made to ensure relationships between the child and others of same ethnicity? Does adopting family understand the special aspects of the child's ethnicity?
 - If home is in different location, what are plans to continue to meet child's education and service needs?



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- If an adoptive home has been recruited
 - Subsidies been identified and paperwork completed?
 - What contact will child have with prior caretaker and others who have had positive relationships with the child? Is adoptive family agreeable to any contact plan that may have been recommended with the biological parent(s)?



CONDUCTING THE TPR HEARING

Questions to ask when determining whether reasonable efforts have been made

- If an adoptive home must be recruited
 - What efforts are being made to identify potential adoptive homes both locally and in other jurisdictions?
 - What is the status of investigating adults with whom the child has had positive relationships re: their potential to becoming adoptive families?
 - How many potential families have expressed interest in the child and what is the status of the investigation of each family?



FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE TPR HEARING

- ⦿ Final order should be issued within 14 days of the close of the hearing
- ⦿ First set of findings
 - Persons present and how absent parties were provided with notice
 - If voluntary relinquishment, efforts made by court to ensure relinquishment was voluntary and informed
 - How reasonable efforts were made to reunify the family



FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE TPR HEARING

◎ First set of findings

- If no efforts were reasonable -statement that based on family circumstances and child health and safety, all reasonable efforts were made
- If case went to trial, whether TPR is granted (if so, under what statutory grounds and specific reasons why statute applies)
 - Indian children, findings must include special requirements of ICWA
- Why TPR and adoption is in best interests of the child



FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE TPR HEARING

⦿ **Second set of findings when TPR granted**

Additional findings addressing the plans to finalize a permanent placement should be made in a separate entry

-what is being done to ensure that reasonable efforts are being made to find an adoptive home and to finalize the permanent placement with specific steps and timeframes that are to occur



FINDINGS OF FACT AND CONCLUSIONS OF LAW AT THE TPR HEARING

⦿ **Second set of findings when TPR granted**

- A description of any special factors or conditions of the child that are identified as special needs and what services are to be provided to address those needs and who is responsible for providing
- Date and time of the next review hearing set for within 90 days



CONCLUDING THE TPR HEARING

- ⦿ Focus on permanency and mandatory timeframes.
- ⦿ Set further reviews and permanency hearing and identify tasks to be accomplished.
- ⦿ Make clear findings and orders on the record.
- ⦿ Engage parents, children and other participants.



SUMMARY: BEST PRACTICE STRATEGIES FOR IMPROVED PERMANENCY OUTCOMES

- ◉ Post TPR Reviews - Not less frequently than every three months
- ◉ Expedite appeals
- ◉ Mediation and other pre-trial negotiations
- ◉ Adoption with contact



*“My Feelings, Painted” -
Marcus, Age 12*



TPR PRACTICE

Any Questions?

