
Termination of Parental Rights Grounds and Best Interest Factors

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Learning Objectives

- Court process for a TPR
- Statutory grounds for TPR
- New statutory factors for best interests determination in a TPR
- Alternatives to TPR

The Court Process



- Chancery, Circuit, and Juvenile courts all have jurisdiction to hear a termination of parental rights petition
- TPR may be filed in the county where the petitioners reside; where the child resides; where any respondent resides at the time of the filing; where the child entered foster care; or where the child entered partial or full guardianship
- TPR may be filed by prospective adoptive parents; licensed child-placing agency with physical custody; GAL; DCS; and child's parent (in very limited circumstances)

Necessary parties for a TPR

- Parental rights for ALL parents must be resolved for a child be placed in full guardianship
- Each parent/respondent has to be served by personal service or publication

Mother(s)

Father(s)

- Legal
- Biological
- Putative/Alleged

Guardian(s)

- DCS must file TPR if a child has been in custody for 15 of the last 22 months, unless a compelling reason not to file exists
- TPR must allege (and the petitioner must prove) at least one ground for termination AND that termination is in the child's best interests
- TPRs are to be given priority over all other matters except CPS cases; hearing to be within six months of the date petition is filed, unless court finds extension is in the best interest of child
- Standard of proof is 'clear and convincing' evidence
- Parents are entitled to counsel if indigent, but they have the obligation to request appointment of counsel
- GALs are required to be appointed for contested TPRs



- If TPR is denied, child does not automatically return to the parent(s)
- If TPR is granted, child will be placed in partial or full guardianship
- Once TPR order is signed AND entered, parties have 30 days to appeal the court's decision to the Court of Appeals

Grounds for TPR



Abandonment

- **Failure to visit or support:** in the four consecutive months preceding the filing of the petition, parent failed to visit the child or failed to support/make reasonable payments towards the support of the child
 - It is an affirmative defense to this ground that that failure to visit or support was not willful
- **Suitable Home:** in the four months following the removal of the child from the physical or legal custody of the parent, the parent does not make reasonable efforts to provide a suitable home and demonstrates a lack of concern such that it appears unlikely to provide a suitable home at an early date
 - DCS must prove reasonable efforts; to be considered reasonable, must equal or exceed that of the parent

Abandonment

- **Incarcerated Parent:** parent incarcerated all or part of the four months prior to the petition and
 - Failed to visit or support for four consecutive months prior to incarceration, or over an aggregation of 120 days of non-incarceration
 - Engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child
- **Failure to Support Mother:** biological or legal father failed to visit or provide reasonable support to mother during the four months prior to the birth
- **“Safe Haven”:** mother voluntarily leaves child under 2 weeks of age at certain facilities, and fails to visit or seek contact with the infant

- **Substantial noncompliance** by the parent with the statement of responsibilities in a permanency plan
- **Persistent Conditions:** child removed from home/physical/legal custody of parent for at least six months and conditions that led to removal still persist or other conditions exist that would cause child to be subjected to further abuse or neglect; little likelihood conditions remedied at an early date; and continuation of parent/child relationship diminishes child's chances of integration into a safe, stable, permanent home
- **Severe Abuse:** found to have committed severe abuse against any child either by prior final order or during TPR

Severe Abuse

Likely to Cause Serious Bodily Injury or Death

- Knowing exposure to or knowing failure to protect from
- Serious bodily injury has same meaning as in Haley's Law

Specific Brutality, Abuse, or Neglect

- Requires expert testimony

Commission of certain (mostly sex) crimes

- Commission of the act or knowing failure to protect from
- Most require penetration unless child is under 13

Severe Abuse

Methamphetamine labs

- Knowingly allowing child to be present in a structure where meth is being created
- 'Structure' has been broadly interpreted

Allowing a Child to Ingest Illegal/Controlled Substance

- Child has to be under 8 and test positive on a drug screen
- Knowingly or with gross negligence

