

TERMINATION OF PARENT-CHILD RELATIONSHIP IN JUVENILE DELINQUENCY CASES

The changes in the payment and supervision of juvenile delinquency placements along with the increased emphasis on permanency plans for children have brought up questions concerning the termination of parental rights (TPR) in those cases where the child has been outside the home for fifteen (15) of twenty-two (22) months. The Department of Child Services (DCS) understands and acknowledges the obligation to file the termination petitions at the appropriate time. The issue, given that the case plan is prepared and supervised by the probation department, is the mechanics by which probation departments timely notify DCS when the statutory time limits have been reached.

FACTORS TO CONSIDER:

Discretionary vs, Mandatory Filing TPR

Discretionary Filing:

- Ind. Code § 31-35-2-4 allows for the filing of an involuntary TPR proceeding if the delinquent child has been removed from the parent for a period of six months pursuant to a dispositional decree.
- DCS must be able to prove the other elements of the statute by clear and convincing evidence (as well as the six month removal requirement):
 - Must prove one of the following:
 - Reasonable probability that the conditions that resulted in the child's removal or reasons for placement outside of the home of the parents will not be remedied; or
 - Reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the child.
 - Termination is in best interest of the child
 - There is a satisfactory plan for the care and treatment of the child

Mandatory Filing:

- Pursuant to Ind. Code § 31-35-2-4.5, DCS is mandated to file a TPR proceeding if the delinquent child has been
 - placed in: a foster family home, child caring institution, or group home licensed under IC 31-27; or the home of a person related (as defined in IC 31-9-2-106.5) to the child as directed by a court in a delinquency action under IC 31-37; and
 - has been removed from a parent and has been under the supervision of the [DCS] or county probation department for **not less than fifteen (15) months of the most recent twenty-two (22) months**, beginning with the date the child is removed from the home as a result of the child being alleged to be a delinquent child.

Issues in Mandatory Filing Situations:

- Calculation of the 15/22 dates:
 - The statute sets the starting date: “beginning with the date the child is removed from the home as a result of the child being alleged to be a delinquent child.”
 - DCS Policy 6.5¹ provides guidance on the issues of how to calculate:
 - The placement outside the home does not have to be continuous
 - Trial home visits are not counted towards the placement outside the home
 - DCS does not count periods where the child has run away from the placement.
 - Best practices:
 - We (the courts and their probation departments) are the keepers of the clock. It will be our responsibility to keep track of the time that the child is in placement and out of the home.
 - The probation officer should be mindful from the initiation of the delinquency case of the 15/22 calculations.
 - We (the courts and their probation departments) will be responsible for notification to counsel for DCS and all counsel of record when the fifteen/twenty-two (15/22) time limit has occurred.
 - The communication should start sooner rather than later in the process so the DCS is aware of the case and that the case may be moving towards TPR. Think about starting the process at five or six months after the child’s removal from the home.
 - TPRs are very fact-based and the probation department and staff attorney from the local DCS office will need to coordinate the efforts to achieve TPR, if that is the desired outcome.
- Motions to Dismiss:
 - Just because the 15/22 benchmark has been achieved and DCS is mandated to file a TPR petition does not mean that DCS/probation must follow through with the TPR proceeding.
 - Ind. Code §31-35-2-4.5(d) allows for a motion to dismiss if there is a compelling reason documented in the case plan prepared by the probation department that proceeding with TPR is not in the best interests of the child.

¹ See [http://www.in.gov/dcs/files/6.12_Involuntary_Termination_of_Parental_Rights_\(TPR\)F.pdf](http://www.in.gov/dcs/files/6.12_Involuntary_Termination_of_Parental_Rights_(TPR)F.pdf)

- Case Plan / Permanency Plan:
 - Just as the motion to dismiss is based on documented compelling reasons in the case plan the reasons for proceeding with TPR should be based on the case plan / permanency plan implemented by the probation department and the courts.
 - Again, communication between the probation department and local staff attorney for DCS should start at the earliest possible point when TPR is being considered either by the probation department or the juvenile court.

BEST PRACTICES:

- Advise parents of the possibility of termination:
 - Do it early on in the process at the initial hearing: “You should also be aware that your parental rights may be terminated. This would require a separate case to be filed for that purpose alone and a separate trial on that issue. That is not the subject of these proceedings today.” (Note: this is the language from the CHINS dialogue for detention/initial hearings)
 - Do it again at the dispositional hearing: . At the dispositional hearing, if the child is placed outside the home, use that time to advise the parent about the possibility of termination of parental rights if the child remains in placement outside of the home for the fifteen (15)/twenty-two (22) month period.

