



# *Countdown to Permanency*

## TPR Timeline and Strategies

September 25, 2008

John A. Sellers, Grand Island

# *Topics*

**1. ASFA, COMPASS, Performance**

**2. Case Timeline**

**3. Filing TPR**

**4. Best Interest Defined**

**5. TPR Trial Presentation**

# Adoption & Safe Families Act



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# *Adoption & Safe Families Act*

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- **42 USC § 675 (5)(E)** The State must file TPR when the child is in state care 15 of most recent 22 months;
- The child is abandoned as defined by state law; or
- The parent has committed certain ‘aggravated’ acts against the child or a sibling unless an exception applies.

# *Adoption & Safe Families Act*

- A Child enters state care on the earlier of the following:
  - The date a court determines that the child has been subjected to abuse or neglect (adjudication); or
  - 60 days after the child is removed from the home. (TPR required to be filed 17 months from removal?)

# *Adoption & Safe Families Act*

- The filing is not required if:
  - The child is being cared for by a relative;
  - The Department has documented in the case plan or permanency plan a compelling reason that such filing is not in the child's best interest; or
  - The family has not had a reasonable amount of time to complete a court ordered case plan.

# *Adoption & Safe Families Act*

- The translation:
  - TPR by county attorney must be filed, at the latest, by 17 months after removal unless:
    - Child is in a relative placement;
    - The department has documented compelling reasons in the case plan;
    - Parents have not had a reasonable time to complete a court ordered case plan.
  - This is why federal standards are heavy on monitoring outcomes for children in state care 17+ months.

# *Performance Standards and Timeline*



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# *Standards of Performance*

- The Nebraska Department of Health and Human Services is currently posting relevant standards for Children's Outcomes Measured in Protection and Safety Statistics (COMPASS) on the Department's website. This is what we as a State need to achieve to pass federal audits and continue receiving federal funding.

**<http://www.dhhs.ne.gov/compass>**

# *Standards of Performance*

- The Federal and State standards are to achieve (physical) reunification within 12 months of entering state care in 75% of cases which result in reunification.
  - 75.2% of reunifications occur within 12 months.
- The Federal and State standards are to achieve a completed adoption within 24 months of entering state care in 36% of cases which result in an adoption.
  - 36.6% of adoptions occur within 24 months.
- Median time in Care < 6 months

# *Standards of Performance*

- The Ninth Judicial District has never reached the 75<sup>th</sup>ile of reunifications within 12 months.
  - We have made some improvement over the last five years.
- The Ninth Judicial District has (barely) meet the 75<sup>th</sup>ile of adoptions within 24 months only 2 of the last 5 years.
- The Ninth Judicial District has exceeded (doubled this year) the 75<sup>th</sup>ile for the number of children reentering care within 12 months of reunification 4 of 5 years.

# *Standards of Performance*

- End Analysis of these numbers is that we are taking too long to put children back into bad homes where they subsequently reenter state care, but we are completing 1/3 of adoptions on schedule. We are improving!



# *Progression Timeline*

- Day 0 Removal
- Day 60(2) Adjudication Complete
  - Or “In State Care” for AFSA
- Day 120(4) Case Plan Adopted
- Day 240(8) Substantial Compliance
- Day 300(10) ‘6 Month’ Disposition Review
  - Reunification? Transition scheduled? Case Plan fully completed? Monitoring & Maintaining? Concurrent Planning?

# *Progression Timeline*

- Day 425(14) '12 month' Perm. Review
  - Physical Placement / Reunification Complete! or **IMMINENT**; (60 days) or change permanency & concurrent plan is substantially complete.
- Day 480(16) '6 Month' Disposition Review
- Day 510(17) State files TPR
- Day 610(20) Child Free for Adoption
- Day 790(26) Adoption Complete

# *FILING TPR*



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## *When to File?*

- County Attorney must file TPR if:
  - Parent abandoned child for 6 months;
  - Child in State Care 15 of 22 months; or
  - Parent committed acts of violence against child or sibling as defined.



# *When to File?*

- GAL should file:
  - When any condition for the county attorney being required to file does exist, but has not done so within reasonable time;
  - If the parent has substantially failed or refused to participate in court adopted case plan for 6 months after entering care;
  - If case plan is not substantially complete and reunification is not imminent 12 months from entering care.

## *Why File?*

- The County Attorney is required to file by federal and state law.
- The GAL owes the professional ethical obligation to the ward to advocate for the best interest and legal rights of the child.
- The best interest of the child have been defined by federal and state law to achieve timely permanency through reunification at 12 months or adoption at 24 months.

