

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

JAN - 5 2011

SPECIAL TRANSMITTAL

SUBJECT: Termination of Parental Rights (TPR) and Compelling Reasons

TO: County Children and Youth Social Service Agencies
Private Children and Youth Social Service Agencies
County Children and Youth Solicitors
Juvenile Court Judges

FROM: Richard J. Gold
Deputy Secretary for Children, Youth and Families



PURPOSE:

The purpose of this transmittal is to reinforce with public and private children and youth agencies, and juvenile courts, involved with children for whom termination of parental rights (TPR) may be under consideration, of the requirements to file timely petitions and to document compelling reasons when determining that the filing of the petition is not in the child's best interests.

BACKGROUND:

In March 2001, Pennsylvania issued the Office of Children, Youth and Families (OCYF) Bulletin Number 3130-01-01 entitled "The Second Revised Interim Implementation Guidelines for the Adoption and Safe Families Act (ASFA) of 1997 (P.L. 105-89)". Two of the key provisions to this bulletin focused on the requirement for filing a petition to terminate parental rights when the child has been in out-of-home care 15 out of the past 22 months and identified certain exceptions that would override the requirement for a petition to be filed. Guidance was also provided in regards to compelling reasons and notice was provided which prohibits the development of a standard list of compelling reasons for not filing the petition to terminate parental rights.

In 2008, Pennsylvania underwent its second Federal Child and Family Services Review. During this review, it was determined that TPR petitions were not filed in accordance with ASFA guidelines and that compelling reasons not to file these petitions were not documented in several of the cases. As such, we are issuing this correspondence as a means to reinforce the requirement that TPR petitions must be filed when the child has been in out-of-home care for 15 out of the past 22 months unless the situation falls under specific circumstances, which are also reiterated in this transmittal. In situations when the TPR petition has not been filed, there must also be documentation that a compelling reason exists.

This guidance reinforces the requirements of the current OCYF Bulletin, as well as the Pennsylvania Dependency Benchbook (Benchbook) issued by the Administrative Office of Pennsylvania Courts. The Benchbook was developed by the Dependency Benchbook Committee with consultation from local and national experts. The Benchbook and the OCYF Bulletin are both in place to assure children achieve permanency in a timely manner and reinforce that permanency planning for children begins at the time they enter placement. The Benchbook can be viewed and downloaded at <http://www.ocfcpacourts.us/judges-and-legal-professionals/benchbook>.

DISCUSSION:

Outlined below is the specific section of OCYF Bulletin 3130-01-01 which discusses filing for TPR, pages 54 through 62. Please take time to review it to ensure that agency practice aligns with these requirements. This information will be monitored by OCYF through annual licensing inspections and noncompliance will result in licensing citations and implementation of an approved plan of correction.

FILING FOR TERMINATION OF PARENTAL RIGHTS (TPR)

REQUIREMENT OF FEDERAL LAW

Section 103 of ASFA requires agencies to file petitions to terminate parental rights when a child has been in out-of-home care 15 of the most recent 22 months. There are three exceptions to this requirement:

- when the child is being cared for by a relative best suited to the welfare of the child;
- the county agency has documented a compelling reason (subject to court approval at the next review) for determining why such a petition is not in the child's best interest; or
- if reasonable efforts to return the child home must be made and the county agency has not provided the family with services consistent with the permanency plan as the county agency deems necessary for the child to return home.

If grounds for TPR exist for any of the children, the county agency should proceed with TPR without waiting for the 15 out of the most 22 month deadline as outlined within Section 103. In addition, agencies may proceed with termination proceedings prior to the 15-month mark where appropriate.

The requirements related to TPR also provided for a three part phase-in for children who were in out-of-home care on or prior to November 19, 1997. The above exceptions also applied to the children who fell in these time frames.

JUVENILE ACT

Pennsylvania implemented this requirement by adding Section 6351(f)(9) of the Juvenile Act which reads as follows:

(9) "if the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's parent, guardian or custodian or to preserve and reunify the family need to be made or continue to be made, whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

(i) the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's parent, guardian or custodian within the time frames set forth in the permanency plan.

