

	Department of Human Services CHILDREN, ADULT & FAMILIES	NUMBER: I-F.3.2.1 OAR: 413-110-0200 thru 0250
	CLIENT SERVICES MANUAL I	SECTION: F. Pre-Adoption Services
	ISSUED BY: Office of Permanency for Children EFFECTIVE DATE: January 1, 2002	SUBSECTION: 3. Initiating Adoption Planning 2. Legal Assistance Program
SUBJECT: 1. Termination of Parental Rights - Oregon Administrative Rule		

Responsible Manager: Manager,
Adoption Services

Approval: _____
Administrator, Office of Permanency
for Children

Interpretation: Manager,
Adoption Services

REFERENCES: ORS 419B.350
ORS 419B.502, .504, .506, .508
PL 105-89, Adoption and Safe Families Act
CAPTA
SB 408 (1999)

PURPOSE

413-110-0200 Pursuant to Oregon law related to the termination of parental rights the Child Abuse Prevention and Treatment Act (CAPTA) and the Adoption and Safe Families Act (ASFA) Department of Human Services (DHS) is mandated or authorized to seek termination of a parent's rights in certain cases where a child is in substitute care. These rules first outline under what circumstances DHS must seek the termination of parental rights of parents whose children are in DHS custody, and next under what circumstances it has the discretion to do so.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

DEFINITIONS

413-110-0205 (1) "Compelling Reason": A reason meeting specific criteria and documented in the case plan by the local DHS staff not to file a petition to terminate parental rights of the parents of a child(ren) where DHS would otherwise be required to do so under state and federal law.

(2) "Date Child Entered Substitute Care": Oregon statute and federal law utilize the date the child is found to be within the jurisdiction of the court (under ORS 419B.100) or 60 days from date of removal, whichever is earlier. DHS shall use the

date of the child's initial substitute care placement for calculating Citizens Review Board reviews, court or permanency hearings intervals.

(3) "Permanency Plan": A plan which will achieve permanency for the child. Although the plan may change as more information becomes available, the goal is to develop a safe and permanent resource with the parent(s), relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency, and be accessible and supportive to the child in adulthood. The child's important attachments will be considered and maintained when in the best interest of the child and consistent with CAF policy.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

VALUES

413-110-0210 (1) Every child needs and deserves a safe, nurturing and permanent home. Termination of parental rights is one means by which DHS can achieve adoption of a child. Adoption is one of several possible permanent plans.

(2) No child shall be freed for adoption without the probability of being placed in a permanent home.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

POLICY

413-110-0220 DHS shall only initiate a termination of parental rights action to free a child for adoption and where DHS has determined that adoption is in the child's best interest, and that other possible permanent plans such as guardianship would not be a more appropriate plan.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

PERMANENCY PLAN REVIEW

413-110-0230 DHS shall review the permanency plan for each child in its legal custody after the 6 month review conducted under ORS 419A.106 or any hearing conducted in lieu of such review; but prior to the permanency hearing required by ASFA to determine the appropriateness of the permanency plan. If the permanency hearing is scheduled before the above 6 month review, DHS shall review the permanency plan prior to the permanency hearing even if the review has not occurred. If the child cannot

be safely placed with a parent, in determining if adoption is the appropriate concurrent permanent plan:

(1) The local designated review body shall consider whether the plan is in the best interest of the child and whether there is a potential adoptive resource for the child or a resource can be located; and

(2) The Legal Assistance Specialist shall provide consultation to the local staff on whether the plan is consistent with statewide practice and whether the plan complies with the requirements of the DHS Adoption Program.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

DECISION TO FILE A PETITION TO TERMINATE PARENTAL RIGHTS

413-110-0240 (1) Unless one of the exceptions outlined in (3)(a) through (c) of this rule applies, and is so documented in the case plan, DHS shall file a petition to terminate the parental rights of the parents to a child in DHS custody. The local DHS staff, in consultation with the Legal Assistance Specialist, shall decide whether to file a petition to terminate the parental rights to a child who:

(a) Has been in foster care for 15 of the most recent 22 months as calculated from the date the child entered substitute care; or

(b) Has been determined by the court to be an abandoned child; or

(c) Has a parent who has been found by a court of competent jurisdiction to have:

(A) Committed murder, of another child of the parent;

(B) Committed manslaughter, of another child of the parent;

(C) Aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of another child of the parent; or

(D) Committed felony assault that results in serious bodily injury to the child or another child of the parent.