# *What to File?*

- Abandonment
- Substantial Neglect
- Fail to Support
- Parents Unfit
- Mental Illness
- Fail to Rehabilitate
- 15 of 22 months in state care
- Serious bodily injury to the child
- Aggravated Circumstances
- Felony Assault against child or sibling

## *Best Interest Burden*

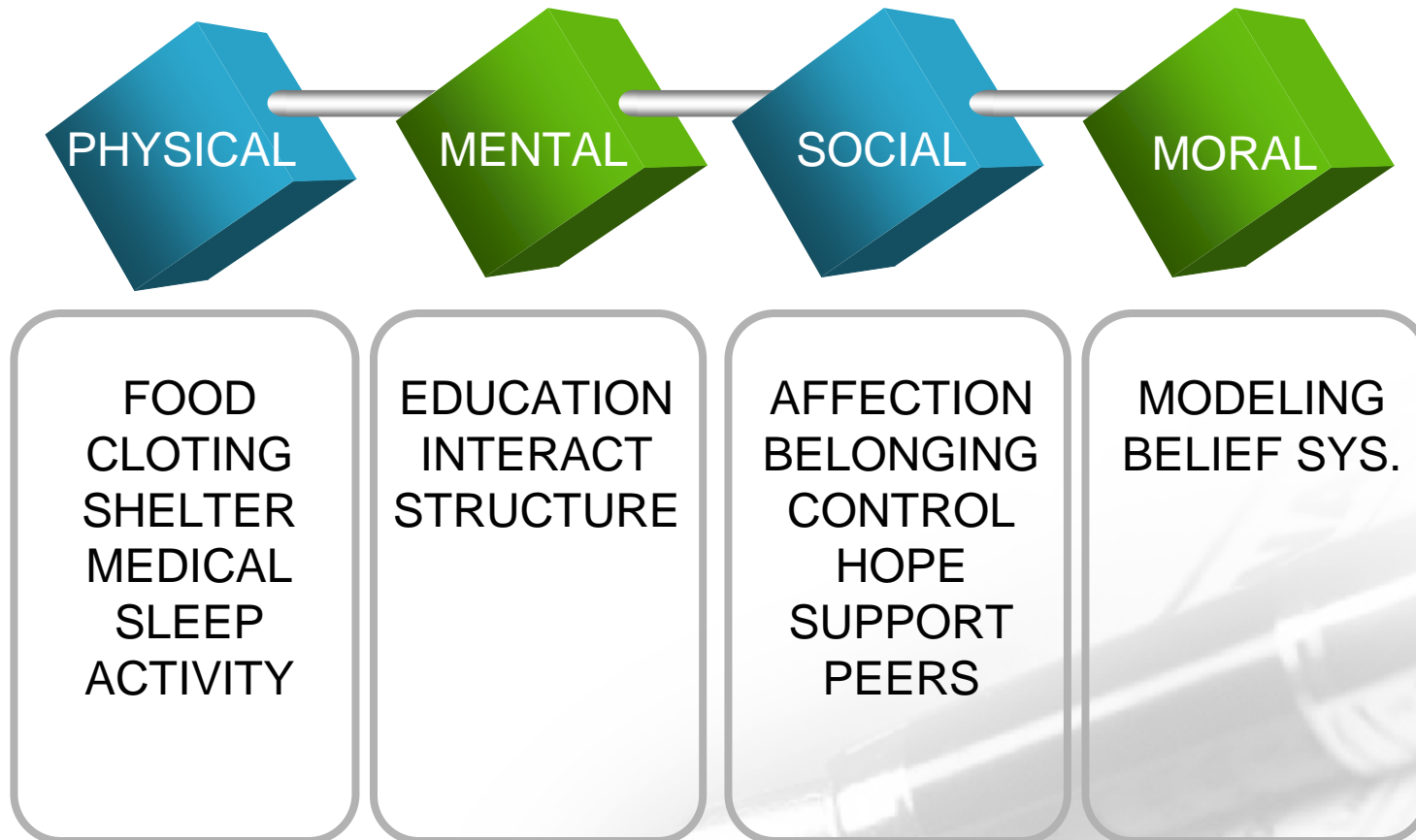
- In Addition to the legal grounds for TPR it must be shown that TPR is in the child's best interest.
- Also, recent cases seem to indicate that 15 of 22 months in state care also requires a showing that the parent is unable to parent the child (unfit).

## *Best Interest Defined*

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



# Basic Needs



# *Needs Based Analysis*

- To present effective evidence on best interest, focus on the child's needs and the parent's ability to meet those needs.
  - At the time of removal
  - At the time of 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)

## *Trial Presentation Tips*

- Prepare an outline of the elements of each legal ground in the motion.
- Match witnesses & exhibits to each element of the legal grounds.
- Always take discovery depositions of the parent and possibly any family members identified as witnesses.
- Use trial depositions for fact witnesses with limited information and expert witnesses that do not require foundation.

# *Trial Presentation Tips*

- Prepare witnesses prior to trial.
- Objections are based on due process not strict rules of evidence.
- Appeal is de novo on the record. Always make an offer of proof if the judge does not allow specific evidence. It may be admitted on appeal.