For children placed in foster care on or before November 19, 1997, the county agency shall file or join a petition for termination of parental rights under this subsection in accordance with section 103(c)(2) of the Adoption and Safe Families Act of 1997 (Public Law 105-89, 111 Stat. 2119)."

If a child cannot safely return home, then the county agency must make reasonable efforts to find the child a permanent home. Unless the child falls within one of the three exceptions listed above, TPR petitions must be filed according to the deadlines listed below for the following children:

- children who enter out-of-home care after November 19, 1997; or
- children in out-of-home care as of November 19, 1997.

This provision does not intend to delay or to defer the filing of petitions to TPR when it is appropriate. When grounds exist for a child whom the county agency would file for TPR, then the county agency must file the petition at that point in time and **not wait** until the child has been in out-of-home care to meet the 15 out of 22 month requirement.

The requirements under this section are for the filing of the petition. The requirements do not presuppose any court action or place a burden on the court to act within a specified time.

IMPLEMENTATION GUIDELINES

The implementation of the requirements under this section will be discussed according to when children entered care, starting with those children who enter out-of-home care after November 19, 1997.

Children Entering Out-of-Home Care after November 19, 1997

When a child has been in out-of-home care 15 of the most recent 22 months, the county agency must file or join a petition to TPR. The date is calculated from the date the child enters out-of-home care. If there are interruptions in placement, such as when the child returns home, those time periods may not count as part of the 15 months. Fifteen months only applies to the time the child is in out-of-home care. Fifteen months of actual out-of-home care time can accrue over a 22-month period to trigger the requirements of this section. A month is defined as 30 days.

Qualifications to this requirement: The calculation of the 15 out of the most recent 22 months is cumulative. The only exceptions to this calculation are that trial visits, home and runaway episodes do not count toward the 15 months.

For example, a child enters out-of-home care on December 1, 1997 and remains in care, uninterrupted. The 15-month date for a TPR petition would fall on March 1, 1999.

As another example, a child enters out-of-home care on December 1, 1997 and goes home on April 1, 1998. Child re-enters out-of-home care on July 1, 1998. Child remains in care. The 15 months for this child would occur at June 1, 1999.

As a final example, a child enters out-of-home care on December 1, 1997, goes home April 1, 1998. This child re-enters out-of-home care on January 1, 1999. The child continues in care. The 22-month mark is October 1, 1999, but the child is only in care 13 months out of that 22-month period. The filing of a petition to TPR is not required based on time alone during this time period. If the child continues in out-of-home care uninterrupted, the date when the 22-month period is counted will shift every month. In this example, if the child remains in out-of-home care from placement January 1, 1999, the earliest the child would have 15 out of 22 months is April 1, 2000.

Permanency should be achieved for a child before the time the child has been in out-of-home placement for 12 months. If permanency has not been achieved for the child by the time a child has been in placement 15 out of the most recent 22 months, the court must determine at a permanency hearing whether the county agency filed or has sought to join a petition to TPR and to identify, recruit, process and approve a qualified family for the child unless one of the three exceptions apply. After the initial fifteenth month determination, the court must make the determination regarding TPR and the agency's attempt to provide a permanent family for the child at each permanency hearing that takes place after the initial fifteenth month court determination.

While there was a phase-in process for children entering out-of-home care on or prior to November 19, 1997, the requirements of ASFA should have already been met for these children. The following information is being provided in the event the requirements of ASFA have not yet been met for children placed before November 19, 1997 to assist in review of current cases.

Children in Out-of-Home Care on or Prior to November 19, 1997

ASFA provided for a phase-in process for children who entered out-of-home care prior to the enactment of federal law. The federal phase-in process was incorporated into the Juvenile Act at §6351(e)(9). The phase-in was to be completed by thirds starting with the group of children in foster care the longest. These children still needed to meet the requirement of having been in foster care 15 out of the most recent 22 months. If the child had any periods when he/she is not in out-of-home care, these periods did not count towards the 15 months in care.