- Scheduling of hearings:
 - Probation officers/juvenile prosecutors should be aware of the statutorily required hearings date at every hearing to make sure that hearings are timely held.
 - Schedule the permanency hearing at the time of entry of the original dispositional decree. Individual judges may wish to consider every review hearing a permanency hearing. That is clearly an acceptable practice however at a minimum; a court should place the case on its docket for permanency at the one year anniversary of the earlier of removal of the child or entry of the dispositional decree.
 - After the permanency hearing, the next scheduled review should also then be conducted as a permanency hearing and that date should be scheduled so as to [occur before or] coincide with the fifteen (15) month removal anniversary date (no later than that date).
 - Any order on the permanency hearing held at one year and any order at the time that the child has been out of the home for fifteen (15) of twenty-two (22) months should contain a provision directing the probation department to provide copy of the order to DCS.
 - **NOTE:** simply providing a copy of the order is not enough for DCS to initiate the TPR.
 - Probation officer should meet with local DCS staff attorney to review the file and determine if 15/22 months have been achieved and discuss other issues regarding whether TPR should be filed.

- Orders should contain provisions finding the time that the child has been in out of home placement.

BENCH BOOKS/FORM CHANGES

- Have a paragraph in the dispositional order and any subsequent review/permanency orders that allows the court to find how long the child has been in out of home placement at that time. For example: The Court finds that the child was originally placed outside the home on (date) and as of the date of the hearing the child has been placed out of the home for (number of months in placement) of (number of months since original placement).

IC 31-35-2-4.5 Petition to Terminate Parent-Child Relationship

(as amended by SB 365, effective July 1, 2009)

(a) This section applies if:

(2) a child in need of services **or a delinquent child**:

(A) has been placed in:

- (i) a foster home, child caring institution, or a group home licensed under IC 31-27; or
- (ii) the home of a person related (as defined by IC 31-9-2-106.5) to the child;

as directed by a court in a child in need of services proceeding under IC 31-34 **or a delinquency action under IC 31-37**; and

(B) has been removed from a parent and has been under the supervision of the department **or county probation department** for not less than fifteen (15) months of the most recent twenty-two (22) months **beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child.**

(b) A person described in section 4(a) of this chapter shall:

- (1) file a petition to terminate the parent-child relationship under section 4 of this chapter: and
- (2) request that the petition be set for hearing.

IC 31-35-2-6

Request for hearing; time

Sec. 6. Except when a hearing is required after June 30, 1999, under section 4.5 of this chapter, the person filing the petition may request the court to set the petition for a

hearing. Whenever a hearing is requested under this chapter, the court shall:

- (1) commence a hearing on the petition not more than ninety (90) days after a petition is filed under this chapter; and
- (2) complete a hearing on the petition not more than one hundred eighty (180) days after a petition is filed under this chapter.

IC 31-35-2-4 Persons who may sign and file petition—Form--Contents

(as amended by SB 365, effective July 1, 2009)

(a) a petition to terminate the parent-child relationship involving a delinquent child or a child in need of services may be signed and filed with the juvenile or probate court by any of the following:

- (1) The attorney for the department.
- (2) The child's court appointed special advocate.
- (3) The child's guardian ad litem.

(b) The petition must:

(2) allege that:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (iii) the child has been removed from the parent and has been under the supervision of a county office of family and children **or probation department** for at least fifteen (15) months of the most recent twenty-two (22) months, **beginning with the date the child is removed from the home as a result of the child being alleged to be a child in need of services or a delinquent child;**

(B) there is a reasonable probability that:

- (i) conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child:

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-37-20-2 Periodic formal hearings—Modifications—Factors considered

(a) The court shall hold a formal hearing:

(1) every twelve (12) months after:

- (A) the date of the original dispositional decree; or
- (B) a delinquent child was removed from the child's parent, guardian, or custodian;

whichever occurs first;
(2) more often if ordered by the juvenile court.

(c) A review of the dispositional decree will be held at least once every six (6) months, or more often, if ordered by the Court. At the review, the court shall determine whether or not the probation department has made reasonable efforts to finalize a permanency plan for the child, if required under IC 31-37-19-1.5.

IC 31-37-20-3 Continued jurisdiction—Hearings—Period for jurisdictional review

(a) The court shall hold a formal hearing on the question of continued jurisdiction:

(1) every eighteen (18) months after:

(A) the date of the original dispositional decree; or

(B) a delinquent child was removed from the child's parent, guardian

Or custodian;

whichever comes first;

(3) more often if ordered by the juvenile court.

(b) The state must show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished and that a continuation of the decree with or without modifications has a probability of success.

(c) If the state does not sustain the state's burden for continued jurisdiction, the court may:

(1) authorize a petition for termination of the parent-child relationship; or

(2) discharge the child or the child's parent, guardian, or custodian.

(d) A jurisdictional review of the dispositional decree, including a review of the child's permanency plan, if required under IC 31-37-19-1.5, shall be held at least once every twelve (12) months.