(2) DHS however, is not required to file a petition to terminate the parental rights to children meeting the criteria of 413-110-0240(1)(a) through (c) if:

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(a) The child is being cared for by a relative and the permanent plan is for the child to remain with that relative;

(b) DHS has not provided to the family of the child, consistent with the time period in the case plan, the services DHS deemed necessary for the safe return of the child to the child's home, if the plan required reasonable efforts (or active efforts in the case of an Indian child under the Indian Child Welfare Act) to do so; or

(c) Local DHS staff have documented in the case plan a compelling reason for determining that filing such a petition would not be in the best interests of the child. Compelling reasons may include, but are not limited to:

(A) A court or Citizens Review Board (CRB) has made a finding at a CRB review, permanency hearing or other hearing that DHS has made "no reasonable efforts" (or "active efforts" in the case of an Indian child under the Indian Child Welfare Act) to make it possible for the child to safely return home, as documented by CRB findings or a court order;

(B) A court or DHS has determined that:

(i) The parent has made significant measurable progress and continues to make diligent efforts to complete the requirements of the case plan and reunification is likely within a reasonable time, but the parent needs more than 15 months to complete the requirements of the plan as documented by narrative recording on the CF 147A, CF 147B, or Service Agreement;

(ii) DHS is working with the non-offending parent to establish a permanent placement as documented by the narrative recording on the CF 147A, CF 147B, or Service Agreement;

(iii) There is a viable alternative to termination of parental rights that would free the child for adoption within a reasonable time;

(iv) If the child is an Indian child under the Indian Child Welfare Act (ICWA), the Indian child's tribe opposes adoption and has another plan for permanency for the child, in accordance with the provisions of the ICWA.

(C) DHS has determined that adoption is not an appropriate plan for the child for reasons that may include, but are not limited to:

(i) A child age 12 years or over or a child less than 12 years of age who is capable of making this decision will not consent to be adopted, and another permanency plan has been identified;

(ii) The parent and child have a significant bond, but the parent is unable to care for the child because of a disability and another permanent plan has been identified;

(iii) The child has a demonstrated inability to be maintained in a family setting as documented by a professional assessment that may include, but is not limited to, a medical, psychiatric or psychological assessment.

(d) If the compelling reason that DHS applied in making the determination that it would not be in the best interest of the child to file a petition to terminate parental rights no longer exists, DHS shall review the decision not to file, to determine if there is another compelling reason not to file the petition, or if it would be in the best interest of the child to proceed with filing.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

OTHER SITUATIONS FOR FILING A TERMINATION PETITION

413-110-0250 DHS may file a petition to terminate the rights of a parent whose child is in DHS custody but is not required to do so if:

(1) The parent has engaged in extreme conduct as specified in ORS 419B.502^{1,2}, which includes but is not limited to:

(a) Rape, sodomy or sex abuse of any child by the parent;

(b) Intentional starvation or torture of any child by the parent;

(c) Abuse or neglect by the parent of any child resulting in death or serious physical injury;

(d) Conduct by the parent to aid or abet another person who, by abuse or neglect, caused the death of any child;

(f) Conduct by the parent to attempt, solicit or conspire to cause the death of any child;

(g) Previous involuntary terminations of the parent's rights to another child if the conditions giving rise to the previous action have not been ameliorated; or

(h) Conduct by the parent that knowingly exposes any child of the parent to the manufacture of amphetamines.

(2) The parent is unfit due to conduct or condition that is seriously detrimental to the child as specified in ORS 419B.504, which includes but is not limited to:

(a) Emotional illness, mental illness or mental deficiency of the parent of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time;

(b) Conduct toward any child of an abusive, cruel or sexual nature;

(c) Addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired;

(d) Physical neglect of the child;

(e) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make the return of the child possible or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected; or

(f) Criminal conduct that impairs the parent's ability to provide adequate care for the child.

(3) The parent has failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child as specified in ORS 419B.506, which includes but is not limited to:

(a) Failure to provide care or pay a reasonable portion of substitute physical care and maintenance if custody is lodged with others.

(b) Failure to maintain regular visitation or other contact with the child which was designed and implemented in a plan to reunite the child with the parent;

(c) Failure to contact or communicate with the child or with the custodian of the child. In making this determination, the court may disregard incidental visitations, communications or contributions.

Statutory Authority: ORS 418.005

Stats. Implemented: ORS 419B.350, ASFA, CAPTA

413-110-0252 In some cases, DHS may decide to file a petition to terminate the parental rights of a parent whose child is in DHS custody without making reasonable efforts to make it possible for the child to be safely returned home and without seeking or having the juvenile court make a finding that DHS is not required to make such efforts.