Assuming the child had a continuous placement, the trigger date for the phase-in depended on when the Pennsylvania State legislative session ended in 1998 (the session ended November 30, 1998). The beginning of the phase-in started six months after the end of the Pennsylvania 1998 legislative session, or May 30, 1999, when petitions for TPR must have been filed for the oldest group of children in out-of-home care who qualified under the 15 month requirement and for whom no exceptions apply. The petitions for the next third of the children must have been filed 12 months from the trigger date, or November 30, 1999. The last group of children must have had petitions filed to TPR 18 months after the trigger date, May 30, 2000.

Children in Out-of-Home Care on or Prior to November 19, 1997 Whose Goal is Adoption

All of these children were to have been included in the first third of children as discussed above for children in out-of-home care on or prior to November 19, 1997.

The following chart reflects the time frames:

<p>All children who entered out-of-home care on or prior to November 19, 1997 – do in groups of thirds</p>	<p>File petitions for children in care the longest. First third due: MAY 30, 1999 NOTE: Children placed on or prior to November 19, 1997 who now have a goal of adoption must also have their petitions for TPR filed with the first group.</p>	<p>Petitions for the second third of this group of children due: NOVEMBER 30, 1999.</p>	<p>Petitions for last group due: MAY 30, 2000</p>
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County agencies should have planned for this requirement based on the interim guidelines (OCYF Bulletin 3130-98-01). The following considerations were recommended:

1. Identify all children in out-of-home care and group them:
 - a. By the longest length of time in care for all children who entered Care on or prior to November 19, 1997. This group also needed to be identified by length of time in care as those in care the longest needed their petitions for TPR filed first.
 - b. By children with a goal of adoption who were placed on or prior to November 19, 1997 as these children were to have been included with the first group of children who needed to have their petitions to TPR filed.
 - c. By those who entered care after November 19, 1997.
2. Review the length of time for each child in out-of-home care to determine if there were any breaks in time in out-of-home care.
 - a. If there are no breaks in out-of-home care for 15 consecutive months for a child, then petitions must be filed by the specified timeline.
 - b. If there are breaks in time spent in out-of-home care, then the time each child spent in out-of-home care must be individually reviewed to ensure that the child has been in out-of-home care for 15 out of the last 22 months.
3. Continually plan to file the petitions for these children, to schedule the hearings and to identify permanent placements for these children in a timely manner.

In addition, county agencies need to plan to identify children who are coming into care as to when they will meet the 15 out of 22 month requirement for filing for TPR. For counting purposes for this requirement, a month is 30 days.

Exceptions to filing a Petition to TPR for a Child in Care 15 out of the last 22 months

There are only three exceptions to the requirement to file a petition to TPR. These are:

- the child is being cared for by a relative best suited to the physical, mental and moral welfare of the child;
- the county agency has documented a compelling reason for determining that filing a petition to TPR would not serve the needs and welfare of the child; or

- The child's family has not been provided with necessary services to achieve the safe return to the child's home within the time frames set forth in the permanency plan.

If the court does not approve an exception, the county agency must file the petition to TPR.

First Exception: Child is With A Relative/Kin

By the time the child has been in out-of-home care for 12 months, the court approved goal in the Permanency Plan should be achieved or nearly achieved by the family. If the goal is that a child be placed with a relative/kin, the county agency should encourage the most permanent relationship the relative is willing to provide for the child. Adoption should be encouraged and the petition for TPR should proceed whenever possible.

If adoption has been discussed but is not an option, then another permanency option such as permanent legal custodianship should be encouraged. In this case, a decision needs to be made whether it is in the best interests of the child to have parental rights terminated. If it is not in the best interest of the child, then the agency may seek court approval of this decision as a compelling reason and may petition the court to approve a permanent legal custodian for the child and, as an option, discontinue further permanency hearings.

If neither adoption nor permanent legal custodianship is an option, the county agency may request that the court find that the relative placement is an exception to the TPR requirements. As long as the child remains with the relative/kin, the county agency will need to request the court to make a determination and enter a finding on this exception at each Permanency Hearing, unless the court approves the placement as a permanent placement for the child. The court may also waive the requirement for Permanency Hearings.

The court approval of the exception may be:

- Obtained at the 12 month Permanency Hearing; or
- Obtained at a Permanency Hearing prior to the end of the fifteenth month.

Note that documenting an exception in the record without court approval is not acceptable. The court must approve the exception.