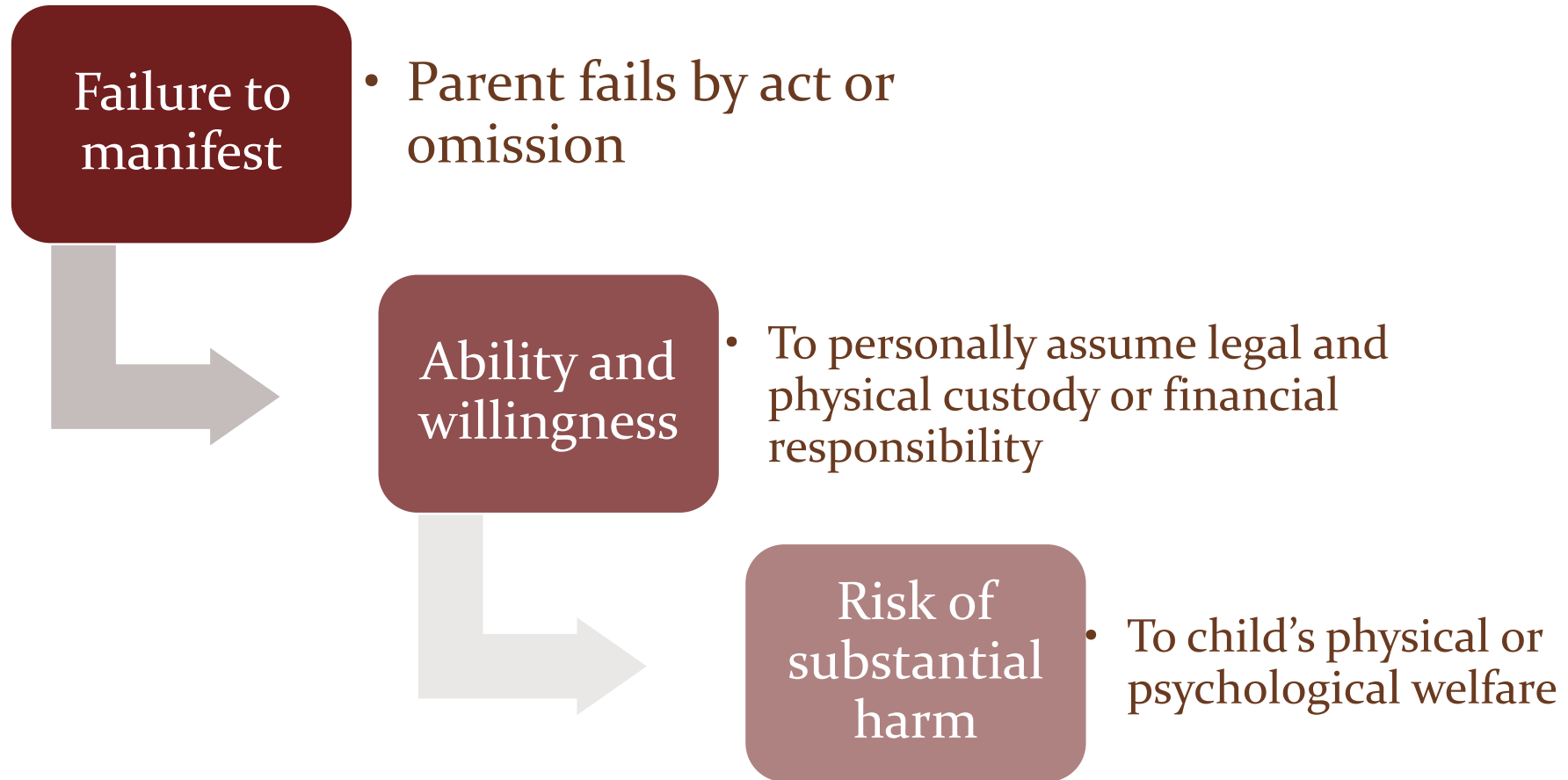
Access to Controlled Substances

- Knowingly allowing child to be present in a structure where present and accessible
- Schedule 1; cocaine; meth; or fentanyl

Other Grounds

- Sentenced to 2+ years imprisonment for severe abuse
- Sentenced to 10+ years and child under 8
- Certain criminal offenses
 - Murder/wrongful death of other parent
 - Sex Trafficking
 - Rape resulting in conception of child
 - Severe child sexual abuse
- Mental incompetence
- Putative father grounds

'Failure to manifest'



Best Interest Factors



Public Chapter 190 (2021)

- Effective April 22, 2021, 9 old best interest factors deleted and creates 20 best interest factors
- Not limited to 20 enumerated factors, but all factors considered to be applicable must be identified and supported by specific findings of fact in court's order
- Expert testimony not required for any best interest factor
- Prompt and permanent placement in a safe environment is presumed to be in child's best interest



- Effect TPR will have on child's critical need for stability and continuity of placement
- Effect change of caretakers/physical environment likely to have on child
- Whether parent has demonstrated continuity/stability in meeting child's basic material, educational, housing, safety needs
- Whether parent/child have secure and healthy attachment
- Whether parent has maintained regular visitation/contact and used contact to cultivate positive relationship
- Whether child is fearful of living in parent's home
- Whether parent, parent's home, or others in the household trigger/exacerbate child's experience of trauma/post-traumatic symptoms

- Whether child has created healthy parental attachment with another person(s) in the absence of the parent
- Whether child has emotionally significant relationships with other persons (including biological or foster siblings) and the likely impact of outcomes on these relationships and child's access to information about child's heritage
- Whether parent has taken advantage of available programs, services, or community resources
- Whether parent has demonstrated lasting adjustment to make it safe/beneficial for child to be in the home, including consideration of criminal activity in the home, use of alcohol, use of controlled substances, use of controlled substance analogues
- Whether DCS made reasonable efforts to assist parent
- Whether parent demonstrated sense of urgency in establishing parentage, seeking custody, or addressing the circumstances

- Whether parent or person residing with or frequenting home has shown brutality, abuse, or neglect towards any child or adult
- Whether parent has demonstrated understanding of the basic and specific needs for the child to thrive
- Whether parent has demonstrated ability/commitment to creating/maintaining home that meets child's basic and specific needs and in which child can thrive
- Whether parent has ever provided safe/stable care for the child or any other child
- Whether physical environment of the home is healthy/safe
- Whether parent has consistently provided more than token support
- Whether the mental/emotional fitness of parent would be detrimental to the child/prevent parent from providing safe/stable care and supervision

Alternatives to TPR



Surrender

- Legal parents
- Revocable

Waiver of Interest

- Putative fathers
- Not revocable

Denial of Paternity

- Legal father, NOT adoptive father
- 'Credible proof' that not biological father

Permanent Guardianship (SPG and PG)

BOTH

- Alternative to adoption
- Does not require TPR

SPG

- Requires preexisting relationship (kinship or fictive kin)
- Must be in home six months
- Eligible for subsidy

PG

- No prior relationship required
- Not eligible for subsidy

PPLA (Planned Permanent Living Arrangement)



THANK YOU

*for the lives you touch
we appreciate you*

SO MUCH

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