If the county agency opts to have a Permanency Hearing at 15 months to secure court approval of an exception and does not include all of the matters for Permanency Hearings as required at §6351(e) (relating to disposition of dependent child), then the next Permanency Hearing will fall when six months have elapsed from the Permanency Hearing where these matters were reviewed.

For example:

- Permanency Hearing is held at 12 months following the date of placement and all the matters at §6351(e) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception and reviews all the matters at §6351(e);
- Then the next Permanency Hearing is at 21 months.

As long as the child remains in out-of-home care, the county agency will need to request the court to make a determination and enter a finding on this exception at each Permanency Hearing after the fifteenth month that the child is in out-of-home care.

If, at any time, the court does not determine an exception exists, then the county agency must file a petition to terminate parental rights.

Second Exception: Compelling Reason Why TPR is not in the Child's Best Interest

A second exception is when there is a compelling reason that it is not in the child's best interest for a petition to terminate parental rights be filed. This exception must be case specific. A case may not be considered as a compelling reason because it falls into an arbitrary category. For example, a child may not be considered for this exception solely because the child is medically fragile. There are families who are willing to adopt a child with serious medical conditions. Since compelling reasons are to be determined on a case by case basis, the development of a standard list is prohibited and is reinforced below.

Final Form federal regulations, via commentary, contained the following prohibition in the Preamble:

"...States may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirements that determinations regarding compelling reasons be made on a case-by-case basis."

Based on the aforementioned federal clarification, the case must have a specific compelling reason/circumstance to not file the petition to terminate parental rights. It will help in assessing whether this exception applies if one remembers that the compelling reason must be directly related to the best interests of the specific child. If the county agency petitions the court to approve the exception, then it must present the case for the compelling reason as it relates to the child's best interests.

The court approval of the exception may be:

- obtained at the 12-month Permanency Hearing; or
- obtained at a Permanency Hearing at the fifteenth month (the county agency may request the court to hold a Permanency Hearing at this time to make a finding on the exception).

If the county agency opts to have a Permanency Hearing at 15 months to secure court approval of the exception and does not include all of the matters for Permanency Hearings as required at §6351(e), then the next Permanency Hearing will fall when six months have elapsed from the Permanency Hearing where these matters were reviewed. For example:

- Permanency Hearing is held at 12 months and all the matters at §6351(e) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception but does not review all of the matters at §6351(e); and
- Then the next Permanency Hearing is at 18 months.

If all of the matters at §6351(e) are reviewed at the Permanency Hearing held for court approval of the exception at 15 months in placement, then the next permanency Hearing is held within six months. For example:

- Permanency Hearing is held at 12 months and the matters at §6351(e) are reviewed;
- Permanency Hearing is held at 15 months and the court approves the exception and reviews all the matters at §6351(e); and
- Then the next Permanency Hearing is at 21 months.

As long as the child remains in out-of-home care, the county agency will need to get a finding on this exception at each Permanency Hearing after the fifteenth month that the child is in out-of-home care.

If, at any time, the court does not determine an exception exists, the county agency must file a petition to TPR.

Third Exception: Services Were Not Provided

The exception for not providing necessary services to achieve the child's safe return home must be fully documented in the case record and must connect to supporting the current goal. County agencies must identify all problems which lead to the child's placement or which can prevent a child's placement and offer services to the family to address the problems. Agencies may provide the services directly or through another provider. The county agency remains responsible for seeing that the services are provided in a timely manner. This exception applies to the services in the family service plan and the child's permanency plan. It cannot be used for services not identified in the family service plan/child's permanency plan. The exception for services not provided must be avoided.

Any questions regarding this transmittal should be directed to the appropriate Office of Children, Youth and Families Regional Office.

- c: Ms. Bernadette Bianchi, Executive Director, Pennsylvania Council for Children,
Youth and Families (PCCYFS)
- Mr. Charles Songer, Jr., Executive Director, Pennsylvania Children and
Youth Administrators
- Mr. Connell O'Brien, MEd, Pennsylvania Community Providers Association
- Mr. James Anderson, Executive Director, Juvenile Court Judges' Commission